

IMCD UK LIMITED

TERMS and CONDITIONS OF SALE

1. GENERAL

1.1 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to every legal relationship between IMCD UK Ltd., further referred to as "IMCD" or "Seller", and the customer who will be purchasing IMCD's goods, further to be referred as the "Buyer". A copy of these Terms and Conditions will be sent on request. Departures from these Terms and Conditions must be expressly agreed in writing. All previous Terms and Conditions are cancelled.

1.2 The applicability of general terms and conditions used by Buyer is expressly ruled out.

2. OFFERS AND AGREEMENTS

2.1 All offers from IMCD shall be without obligation. All offers shall furthermore be revocable, regardless of whether they contain a period for acceptance.

2.2 All verbal supplements, promises or changes shall be binding only if they have been made by authorised persons at IMCD.

2.3 Samples and models shown or provided shall serve as indications only, without the goods having to comply with those samples and models. Minor variations in stated size, weight, number, colour and such like shall not be considered to be defects. Commercial practice shall determine whether variations are minor.

3. PRICE INCREASES

Seller reserves the right to increase the price of the goods by giving notice at any time before delivery.

4. WEIGHT AND VOLUME OF GOODS

The weight and volume of goods delivered shall be determined at the works or store of Seller or Seller's Agent. The weight and volume so determined and declared by Seller or Seller's Agent shall be deemed to be the weight and volume of the goods delivered, unless Buyer notifies any discrepancy in accordance with Article 14 below.

5. QUANTITY TOLERANCES

Seller reserves the right to deliver against any order in excess or deficiency up to 10% of weight of volume ordered.

6. WARRANTIES AND LIABILITIES

6.1 Seller warrants that the goods shall comply with Seller's specification for the goods in question as current from time to time. Seller does not warrant the fitness of the goods for any particular purpose, even though that purpose be known to him, and no such warranty is to be implied from the name or description under which the goods are sold.

6.2 Subject as aforesaid, all warranties, conditions and statements, express or implied, by statute or common law or arising from conduct or a previous course of dealing or otherwise are excluded save those implied by S.12 of the Sale of Goods Act 1979.

6.3 Seller's liability in contract or tort for any arising (whether or not from Seller's own negligence) directly or indirectly out of the supply or use of the goods, or of the packages or pallets or containers by which the goods are delivered, shall be limited to the value of the goods supplied.

6.4 IMCD shall be liable only for direct damage resulting from an intentional act or wilful recklessness, proven by Buyer, on the part of IMCD and/or its managerial staff forming part of the board of directors or management, during the fulfilment of the obligations arising from the Agreement concluded between IMCD and Buyer.

6.5 IMCD shall never be liable for:

- indirect loss of any kind, including consequential loss and/or
- non-material loss suffered by Buyer or by a third party as a result of IMCD, or a person for whom it is liable under the law, failing in the performance of the Agreement.

6.6 Buyer shall in any case be liable for damage, of whatever nature and in whatever form, which arises after the goods delivered by IMCD have been treated and/or processed.

6.7 The liability of IMCD shall be limited at all times per event, with a series of connected events counting as one event, to the amount that is paid out under IMCD's business liability insurance policy in the case concerned.

6.8 Buyer must compensate and hold IMCD harmless for, and indemnify it against, all third-party claims, for whatever reason, in connection with compensation for any and all damage, costs, expenses, interest, losses and/or liabilities arising out or in connection with the goods delivered by IMCD, Buyer's use thereof and/or Buyer's use or application of any information disclosed or provided by or on behalf of IMCD.

6.9 In addition, Buyer agrees to comply with all of its obligations under the REACH Regulations. In particular, but without limitation, Buyer shall provide, on a timely basis, to Seller all relevant new information regarding hazards in its use(s) of the goods. Buyer shall comply with any safety information on the goods supplied to it and ensure that Buyer's customers are provided with all the information required to use their products safely.

7. FORCE MAJEURE

7.1 In the event that, due to force majeure, IMCD is prevented from performing the Agreement, or performance becomes more costly, IMCD shall have the right to suspend the Agreement for the duration of the force majeure situation, or to dissolve the Agreement in full or in part, without IMCD being obliged to pay any compensation.

7.2 The term "force majeure" shall be understood to mean any circumstance, both foreseen and unforeseen, as a result of which Buyer can no longer reasonably require performance of the Agreement. Such circumstances shall in any case be understood to include (but not limited to) strike, excessive staff sickness, interruptions in production, destruction of machinery, equipment and any kind of installation, transport problems, fire and other business disruptions, import, export and transportation bans, late or defective delivery by IMCD's suppliers, and other events beyond the control of IMCD, such as flood, storm, natural and/or nuclear disasters, war and/or threat of war, Acts of God, but also changes in legislation and/or government measures. In addition, IMCD may always rely upon force majeure in the case of unsuitability of products and/or persons used by IMCD to perform the Agreement.

7.3 If IMCD suspends performance of the Agreement in accordance with the provisions of paragraph one of this Article, Buyer must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 11.2 of these Terms and Conditions up to the new delivery date.

8. SUITABILITY OF STORAGE FACILITIES AND COLLECTING VEHICLES

8.1 In the case of goods conveyed by ship, road or rail tanker or bulk container, Seller reserves the right at any time without notice to refuse to make delivery of any quantity of the goods without incurring any liability as a result thereof, if, in the opinion of Seller, Buyer's storage tank or other installation (or any valve, filling line, pump or other equipment of Buyer required to be used in connection therewith) into which such quantity of the goods would be transferred on delivery is unsuitable by reason of inaccessibility to such transport, or dangerous to persons or property, or does or would contravene any statute, regulation, byelaw or other rule having the force of law. In such event, Seller shall be entitled to recover from Buyer all reasonable freight and other costs payable by Seller. Where, however, delivery is made by Seller of any quantity of the goods conveyed by ship or by road or rail tanker, such delivery shall not in any way be deemed an admission of the part of Seller as to the suitability of Buyer's storage tank or installation as aforesaid.

8.2 Although Seller may inspect any collection vehicle used by Buyer, or anyone acting on their behalf, to check its safe condition, Seller shall neither be responsible for the condition of such vehicle nor liable for any damage or loss resulting from such condition.

9. DELIVERY

9.1 The delivery period stated by IMCD shall not be a deadline. The mere expiry of the delivery period shall not constitute a breach of contract. IMCD shall comply with the delivery period as far as possible. Exceeding the delivery period shall not give Buyer any right to compensation.

9.2 If a delivery period has not been expressly agreed upon, a reasonable delivery period shall apply, beginning from the time that the Agreement is formed.

9.3 IMCD shall have the right at all times to deliver in consignments, and shall always be entitled to invoice for such partial performances separately.

9.4 Delivery shall take place in accordance with the definitions of the latest version of Incoterms. In the event of a conflict between these Terms and Conditions and the Incoterms, the Terms and Conditions shall prevail.

9.5 If Buyer does not take up or demand, as the case may be, the goods delivered, or does not do so in time and/or properly, it shall be in default without notice of default being required, and IMCD shall in any case be entitled to invoice for the agreed price. IMCD shall then also be entitled, without prejudice to its other rights under the law, to store the goods at Buyer's expense and risk; all costs arising there from, including increases in duties, levies, premiums and the such like, shall be payable by Buyer. Furthermore, should Buyer fail to take delivery of the goods, or any part thereof, at the times stated for delivery by reason of any cause, then Seller shall be entitled to cancel such delivery and all other outstanding deliveries or instalments and to charge Buyer with any loss suffered.

10. PROPERTY

10.1 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Terms, legal title in the Goods shall not pass to Buyer until Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by Seller to Buyer for which payment is then due.

10.2 Until such time as title in the Goods passes to Buyer, Buyer shall hold the Goods as Seller's fiduciary agent and bailee and shall keep the Goods separate from those of Buyer and third parties and properly stored protected and insured and identified as Seller's property but Buyer may resell or use the Goods in the ordinary course of business.

10.3 Until such time as title in the Goods passes to Buyer, Seller may at any time require Buyer to deliver up the Goods to Seller and, if Buyer fails to do so forthwith, enter any premises of Buyer or any third party where the Goods are stored and repossess the Goods.

10.4 Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of Seller, but if Buyer does so all monies owing by Buyer to Seller shall (without limiting any other right or remedy of Seller) forthwith become due and payable.

10.5 If Buyer or Buyer's agent forms a new product from, or partly from, the goods delivered to it by IMCD, this shall be a product which IMCD has had formed for itself. Furthermore, Buyer or Buyer's agent shall keep the product for IMCD, and IMCD shall always remain the owner until all the obligations referred to in paragraph 10.1 of this Article have been fulfilled.

11. PAYMENT

11.1 Payment in full shall be made and received by the date for payment stipulated on the front of the invoice or otherwise made within 14 days of invoicing, without discount and/or setoff, in the currency specified by IMCD and in the manner stated by IMCD. If payment in full is not made within the period stated, Buyer shall be in default by operation of law and shall be liable to pay interest at the rate of 10% per annum on the amount outstanding. If the statutory interest is more than 10%, Buyer shall be liable to pay the statutory interest.

11.2 IMCD shall be entitled at all times, before starting or continuing its performance, to require security from Buyer for the fulfilment of both its payment and other obligations. The security shall be provided in the manner stipulated by IMCD. If Buyer has not provided security within 14 days of a request to that effect, in the manner stipulated by IMCD, all amounts owed by Buyer to IMCD shall be due and payable in full and immediately, without prior notice of default being required.

11.3 In the event of non-payment or incomplete or late payment of an amount due and payable, failure to fulfil any other obligation arising from an Agreement, or failure to do so fully and/or in time, suspension of payment, a moratorium or application for such, bankruptcy or petition for such, or Buyer being placed under guardianship, dying or its business being wound up, IMCD shall have the right, without notice of default and without judicial intervention, to suspend performance of the Agreement or to dissolve the Agreement in full or in part, and to claim back, as its property, any goods delivered but not yet paid for in full, offset against any sums already paid, without prejudice to its right to compensation. If one of the situations described in the previous sentence arises, all amounts owed by Buyer to IMCD shall be due and payable in full and immediately, without prior notice of default being required.

11.4 Judicial and extrajudicial costs shall be payable by Buyer. The extrajudicial costs shall amount to 15% of the outstanding amount, with a minimum of Pounds Sterling 125.

11.5 Without prejudice to the provisions of Article 14, complaints about invoicing may only be made within the payment term. Complaints must be submitted in writing. The submission of a complaint shall not suspend Buyer's payment obligation.

11.6 Payments shall cover firstly judicial costs, extrajudicial collection costs and interest payable, and then the outstanding principal sums, starting with the most outstanding principal sums, regardless of any instructions to the contrary from Buyer.

11.7 If, in accordance with the provisions of paragraph 11.3 of this Article, IMCD suspends performance of the Agreement, Buyer must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 11.2 of these Terms and Conditions up to the new delivery date.

12. VALUE ADDED TAX

The Seller's invoice will normally include Value Added Tax at the prevailing rate. Where Buyer has represented to Seller that goods being delivered to Buyer are not subject to Value Added Tax, Buyer shall produce all evidence as may be required by the competent authority eg, that such goods have been exported, and shall indemnify and hold Seller harmless in respect of all Value Added Tax charged to Seller by the competent authority in respect of such goods together with all interest charges, penalties, fines and other costs incurred by the Seller as a result of Buyer either not exporting such goods or failing to provide the relevant evidence required by the competent authority within the time prescribed.

13. PACKAGES, PALLETS AND CONTAINERS

13.1 Unless otherwise agreed, returnable packaging provided by IMCD shall remain the property of IMCD at all times and must be returned to IMCD in perfect condition after use at Seller's expenses to the works or depot named by Seller, and Buyer shall notify Seller of the date of despatch thereto. If the returnable packaging is not returned in perfect condition, IMCD shall no longer be obliged to take back the returnable packaging, and the deposit charged shall not be returned either. If Buyer fails within a reasonable period, and in any case within three months, to return any such package or pallet or container in good order and condition, Buyer shall pay the cost of replacement thereof. IMCD shall have the right to deduct rent from the deposit.

13.2 The loading or filling of transport equipment and/or packaging made available by Buyer shall take place at Buyer's expense and risk. If IMCD should nonetheless be liable, the provisions of Article 6 of these Terms and Conditions shall then be fully applicable.

13.3 IMCD shall have the right to refuse to load equipment and/or fill packaging if it does not fulfil the requirements which may be reasonably set in connection with safety.

13.4 In the case referred to in Article 13.3, IMCD shall not be liable for any costs arising from a possible delay. Costs shall also be understood to include the costs referred to in Article 9.5.

13.5 If Buyer does not promptly discharge road vehicles, or does not promptly discharge and return rail wagons, Seller shall have the right to charge Buyer demurrage at the prevailing rate in respect of consequent delays.

14. CLAIMS/INSURANCE/RETURNS

14.1 All claims for damage to or partial loss of goods in transit must be submitted in writing to carrier and Seller or Seller's Agent within three days of delivery and the delivery note must be endorsed accordingly.

14.2 All claims for non-delivery of the whole of any consignment, or of any separate package forming part of a consignment must be submitted in writing to the carrier and Seller or Seller's Agent within seven days of receipt by Buyer or Buyer's Agent of Seller's invoice or advice note, whichever is the earlier.

14.3 As soon as reasonably practicable and in any event within seven days of receipt of the goods, Buyer shall examine them for the purpose of ascertaining whether they conform to the contract, and if such goods do not conform, promptly give written notice thereof to Seller with sufficient particulars; Buyer shall permit Seller to investigate the matters relevant to such notification before the remainder of the goods comprised in the same consignment are used or pursuing any claim in respect of the goods.

14.4 In the absence of notification as a claim or otherwise in accordance with 14.1, 14.2 or 14.3 above, the goods shall be deemed to have been delivered and accepted in conformity with the contract.

14.4 The insurance costs shall be payable by IMCD only if provided for by the definitions of an Incoterm declared applicable. In that case, however, IMCD shall not be obliged to do any more with regard to the insurance to be taken out, than to take out insurance up to values equivalent to the net invoice sum.

14.5 The insurance to be taken out shall insure against normal business risk only, and therefore not against exceptional risks and/or acts of war. The liability of IMCD shall not, in any case, extend beyond the cover provided by the insurance. If IMCD should nonetheless be liable beyond the cover provided by such insurance, the provisions of Article 6 of these Terms and Conditions shall be fully applicable.

14.6 In the event of damage or loss in transit in cases where risk remains with IMCD, IMCD shall submit a claim to the insurer. After IMCD has received the payment from the insurer, it shall pay relevant sums to Buyer.

14.7 Without duly authorised prior written consent on its part, IMCD shall not be obliged to accept returns from Buyer. If goods are returned without the duly authorised prior written consent of IMCD, their dispatch and storage after their return shall be at Buyer's expense and risk.

14.8 The risk in returned goods shall continue to be borne by Buyer until IMCD has accepted the return and the returned goods in writing, to which acceptance IMCD may attach conditions.

14.9 Complaints about goods which have already been treated and/or processed in any way after delivery shall not be accepted.

14.10 If a complaint is submitted in time and in accordance with these Terms and Conditions, and IMCD is reasonably of the opinion that it has been sufficiently demonstrated that the goods are not suitable for their intended use, IMCD shall be free to choose either to deliver what is lacking so that the goods are then suitable for the intended use or to redeliver the goods found to be unsound free of charge, or to grant a discount on the price. By performing in one of the stated ways, IMCD shall have discharged its guarantee obligation fully and shall not be obliged to pay any further compensation. Replaced goods shall become the property of IMCD.

14.11 The guarantee on goods delivered by third parties may never extend beyond the guarantee that is provided to IMCD by the manufacturer or importer of those goods.

14.12 Any claim under this Article shall in any case lapse once three months have passed since receipt of the goods supplied.

15. TRADE MARKS AND PATENTS

15.1 Nothing contained in this contract, whether express or implied, shall be deemed to confer any rights upon Buyer to apply any trade mark, patents, copy right or any other intellectual property right owned by Seller or any of Seller's associated companies to any goods supplied under this contract, unless explicitly agreed in writing between Seller and Buyer. Buyer warrants not to infringe any intellectual property of Seller by reason of its importation and/or use of the goods.

15.2 When goods are made or adapted by Seller in accordance with Buyer's specifications, Buyer shall indemnify Seller against all costs, claims and expenses incurred by Seller in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trade marks or other rights belonging to third parties.

16. NON-ASSIGNABILITY

This contract is not assignable by Buyer without Seller's prior consent in writing.

17. CONVERSION

If, and insofar as, any stipulation in these Terms and Conditions cannot be relied upon, that stipulation shall have a significance as similar as possible in terms of contents and purpose, so that the stipulation concerned may be relied upon.

18. PROPER LAW

The construction, validity and performance of this contract shall be governed by the law of England and Wales and any dispute shall be resolved by the English courts.

19. EXPORT

19.1 The export or re-export of these goods is subject to compliance with the export control laws and regulations of the United Kingdom. Buyer shall not knowingly directly or indirectly export or re-export the goods to any country proscribed from time to time pursuant to such laws and regulations.

19.2 Buyer shall be responsible for complying with any legislation and regulations governing the importation of the goods into the country of destination, and into any country through which the goods are transported.

20. CONFIDENTIALITY

If Seller discloses or grants to Buyer access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Buyer shall treat this information as strictly confidential and will not, directly or indirectly, make use of any such information or disclose such information to any third party at any time, without Seller's prior written consent. In the event that Buyer and Seller have entered into a separate confidentiality agreement, the terms and conditions of such agreement shall take precedence over the terms of this Article.