

GENERAL TERMS AND CONDITIONS OF SALE IMCD CANADA LIMITED



1. ENTIRE AGREEMENT; ACCEPTANCE OF TERMS.

These terms and conditions are the only terms which govern the sales of products and/or services ("Deliverables") by IMCD Canada Limited and its affiliates ("Seller") to the purchaser and its affiliates ("Buyer"). The supply agreement submitted with these terms and conditions, together with any quotations, proposals, order acknowledgments, invoices, specifications, quality assurance agreements, supplements and attachments and any amendments and modifications thereto issued by Seller from time to time to Buyer shall constitute the entire agreement (the "Agreement") between Buyer and Seller and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, concerning the subject matter herein. This Agreement, including these terms and conditions, prevail over any of Buyer's general terms and conditions of sale regardless whether or when Buyer has submitted such terms and conditions. Buyer's acknowledgement, taking delivery or acceptance of any Deliverable, or any other conduct of Buyer which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Buyer of this Agreement, including these terms and conditions. Acceptance of this Agreement is expressly conditioned on Buyer's assent to all of the terms and conditions of this Agreement. Additional or different terms provided in Buyer's request for quotation, bid documents, purchase order, acceptance of Seller's offer or other communications which vary in any degree from any of the terms of this Agreement shall be deemed material and are hereby objected to and rejected. If this Agreement shall be deemed an acceptance by the Seller in response to an offer by Buyer and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Seller shall constitute an acceptance expressly conditioned upon Buyer's assent to all of the terms and conditions of this Agreement. These terms and conditions of sale may be amended or modified from time to time by Seller, by notice and delivery to Buyer. Each such amendment or modification shall be binding upon Buyer with respect to all purchases occurring after the date of such modification.

2. PRICE ADJUSTMENTS.

Seller may adjust the prices of Deliverables on undelivered Deliverables or orders at any time. Buyer may cancel or suspend any such orders subject to any price increase immediately upon notice of such price increase, unless such price increase relates to an increase in the cost of shipping or insurance prior to the shipping date as contemplated by Section 7 hereof, in which case the Buyer may not cancel or suspend the order for the relevant Deliverables and shall pay such increased price. Any order so suspended that is not renewed within 30 days shall be deemed cancelled. In no event shall Seller have any obligation or liability to Buyer on account of any such cancellations or suspensions.

3. PAYMENT.

Payment terms are net 30 days from date of invoice. Unless otherwise specified, if payment of the price or any other amounts owed by Buyer to Seller hereunder is not made on time, Seller, in addition to all other legal, equitable and contract rights, shall be entitled to interest on such overdue amount at a rate equal to the lesser of (a) one and one-half percent (1½%) per month and (b) the highest rate permitted by applicable law in regard to such obligation owed by the Buyer. Buyer also agrees to pay all charges, costs and legal fees incurred in collecting amounts owed.

4. PRICES; TAXES; FREIGHT AND OTHER COSTS.

Except to the extent otherwise provided in this Agreement, the price for the Deliverables shall not include applicable Federal, provincial and local transactional costs and expenses, including, but not limited to, freight, fuel surcharges, taxes, duties, tariffs or other additional costs imposed by reason of the sale of the Deliverables, which costs and expenses shall be the responsibility of Buyer. If Buyer shall fail to pay and discharge such taxes, duties and other sums when due, Seller may at its option, pay the same, in which event Buyer shall promptly reimburse the Seller for such sums paid and any costs incurred by Seller in making such payments on Buyer's behalf.

5. CONTAINERS.

Seller retains ownership of all returnable containers. Buyer may use the containers only for the storage of original contents. Buyer shall return the containers to Seller empty and in the same condition provided, normal wear and tear excepted, within 90 days from the date of delivery. Seller shall credit the deposit, less a handling fee, to Buyer's account if Buyer returns the containers FOB. (Incoterms) to Seller's return point in good condition within 90 days. If not returned or returned in a condition that does not meet the foregoing standard within 90 days, Seller shall charge full replacement cost.

6. TITLE; RISK OF LOSS.

The respective responsibilities of Seller and Buyer for delivery, transportation, customs clearance, payment of expenses in respect thereof and risk of loss or damage to the Deliverables and similar matters shall be those specified for Ex Works (Incoterms), unless expressly stated and agreed otherwise by Seller in writing. Notwithstanding delivery and the passing of risk of loss, or any other provision of this Agreement, legal and beneficial title in all Deliverables shall not pass to Buyer until Seller has received payment in full of the price of the Deliverables and all other Deliverables sold by Seller to Buyer for which payment is then due in the form of cash or other settled funds. Until such time as title in the Deliverables passes to Buyer, Buyer shall hold the Deliverables as Seller's fiduciary agent and bailee and shall keep the Deliverables separate from other goods of Buyer and third parties and properly stored, protected and insured and identified as Seller's property, and Buyer may not: (a) use the Deliverables other than in the ordinary course of Buyer's business; or (b) resell or dispose of the Deliverables, in either case, until Buyer acquires title thereto from Seller as herein provided. Until such time as title in the Deliverables passes to Buyer, Seller may at any time Buyer is in default of payment of the price or otherwise under this or any other agreement with the Seller, require Buyer to deliver up the Deliverables to Seller and, if Buyer fails to do so forthwith, enter on any premises of Buyer or any third party where Deliverables are stored and repossess the same, in all cases without obligation or liability to Buyer. Buyer shall not be entitled to pledge or grant or suffer to exist any security interest, hypothec, lien or adverse claim in or to any Delivery which remains 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. If the Buyer forms a new product from, or partly from, any Deliverable delivered to Buyer by Seller prior to payment in full in cash to Seller of the price thereof, Seller shall have co-ownership title and rights on the new product in proportion of the value of the Deliverable processed or mixed in



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relation to the new product. Furthermore, the Buyer shall keep (part of) the product for Seller, and Seller shall always remain the owner equal to its share of co-ownership until all the obligations referred to in this section have been fulfilled.

7. TRANSPORTATION.

If and to the extent, subject to the foregoing, that (a) Seller arranges or pays for railroad tank cars or another mode of transportation, Buyer agrees to unload the cars (or other mode of transportation) within 2 hours, and (b) Seller is obligated to pay for insurance and/or transportation costs, such insurance and transportation shall be provided at the applicable rates available to Seller in effect at the date such transportation or insurance is arranged; if for any reason the cost of insurance and/or transportation increases prior to shipment date, such increase shall be for the account of, charged to and paid by Buyer.

8. LIMITED WARRANTY; EXCLUSIVE REMEDY.

EXCEPT AS SET FORTH IN ANY APPLICABLE LIMITED WARRANTY THAT MAY BE GIVEN BY SELLER IN WRITING AND IN EFFECT WITH RESPECT TO THE DELIVERABLES, SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE DELIVERABLES. SELLER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE DELIVERIES OR THE FITNESS OF THE DELIVERABLES FOR ANY PARTICULAR PURPOSE AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE DELIVERABLES WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING. Any warranty made by Seller, if any, will be expressly subject to proper use of the Deliverables in accordance with any directions for use or other applicable instructions or documentation. No warranty shall apply in situations of error, omission, or negligence in connection with installation, operation, or use of the Deliverables. BUYER'S SOLE REMEDY IN THE EVENT OF A BREACH OF ANY APPLICABLE LIMITED WARRANTY IS THE REPAIR OR REPLACEMENT OF THE AFFECTED DELIVERABLE OR THE REFUND OF THE PURCHASE PRICE OF THE AFFECTED DELIVERABLE BY SELLER. Seller's repair or replacement or refund of the purchase price of any Deliverables in the manner contemplated by this provision or any limited warranty provided by Seller will not be deemed an admission of any fault on the part of Seller, or an admission that the Deliverables are otherwise defective or non-conforming. Seller agrees to transfer the benefit of any warranties with respect to any Deliverable (or component thereof) from a supplier of such Deliverables (or component thereof) to Seller if and to the extent such warranties are transferable.

9. INSPECTION.

Seller shall be under no obligation to notify Buyer of any changes to the processing, design, composition, or performance of its Deliverables, unless such change cause such Deliverables to be non-conforming in accordance with the terms hereof. The Buyer shall itself or by its agent be responsible for checking the conformity of the Deliverables during their delivery, indicating any reservations on the delivery note which is signed by the carrier regarding - including but not limited to - quantity, quality, documentation and labeling. Lacking of such reservations, the Deliverables shall be deemed free of visible defects. The Buyer further acknowledges its responsibility to, as soon as possible but in any event prior to use and/or reselling the Deliverables, test and effectively evaluate (i) whether the Deliverables (including samples and models) meet the specifications, as provided by Seller for such Deliverables and (ii) whether the Deliverables and/or any technical assistance and information provided by Seller is suitable for Buyer's intended uses and applications. Buyer understands its application-specific analysis shall at least include testing to determine suitability from a technical as well as health, safety, and environmental standpoint. The Buyer shall make complaints about the delivered Deliverables in writing within 14 days of the time of delivery, stating the reasons for the complaint and if possible accompanied by proof, failing which the Buyer shall be deemed to have accepted the quantity and quality of the Deliverables and shall lose any claim against Seller in respect of defects in the Deliverables supplied, subject to the terms of the Agreement. Buyer's obligation to accept and make payment on time for the balance of the Deliverables delivered or to be delivered under this Agreement shall not be affected by the foregoing. BUYER EXPRESSLY RELEASES SELLER FROM ALL LIABILITY, IN TORT, CONTRACT OR OTHERWISE, INCURRED IN CONNECTION WITH THE SALE, HANDLING, STORAGE, TRANSPORTATION, USE AND/OR DISPOSAL OF DELIVERABLES, EXCEPT TO THE EXTENT ANY SUCH LIABILITY ARISES FROM GROSS NEGLIGENCE OR WILLFUL MISCONDUCT ON THE PART OF SELLER.

10. REMEDIES.

Seller's liability for nonconforming Deliverables is exclusively limited, at Seller's option, to replacement of the defective Deliverables or refund of the purchase price of such Deliverables. Seller's liability for any defective or negligent service is limited to Seller re-performing the service or a refund of an amount not to exceed the amount paid for the service, or, if the services were provided free of charge, to pay an amount not to exceed the amount paid for the Deliverables to which the services related in the 12 months prior to the event of the liability.

11. LIMITATION ON LIABILITY.

IN NO EVENT SHALL SELLER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT LIABILITY, MISREPRESENTATION, FRAUD, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE PURCHASE PRICE OF THE DELIVERABLES.

12. DISCLAIMER OF CONSEQUENTIAL DAMAGES; BUYER INDEMNITY.

IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION OR WARRANTY IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HEREWITH. "CONSEQUENTIAL DAMAGES" FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY TO ANY PERSON, OR LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED THROUGH



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THE USE OF THE DELIVERABLES), DAMAGES OR LOSSES RESULTING FROM CLAIMS OF OTHER PERSONS AGAINST BUYER, OR DAMAGES OR LOSSES SUSTAINED AS THE RESULT OF WORK STOPPAGE. Without limiting the foregoing, under no circumstances will Seller be responsible for any purchase price reimbursements, costs, penalties, fees, or other amounts associated with Buyer's purchase or acquisition of any replacement product or services.

13. RETURNS.

Deliverables may not be returned without Seller's permission and transportation for return will not be paid by Seller unless authorized in advance.

14. FORCE MAJEURE.

Seller is not liable for nonperformance or delay in performance caused by circumstances beyond the control of Seller ("Force Majeure Event"). A Force Majeure Event includes, without limitation, (a) acts of God, war, riots, fire, explosions, floods, strikes, lockouts, injunctions, accidents, product shortage, unforeseen shutdown of major sources of supply, late or defective delivery of any of Seller's suppliers, breakage of machinery or apparatus, or national emergency, (b) Seller's inability to obtain Deliverables (or components thereof), fuel, power, raw materials, labor, containers or transportation at prices Seller deems in its discretion to be commercially reasonable, (c) the occurrence of any unforeseeable contingency making performance impractical, or (d) for any reason beyond the control of Seller or of Seller's supplier, whether similar or dissimilar to any of the foregoing. Any delivery so suspended for more than 60 days may be cancelled by Seller or Buyer without liability of either party to the other, but this Agreement shall otherwise remain in full force and effect. A Force Majeure Event shall not excuse or extend any payment obligation of any party.

15. SHORTAGES.

Unless otherwise specified, Seller shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale, and payment shall become due therefor in accordance with the terms of payment contained in this Agreement. When in the opinion of Seller there is a period of shortage of supply for any Deliverable (or any component thereof) for any reason, including in the case of any Force Majeure Event, Seller may allocate its available supply among any or all of its various customers in its sole and absolute discretion, with no liability on its part for failure to deliver the quantity or any portion therein specified.

16. STEWARDSHIP.

Buyer agrees that the Deliverables will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. Buyer agrees to instruct its employees with respect to, and to make certain that they know and understand, procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the Deliverables. Buyer further agrees to deliver the most recent edition of any literature pertaining to the Deliverables, including safety data sheets, to its employees and customers and to maintain a written record of such Deliverables. Buyer shall only sell or otherwise transfer the Deliverables to those who Buyer reasonably believes can handle, use, store, transport and dispose of the Deliverables safely.

17. COMPLIANCE WITH LAWS; CODE OF CONDUCT.

Buyer agrees that the Deliverables will not be used, resold, transferred, exported or reused in any way by Buyer in violation of applicable law or regulations of any federal, local, provincial or other governmental entity including applicable import/export regulations. Buyer further acknowledges that it has read and agrees to follow, subject to the foregoing, the IMCD Code of Conduct as amended, modified or supplemented from time to time, as found on the following website: www.imcdgroup.com. Buyer agrees to use its best efforts to require that all third parties to whom any Deliverables are sold, or otherwise transferred, to by Buyer, whether in original form or as intermediate or end-product, will comply with the terms set out in the first paragraph of this section and agrees to refuse to supply any Deliverables to any such entity with respect to which Buyer has reasonable doubts as to such compliance.

18. INTELLECTUAL PROPERTY.

Nothing contained in this Agreement, whether express or implied, shall be deemed to confer any license or other rights upon Buyer to any trademark, service mark, slogan, brand name, patent, copyright, registered design, trade secret, or any other proprietary right ("Intellectual Property Rights") owned by Seller or any other person or entity, whether associated with any Deliverables or otherwise. Buyer warrants not to infringe any Intellectual Property Rights of Seller or any other person or entity by using, selling, or reproducing the Deliverables for purposes other than those intended by Seller in selling the Deliverables to the Buyer as provided herein.

19. CONFIDENTIALITY.

Buyer agrees to maintain in strict confidence and will not, directly or indirectly (including through its principals, directors, officers, employees, agents or affiliates), divulge, transmit, publish, release, or otherwise use any confidential or proprietary information relating to the Seller's products, services, pricing, technology, business relationship, or customers, or otherwise relating to the Seller's business operations. Buyer will at all times use the same level of care (but in any event will not use less than commercially reasonable care), to prevent disclosure of the confidential and proprietary information of the Seller that it uses with its own information of similar sensitivity or importance. Buyer acknowledges that all confidential proprietary information regarding the Seller compiled or obtained by, or furnished to Buyer, in connection with the Deliverables or this Agreement, is confidential information and the Seller's exclusive property. 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 section.

20. SUSPENSION OF FUTURE SHIPMENTS – CHANGE OF CREDIT TERMS.

Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier shall constitute a



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further representation of solvency at the time of signing such receipt. Should Buyer fail to make payment when due under this Agreement or any other contract between Buyer and Seller, Seller shall have all rights and remedies provided under applicable law, including, without limitation, the right to withhold shipment of any portion of the Deliverables covered by this Agreement or by any other existing contract between Seller and Buyer. Said action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining portion of Deliverables if and when shipped by Seller or otherwise release Buyer of any of its obligations under this or any such other contract. If at any time there is any such payment default, a change in the financial condition or structure of Buyer arising from a change in business or market conditions or otherwise, or arising from a corporate transaction, amalgamation, merger, reorganization or other change in business form or if Buyer becomes insolvent, makes an assignment for the benefit of its creditors or ceases to be a going concern, or if a petition in bankruptcy with respect to Buyer is filed, or if any lien arising from judicial process or otherwise is placed upon or any receiver or trustee is appointed with respect to any material asset of Buyer, then Seller, in addition to any and all other rights and remedies, shall have the right to cancel any undelivered or future orders under this Agreement without liability on its part or to change the credit terms applicable to Buyer, including but not limited to requiring the payment of cash in advance of delivery.

21. INDEMNITY.

Buyer shall defend, indemnify and hold Seller, its officers, directors, agents, and employees harmless from and against all claims, demands, actions and causes of action, losses, costs, damages, and liabilities (including reasonable legal fees and other out-of-pocket costs) ("Claims") asserted against or incurred by Seller in connection with: (a) Buyer's negligence, willful misconduct or breach of this Agreement; (b) when Deliverables are made or adapted by Seller in accordance with Buyer's specifications, any alleged or actual infringement by such Deliverables of any Intellectual Property Rights of any other person; or (c) other acts of Buyer giving rise to Claims, including third party Claims, against Seller.

22. GOVERNING LAW AND VENUE.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable in such Province and this Agreement shall be treated, in all respects, as an Ontario contract. The United Nations Convention on Contracts for the International Sale of Goods will not apply. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be brought in any court of competent jurisdiction in the Province of Ontario, and the parties hereby irrevocably submit to the jurisdiction and venue of such courts. Both parties, to the full extent permitted by law, hereby waive any right to trial by jury in any action or proceeding involving this Agreement or any Deliverables or transaction relating thereto.

23. LIMITATION ON ACTIONS.

Unless otherwise specified in this Agreement, no claim or cause of action, other than a claim for payment of amounts owed by Buyer to Seller, arising under this Agreement may be asserted more than one year after the date on which such claim or cause of action arises.

24. ENGLISH LANGUAGE.

The Parties hereto have requested that this Agreement and any of its accessories, including any notice, be written in the English language. In the event of any discrepancy between the English language version of this Agreement (including these terms and conditions) and the French language version of this Agreement (including the French language version of these terms and conditions), the English language version shall prevail. Les Parties aux présentes ont exigé que ce contrat et ses accessoires, y compris tout avis, soient rédigés en anglais. En cas de divergence entre la version anglaise des présentes modalités et conditions et la version française des présentes modalités et conditions, la version anglaise l'emporte.

25. GENERAL.

Buyer may not assign its right under or interest in this Agreement without the prior written consent of Seller, which consent may be withheld or conditioned in Seller's sole discretion. This Agreement shall be binding upon and inure to the benefit of Buyer and Seller, their successors and permitted assigns. No waiver by either party of any breach of this Agreement shall constitute a waiver of any other breach. If any provision hereof is held to be invalid or otherwise unenforceable for any reason, all other terms and remaining conditions will continue to be in force. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever. This Agreement may only be amended or modified in writing stating specifically that it amends this Agreement and is signed by an authorized representative of each party. The headings are for convenience of reference only, shall not constitute a part of this Agreement, and shall not be taken into consideration in the interpretation of, or affect the meaning of, this Agreement. References to this Agreement shall include a reference to all schedules and exhibits hereto, as the same may be amended, modified, supplemented, or replaced from time to time. Unless the context otherwise requires, wherever used herein the plural includes the singular, the singular includes the plural, and each of the masculine, feminine, and neuter genders include all other genders. References containing terms such as: "hereof", "herein", "hereto", "hereby", "hereinafter", "hereunder" and other terms of like import are not limited in applicability to the specific provision within which such references are set forth but instead refer to this Agreement taken as a whole; and "includes" and "including", whether or not used with the words "without limitation" or "but not limited to", shall not be deemed limited by the specific enumeration of items but shall, in all cases, be deemed to be without limitation and construed and interpreted to mean "includes without limitation" and "including without limitation" and referring to all other items or matters that could reasonably fall within the broadest possible scope. Any reference to a person includes and is deemed to be a reference to any person that is a successor or permitted assign of that first Person. References to "days" shall mean calendar days.

