

GENERAL TERMS AND CONDITIONS OF SALE IMCD KENYA LIMITED



Article 1 - GENERAL

1.1 Definitions:

Agreement:	any agreement and/or legal act between IMCD and the Purchaser in connection with the purchase of products by the Purchaser from IMCD.
IMCD:	IMCD Kenya Limited, having its registered office at C&S House, Plot 2019/10491, Old Embakasi Road, Embakasi, P.O. Box 61639-00200, Nairobi, Kenya.
the Purchaser:	any legal or natural person that wishes to conclude, concludes or has concluded an Agreement with IMCD, as well as any legal or natural person to which IMCD supplies or has supplied products.
Terms and Conditions:	these general terms and conditions of sale of IMCD.

- 1.2 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to all offers and quotes from IMCD, to the Agreement and to all acts and legal acts between IMCD and the Purchaser.
- 1.3 Departures from these Terms and Conditions are only valid if they were expressly agreed in writing.
- 1.4 The applicability of general terms and conditions used by the Purchaser or any other general terms and conditions is expressly ruled out.
- 1.5 The text of the Agreement shall prevail over these Terms and Conditions in the event of a conflict.

Article 2 - OFFERS AND AGREEMENTS

- 2.1 All offers, quotes and price proposals from IMCD will be subject to contract at all times and may be amended or revoked at any time, 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 people at IMCD.
- 2.3 Samples and models shown or provided shall serve as indications only, without the products having to comply with those samples and models. Minor variations in stated size, weight, number, colour and other product properties shall not be considered to be defects. Commercial practice shall determine whether variations are minor.
- 2.4 IMCD shall be entitled at all times, before starting or continuing its performance, to require security from the Purchaser for the fulfilment of any of its obligations under any Agreement. The security shall be provided in the manner stipulated by IMCD in its sole discretion.
- 2.5 If the Purchaser has not provided security within 14 days of a request to that effect, in the manner stipulated by IMCD, all amounts owed by the Purchaser to IMCD shall be due and payable in full and immediately, without prior notice of default being required.

Article 3 - DELIVERIES

- 3.1 Unless expressly agreed otherwise in writing, the delivery of products shall be ex-works at such premises as IMCD may designate to the Purchaser from time to time (Incoterms EXW).
- 3.2 Delivery shall take place in accordance with the definitions of the latest version of the Incoterms. In the event of a conflict between these Terms and Conditions and the Incoterms, the Incoterms shall prevail.
- 3.3 The risk attached to the products purchased will pass to the Purchaser at the time of delivery. The time of delivery is the time that the products purchased arrive at the place of delivery, even if the Purchaser does not accept the delivery. For delivery ex-works, the time of delivery is the time that IMCD notifies the Purchaser that the products purchased are ready for collection.
- 3.4 Unless expressly agreed otherwise in writing, the delivery period specified and agreed will not be a final deadline. The mere fact that IMCD exceeds the agreed delivery period shall not constitute a breach of contract, shall not result in default or any liability to the Purchaser and shall not entitle the Purchaser to terminate the Agreement or to any other remedy for breach of contract.
- 3.5 If a delivery period has not been expressly agreed upon, a reasonable delivery period shall apply.
- 3.6 IMCD shall have the right at all times to deliver in consignments, and shall always be entitled to invoice for such partial performances separately.
- 3.7 If the Purchaser does not accept delivery, or in the case of ex-works delivery does not collect the products delivered within seven days after delivery and/or in the manner stipulated by IMCD, the Purchaser shall be in default without notice of default being required, and IMCD shall in any case be entitled to invoice for and receive the agreed price. IMCD shall then also be entitled, without prejudice to its other rights under the law, to store the products at the Purchaser's expense and risk, all costs arising therefrom, including but not limited to increases in duties, levies, premiums, taxes and charges, shall be payable by the Purchaser.
- 3.8 If a situation provided for in Article 3.7 arises, and, despite being given a reasonable time by IMCD, the Purchaser still fails later to take up the products or fails to do so in time and/or properly, IMCD shall without prejudice to its other rights under the law, these Terms and Conditions and/or the Agreement be released from all its obligations and be entitled to retain the purchase price (if paid) as compensation for the storage costs incurred and against any loss of value which the products have sustained since delivery.

Article 4 - PRICES

- 4.1 Unless expressly agreed otherwise in writing, all prices shall be ex-works. All prices shall be exclusive of VAT, the costs of transporting and/or dispatching the products, other costs incurred in connection with delivery, government levies and/or taxes payable.
- 4.2 IMCD shall be entitled at all times to change its prices, on condition that prices already agreed may be changed only if the cost-determining factors on which the prices are based have changed since the Agreement was concluded and prior to delivery. Such price adjustments will not entitle the Purchaser to terminate the Agreement. Such cost-determining factors include without limitation raw material prices, labour costs, social security costs, taxes (including VAT and other government levies), import and export duties and exchange rates.

Article 5 - TRANSPORT EQUIPMENT AND PACKAGING

- 5.1 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. 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. Furthermore, the deposit shall not be returned if returnable packaging provided by returned after it has been used by the Purchaser for more than two years. Only if the returnable packaging concerns intermediate bulk containers, the Purchaser will be charged a reasonable rent from 30 days after delivery, in addition to the deposit. This rent shall be charged after the intermediate bulk containers have been returned. IMCD shall have the right to deduct rent from the deposit.
- 5.2 The loading or filling of transport equipment and/or packaging made available by the Purchaser shall take place at the Purchaser's expense and risk. If IMCD should nonetheless be liable, the provisions of Article 8 of these Terms and Conditions shall then be fully applicable.
- 5.3 IMCD shall have the right to refuse to load equipment and/or fill packaging if it does not comply with the reasonable safety requirements set by IMCD from



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time to time. In that case, 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 3.7.

Article 6 - RETURNS, COMPLAINTS AND GUARANTEE

- 6.1. Without prior written consent on its part, IMCD shall not be obliged to accept returns from the Purchaser. If products are returned without the prior written consent of IMCD, their dispatch and storage after their return shall be at the Purchaser's expense and risk.
- 6.2. The risk in returned products shall continue to be borne by the Purchaser until IMCD has accepted the return and the returned products in writing, to which acceptance IMCD may attach conditions.
- 6.3. The Purchaser shall itself be responsible for checking, or having someone check, the conformity of products during their delivery. Purchaser acknowledges its responsibility to test and effectively evaluate the supplied products to determine the Purchaser's own satisfaction, whether the product and/or any technical assistance and information provided by IMCD is suitable for Purchaser's intended uses and applications. Purchaser understands its application-specific analysis must at least include testing to determine suitability from a technical as well as health, safety, and environmental standpoint.
- 6.4. Complaints must be made 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 Purchaser shall be deemed to have accepted the quantity and quality of the products and shall lose any claim against IMCD in respect of defects in the products supplied, subject to the provisions of Article 7 regarding warranties.
- 6.5. Complaints about products which have already been treated and/or processed in any way after delivery shall not be accepted.
- 6.6. Submitting a complaint will not release the Purchaser from its payment obligations.
- 6.7. If a complaint is submitted in time and in accordance with these Terms and Conditions, and IMCD is reasonably of the opinion that the complaint is justified, IMCD shall be free to choose either to deliver what is lacking, or to redeliver the products 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 warranty obligation under Article 7 fully and shall not be obliged to pay any further compensation. Replaced products shall become the property of IMCD.
- 6.8. The guarantee on products delivered by third parties may never extend beyond the guarantee that is provided to IMCD by the manufacturer or importer of those products.
- 6.9. Any claim under this Article 6 shall in any case lapse three months after the time of delivery.

Article 7 - WARRANTY

IMCD warrants to the Purchaser that the products sold to the Purchaser shall at the moment of delivery comply with the specifications as provided by IMCD to the Purchaser for such products. IMCD does not make any express or implied warranty as to the merchantability or fitness for any particular purpose of the products. This warranty will lapse if the Purchaser fails to fulfil its obligations under the Agreement and/or these Terms and Conditions. Invoking the warranty will not release the Purchaser from its obligations under the Agreement and/or these Terms and Conditions. Notwithstanding anything to the contrary contained in these Terms and Conditions, in case of a breach of the warranty given to the Purchaser in terms of this Article 7, the Purchaser's only remedy is a claim for specific performance by IMCD of its obligations under such warranty.

Article 8 - LIABILITY

- 8.1. IMCD will not be liable for any damage sustained by the Purchaser, irrespective of whether this damage is the result of failure by IMCD to fulfil its obligations under the Agreement and/or these Terms and Conditions (including the warranty obligation of Article 7), or of any act and/or omission by IMCD itself and/or by others acting on IMCD's instructions, unless the Purchaser proves that the damage is the result of intentional or wilful recklessness by, exclusively any director or directors of IMCD.
- 8.2. Unless otherwise provided by law, IMCD shall not be liable for (i) indirect loss of any kind including special or consequential loss, (ii) lost revenue or profits, or (iii) loss suffered by the Purchaser or by a third party as a result of IMCD, or a person for whom it is liable under the law, committing a non-material breach of the Agreement.
- 8.3. IMCD shall not be liable for damage or loss, of whatever nature and in whatever form, which arises or is incurred after the products delivered by IMCD have been treated and/or processed.
- 8.4. IMCD does not guarantee the completeness and accuracy of information received by IMCD from its own supplier and will not be liable for any damage – of whatever nature and in whatever form – incurred as a result of the incompleteness or inaccuracy of this information.
- 8.5. The liability of IMCD shall at any event 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.
- 8.6. The Purchaser must compensate IMCD for, and indemnify it against, all third-party claims, for whatever reason, in connection with compensation for any damage, costs, interest and/or losses which arise in connection with the products delivered by IMCD to the Purchaser, unless and insofar as the Purchaser demonstrates that the claim falls exclusively within IMCD's area of responsibility.
- 8.7. The provisions of this Article shall also apply in favour of all legal or natural persons used by IMCD to perform its obligations under the Agreement.
- 8.8. Any claim for damages shall in any case lapse three months after the time of delivery.

Article 9 - COMPLIANCE WITH LAWS

- 9.1. The Purchaser shall comply with all applicable laws including but not limited to laws and conventions relating to (a) competition law, (b) anti-bribery, and anti-corruption, and (c) laws relating to export control and customs regulations such as (i) the rules on embargoed countries, (ii) the restrictions on the sale of products to restricted or denied customers, and (iii) the regime for the control of imports, exports, transfer, brokering and transit of dual-use items. The Purchaser shall not directly or indirectly utilise, sell, ship or otherwise transfer, the products purchased from IMCD to or through any country, entity or individual as prohibited under national and international regulations.
- 9.2. Without prejudice to the other provisions in this Article, the Purchaser shall comply with all applicable laws and regulations in performing its obligations under the Agreement in a manner consistent with the IMCD Code of Conduct. The Purchaser confirms to have read and agrees to the IMCD Code of Conduct which is available at the following website: www.imcdgroup.com.
- 9.3. The Purchaser shall procure that any third parties to whom the products from IMCD will be supplied, whether in original form or as intermediate or end-product, are under the same obligations as set out in this Article 9 such that all third parties down the supply chain, as far as the end-user, are under the same strict compliance.
- 9.4. The Purchaser agrees to indemnify and hold harmless IMCD, its officers, employees, agents, and representatives, from and against all damages, losses, liabilities, penalties, costs and expenses, including reasonable attorney fees, as a result of any claim, suit, action, proceeding, demand, judgment or settlement arising out of Purchaser's failure to adhere to the provisions of this Article 9.



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Article 10 - FORCE MAJEURE (NON-ATTRIBUTABLE NON-PERFORMANCE)

- 10.1 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 in full or in part for the duration of the force majeure situation, or to terminate the Agreement in full or in part, without judicial intervention and without IMCD being obliged to pay any compensation.
- 10.2 The term "force majeure" shall be understood to mean any circumstance, both foreseen and unforeseen, that permanently or temporarily prevents the performance by IMCD of the Agreement. Such circumstances shall in any case be understood to include inability to pay for whatever reason, strikes, excessive staff sickness, interruptions in production, 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, 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.
- 10.3 If IMCD suspends performance of the Agreement in accordance with the provisions of this Article 10, the Purchaser must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 2.4 of these Terms and Conditions up to the new delivery date.

Article 11 - PAYMENT

- 11.1 Unless agreed otherwise in writing, payment must be made within 14 days of the invoice date, without any discount and/or setoff, in the currency specified on the invoice.
- 11.2 If payment in full is not made within the period stated, the Purchaser shall be in default by operation of law and shall be liable to pay penalty interest which shall be calculated per annum according to a rate of interest equivalent to the Central Bank Rate published by the Central Bank of Kenya.
- 11.3 The Purchaser shall fully pay to IMCD its actual judicial and extrajudicial costs, including legal fees, incurred as a result of the Purchaser's failure to fulfil its obligations under the Agreement in full and/or on time, whereby in any event the Purchaser is obliged for any such failure to pay to IMCD at least extrajudicial costs amounting to 15% of the outstanding amount.
- 11.4 Without prejudice to the provisions of Article 6.3, 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 the Purchaser's payment obligation.
- 11.5 Payments shall be deducted firstly from judicial costs, extrajudicial collection costs and interest payable, and then from the outstanding principal sums, starting with the oldest outstanding principal sums, regardless of any instructions to the contrary from the Purchaser.
- 11.6 The Purchaser will be unable to offset any debt to IMCD against any claim of the Purchaser against IMCD.

Article 12 - SUSPENSION AND TERMINATION

- 12.1 Without prejudice to the provisions of Article 10, and without prejudice to the right to claim compensation, IMCD may suspend the fulfilment of its obligations under the Agreement either wholly or in part or terminate the Agreement either wholly or in part out of court by means of a written notification, without any obligation to pay compensation, in the event that (there is a reasonable expectation that):
- a) the Purchaser materially fails to fulfil one of its obligations under the Agreement, such as its obligation to pay on time and in full;
 - b) an attachment is made against the Purchaser;
 - c) the Purchaser is granted a moratorium;
 - d) a petition is filed for the Purchaser's bankruptcy, or the Purchaser is declared bankrupt;
 - e) the Purchaser makes a payment arrangement with one or more of its creditors;
 - f) the Purchaser dies, is placed under guardianship or put into administration; or
 - g) the Purchaser's business is sold or dissolved.
- If, in accordance with Article 12.1, IMCD suspends performance of the Agreement, the Purchaser must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 2.4 of these Terms and Conditions up to the new delivery date.
- 12.2 If, in accordance with Article 12.1, IMCD terminates the Agreement in whole or in part, IMCD may claim back, as its property, any products delivered but not yet paid for in full, offset against any sums already paid, without prejudice to its right to compensation.
- 12.3 If one of the situations described in Article 12.1 arises, all amounts owed by the Purchaser to IMCD shall be due and payable in full and immediately, without prior notice of default being required.
- 12.4 The Purchaser may not suspend compliance with its obligations under or in connection with the Agreement or these Terms and Conditions on whatever grounds.

Article 13 - RESERVATION OF TITLE

- 13.1 The products which IMCD supplies to the Purchaser will remain the property of IMCD until the Purchaser has paid all amounts, including interest and costs, it owes to IMCD under or in connection with the Agreement. Before payment has been made in full, the Purchaser shall not have the right to fully or partially pledge the products to third parties. Purchaser shall further not have the right to transfer ownership of the products, other than in accordance with its normal activities or the normal use of the products.
- 13.2 The Purchaser shall keep the products delivered subject to a reservation of title with due care and as the recognisable property of IMCD and shall insure these products against damage and theft.
- 13.3 If one of the situations described in Article 12.1 arises, IMCD shall have the right to take back itself, or have someone else take back, the products which are its property, at the Purchaser's expense, from the place where they are located. The Purchaser will cooperate fully and hereby authorises IMCD irrevocably, if that situation arises, to enter, or have someone enter, the premises in use by or for the Purchaser.
- 13.4 The Purchaser shall not be permitted to rely upon a right of retention with regard to the costs incurred in connection with the safekeeping pursuant to Article 13.3, or to offset those costs against its performance.
- 13.5 If the Purchaser forms a new product from, or partly from, the products delivered to it by IMCD, IMCD shall have co-ownership title and rights on the new product in proportion of the value of the products processed or mixed in relation to the new product. Furthermore, the Purchaser shall keep (part of) the product for IMCD, and IMCD shall always remain the owner equal to its share of co-ownership until all the obligations referred to Article 13.1 have been fulfilled.

Article 14 - INTELLECTUAL PROPERTY

- 14.1 The Agreement and these Terms and Conditions do not entail any transfer or licensing of any intellectual property rights to the Purchaser.
- 14.2 The Purchaser warrants to IMCD at all times and indemnifies IMCD in this respect that the use by IMCD of data, specifications or material provided by the Purchaser does not breach any statutory regulation or infringe third-party rights.



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Article 15 - CONFIDENTIALITY

If IMCD discloses or grants to Purchaser access to any research, development, technical, economic, or other business information or "know-how" of a confidential nature, whether reduced to writing or not, Purchaser 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 IMCD's prior written consent. In the event that Purchaser and IMCD have entered into a separate confidentiality agreement, the terms and conditions of such agreement shall take precedence over the terms of this Article.

Article 16 - INVALIDITY AND CONVERSION

If any provision in the Agreement or these Terms and Conditions is held to be or becomes illegal, invalid, not binding or unenforceable (in each case either in its entirety or in part) under any law of any jurisdiction:

- a) that provision shall to the extent of its illegality, invalidity, lack of binding effect or unenforceability be deemed not to form part of this agreement but the legality, validity, binding effect and enforceability of the remainder of the Agreement or these Terms and Conditions shall not be affected; and
- b) a provision will apply between IMCD and the Purchaser which is legal, valid, binding and enforceable which is as similar as possible in terms of contents and purpose.

Article 17 - APPLICABLE LAW AND COMPETENT COURT

Kenyan law shall apply exclusively to all Agreements and to these Terms and Conditions, including this Article 17, and to any non-contractual obligation arising out of or in connection with the Agreement or these Terms and Conditions. Applicability of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is explicitly ruled out. All disputes arising in connection with this agreement, including disputes concerning the existence and validity thereof, shall be brought before the court of Nairobi, Kenya. IMCD may also opt to resolve the dispute by arbitration in accordance with the rules of the London Court of International Arbitration. The arbitration proceedings shall be held in Nairobi, Kenya and be conducted in the English language. The decision of the arbitration tribunal is final and binding upon the parties and neither the Purchaser nor IMCD shall have any right of appeal against any award save for any appeal for manifest error or fraud.

