

TERMS AND CONDITIONS OF SALE EFFECTIVE 2nd April 2007

- 1 In these conditions and in any contract to which these conditions apply:**
- (a) "the Seller" means IMCD New Zealand Limited as being the supplier of the Goods delivered or services provided or, such other company being a related company as defined in the Companies Act 1993 or any other body or legal entity under the control of its parent or holding company;
 - (b) "the Buyer" means the person who buys or has agreed to buy the Goods;
 - (c) "the Goods" means raw materials, procured products, manufactured components, ingredients and all other goods supplied by the Seller to the Buyer for resupply or use as, incorporation into, or consumption in manufacture of the Buyer's inventory or product, and
 - (d) "the Purchase Price" means the price for the Goods specified on the Seller's invoice or any delivery docket given to the Buyer in connection with the Goods and any other charges payable in connection with the sale of the Goods. If the purchase price is not paid within agreed terms this expression shall also include interest for liquidated damages, arising as a result of payment default, which is calculated at the rate specified in clause 4(b).
- 2 GENERAL**
These conditions shall apply to every sale made or agreed to be made by the Seller and no variation or abrogation of the same shall be effective unless it is evidenced in writing and signed on behalf of the Seller. To the extent to which the terms of any order differ from these conditions of sale the acceptance thereof shall be deemed to be an offer to supply only on the terms and conditions contained herein and acceptance of the Goods thereafter shall constitute acceptance of the Goods on these conditions of sale.
- 3 PRICE**
- (a) Unless otherwise stated on the face hereof the Purchase Price is for delivery ex-works and includes the cost of basic packaging.
 - (b) The Seller shall be entitled without notice to the Buyer to adjust the Purchase Price, whether before or after acceptance of the Goods, in the event of and to account for any increase in the cost to the Seller of supplying the Goods as the result of increases in costs of transport or insurance, or in rates of any applicable taxes in respect of the supply of the Goods including any duty, charge or levy in respect of the export or import of goods, or changes in the classification or value of goods for customs purposes, or any changes in applicable exchange rates or in the event of delays by the Buyer in providing any information or licences required by the Seller for the production, supply, dispatch or delivery of the Goods, or any other impost arising after the sale.
- 4 PAYMENT TERMS, DEFAULT AND LIMIT**
- (a) Unless otherwise agreed by the parties in writing, the Purchase Price shall be paid within twenty (20) days of the following month from the invoice date of the Goods.
 - (b) Time for payment of the Purchase Price shall be of the essence of the contract and if the Buyer fails to pay the Purchase Price when due, the Seller may treat the contract as repudiated by the Buyer or may, until payment in full is made, suspend delivery of the Goods the subject of the contract and any Goods the subject of any other contract with the Buyer without incurring any liability whatsoever to the Buyer in respect thereof. In addition, but without prejudice to such rights of the Seller, the Buyer shall pay compounding interest on a daily balance basis to the Seller on the overdue outstanding Purchase Price at the rate of 3 per cent per annum above the Indicator Lending Rate of the Seller's banking institution ruling from time to time until the Purchase Price is paid in full. Further, all moneys owing and outstanding to the Seller on any account whatsoever by the Buyer shall become immediately due and payable at the option of the Seller if any of the following events occur:
 - (i) the Buyer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration;
 - (ii) the Buyer makes a scheme or compromise with its creditors;
 - (iii) the Buyer ceases or threatens to cease conducting its business in the normal manner and, whereby changes arise in management control, structure or legal entity of the Buyer;
 - (iv) the Buyer or a related company of the Buyer (within the meaning of the Companies Act 1993) or any Guarantor of the Buyer defaults or breaches any condition or understanding under this contract or any other contract between the Seller and the Buyer or the Seller and the related company.
 - (c) The Seller can at any time without notice to the Buyer alter or terminate the Buyer's credit limit or terms. The Seller accepts no liability whatsoever in the operation of this condition.
 - (d) Any money paid by the Buyer shall be firstly applied to payment of all interest owing, secondly to any other costs which are applicable under these conditions of sale (if any) and thereafter any residual of the amount paid shall be applied against the Purchase Price of the Goods, and against such amounts, items or portions of that Purchase Price as the Seller determines (at its sole discretion) and specifies to the Buyer. Until the Seller specifies its application of any moneys, all moneys received shall be held unallocated and in suspense and no account due in respect of any Goods or any invoice shall be reduced, or deemed reduced until moneys have been expressly applied by the Seller.
- 5 RECOVERY**
In dealing with the recovery and salvage of an overdue debt and / or a credit account in payment default the Seller can charge the Buyer with all reasonable expenses (including, but not limited to transportation, storage costs, collection and recovery costs and legal costs) incurred by the Seller to enforce payment of any debt owed by the Buyer to the Seller or otherwise in enforcing these terms and conditions of sale.
- 6 DELIVERY**
- (a) Any time or date named or accepted by the Seller for completion, delivery, dispatch, shipment or arrival of the Goods or for tender of any documents is an estimate only and does not constitute a condition of the contract or part of the description of the Goods. The Seller shall not be under any liability whatsoever for the consequences of any delay as a result of any cause outside its reasonable control and, in particular, but without prejudice to the generality of the foregoing, the Seller shall be under no liability whatsoever for any delay in completion, delivery, dispatch, shipment or arrival of the Goods or in the tender of any documents caused (directly or indirectly) by acts of God, war, riots, strikes, lockouts, trade disputes, fires, breakdowns, mechanical failures, interruption of transport, government action or by any other cause whatsoever, whether or not of a like nature to those specified above, outside the reasonable control of the Seller and in any such event the time for completion, delivery, dispatch, shipment or arrival of the Goods or tender of documents may be extended by the Seller (or the Seller may cancel the contract without any liability whatsoever on its part). Time for completion, delivery, dispatch, shipment or arrival of the Goods or for the tender of any documents is not of the essence of the contract.
 - (b) In the event of production of the Goods or any part thereof being hindered or impaired or ceasing for any cause whatsoever outside the reasonable control of the Seller, the Seller may notify the Buyer that it is unable to fulfil the contract and may cancel the contract without being under any liability whatsoever save for an obligation to return to the Buyer any money received by the Seller in respect of the Goods at that time.
 - (c) Unless otherwise stated in writing the Seller may make partial deliveries or deliveries by instalments in any amounts it may determine and each such partial delivery or delivery by instalment shall be deemed to be separate contracts and these conditions of sale shall apply to each partial delivery or delivery by instalment.
 - (d) The Seller may deliver up to ten per cent more or less than the amount specified for delivery, subject only to an appropriate adjustment to the price payable, in full satisfaction of the Seller's obligations pursuant to the particular contract.
- 7 CLAIMS**
The Buyer shall notify the Seller in writing within fourteen (14) days of the date the Goods are delivered if the Seller is responsible for any shortfall in or loss or damage to the Goods delivered (these expressions include Goods which are defective or non-conforming) and shall ensure the Goods are kept intact for inspection by the Seller. Failure to comply with this provision shall, to the full extent permitted by law, disentitle the Buyer to any remedy in respect of the shortfall, loss or damage. (The Seller may at its discretion refuse Goods for return for any reason other than the conditions contained herein.) Without limiting the provisions of any other condition within these conditions of sale, the Seller's liability with respect to claims shall not exceed the Purchase Price of the Goods. The Seller may at its discretion replace Goods which are the subject of a claim, at no extra cost to the Buyer, and the replacement Goods shall be subject to these conditions of sale.
- 8 PROPERTY**
- (a) Property and ownership in the Goods will not pass to the Buyer but will remain in the Seller until payment in full of the Purchase Price of the Goods and all other amounts owing is made to the Seller by the Buyer.
 - (b) Risk in the Goods will pass at the time of delivery and the Buyer must insure the Goods.
 - (c) Until property in the Goods passes to the Buyer:
 - (i) the Buyer will hold the Goods as fiduciary bailee and agent for the Seller;
 - (ii) the Goods are to be stored separately and in a manner to enable them to be readily identifiable as the Seller's property;
 - (iii) the proceeds of any Goods sold are to be kept in a separate account and must not be mixed with any other monies, including funds of the Buyer;
 - (iv) the Buyer must return the Goods to the Seller on demand;
 - (d) In the event that the Buyer fails to return the Goods following the making of a demand, the Seller is entitled to enter the Buyer's premises for the purpose of taking possession of the Goods and the Seller may resell the Goods to another person, and sections 108, 109 and 120 of the Personal Property Securities Act 1999 do not apply to the extent they are inconsistent with this clause.
 - (e) The Buyer acknowledges that if it mixes the Goods with other products or items so that the Goods are no longer separately identifiable, the Buyer and Seller will be owners in common of the new product and thereafter each party will have a right to share in any proceeds of sale. The proceeds of sale will be divided between the Buyer and the Seller in accordance with the respective value of contributed product or ingredient.
 - (f) The authority of the Buyer to sell the Goods does not extend to the making of any warranties or conditions which exposes the Seller to liability to another person (except as to the price, the terms of payment and like provisions) and the Buyer must ensure that to the full extent permitted by law all conditions, warranties implied or imposed by law are excluded and where such a condition cannot be excluded that the Seller's liability is limited to the full extent permitted by law.
 - (g) The Buyer shall not attempt to give or allow any security interest over the Goods in favour of another person.
 - (h) The conditions of this clause 8 apply notwithstanding any arrangement between the parties under which the Seller grants the Buyer credit.
- 9 EXCLUSION OF LIABILITY**
- (a) Unless otherwise agreed in writing to the maximum extent permitted by law the only warranty provided by the Seller in respect of the Goods (if any) is that warranty provided by the manufacturer of the Goods and the liability of the Seller pursuant to such warranty is limited to any amounts received by the Seller from the manufacturer.
 - (b) To the full extent permitted by law:
 - (i) the Seller gives no condition or warranty whatsoever as to the condition or quality of the Goods or as to their suitability or fitness for their ordinary or any special use or purpose and the description of the Goods in any contract or other document shall not import any such condition or warranty on the part of the Seller;
 - (ii) all statutory and implied conditions and warranties except as to title are excluded; and
 - (iii) it is the responsibility of the Buyer to inspect the Goods and satisfy himself as to the condition, quality, suitability and fitness of the Goods for his purposes prior to the use or re-sale of the said Goods. If the Buyer fails to inspect the Goods in connection with the requirements specified in this clause 9(b)(iii), he shall have forfeited any right for compensation of any kind and must pay the full Purchase Price of the Goods to the Seller, the Seller assumes no liability (whether for negligence or otherwise) for any technical advice or assistance given or the results obtained therefrom and any such advice is given and accepted at the Buyer's risk;
 - (v) the Seller shall be under no liability whatsoever for any defects (including any defect caused by the loading of the Goods) in, or deterioration or failure of, the Goods or any part thereof (or any goods supplied with the Goods or any part thereof) whether due to design, workmanship or materials or to any cause whatsoever unless the same is due to the negligence or wilful default of the Seller or its employees or agents. The Seller shall be under no liability whatsoever for any failure of the Goods (other than in relation to a substantial ingredient of the identity of the Goods) to correspond with any description (including without limitation, any description relating to quantity, dimensions, weight, place of shipment or other statements relating to transport of the Goods);
 - (vi) the Seller shall be under no liability to the Buyer for any loss (including but not limited to loss of profits and consequential loss) of any kind whatsoever arising out of the supply or failure to supply the Goods.
 - (c) Notwithstanding anything else in these conditions of sale, the Buyer will have the benefit of any liability of the Seller arising under an Act of Parliament to compensate or indemnify the Buyer to the extent to which the liability is prohibited by the Act from being excluded, restricted or modified.
- 10 INDEMNITY**
The Buyer shall comply with all instructions of the Seller in relation to the handling, fitting, installation and use of the Goods and, notwithstanding such compliance, the Buyer shall keep the Seller indemnified against all costs, claims, demands, expenses and liabilities of whatsoever nature, including, without prejudice to the generality of the foregoing, claims for death, personal injury, damage to property and consequential loss, (including loss of profit) which may be made against the Seller or which the Seller may sustain, pay or incur as a result of or in connection with the manufacture, sale, export, import or use of the Goods unless such cost, claim, demand, expense or liability shall be directly and solely attributable to any breach of contract by, or negligence of, the Seller or a duly authorised employee or agent of the Seller.
- 11 HEALTH AND SAFETY**
It is the Buyer's responsibility to ensure that all applicable health and safety regulations are observed and other appropriate steps taken in relation to the storage, handling and use of the Goods and, where information is supplied to the Buyer on potential hazards relating to the Goods, to bring such information to the attention of its employees, agents, subcontractors, visitors and customers. Without prejudice to the foregoing, it is also the Buyer's responsibility to provide safe facilities for the reception of the Goods into storage.
- 12 TAXES, DUTIES**
The Buyer shall pay to the Seller in addition to the price of the Goods all taxes, duties, imposts, demurrage or other levies thereon or in respect thereof charged to the Seller or for which the Seller may be liable when demand is made thereafter (whether in the invoice for the Goods or otherwise). If applicable, the Buyer must promptly supply any prescribed certificates exempting payment of taxes; otherwise taxes are for the account of the Buyer.
- 13 PROPER LAW AND JURISDICTION**
All contracts made between the Seller and the Buyer in New Zealand shall be governed by and construed in accordance with the laws of New Zealand. The Buyer agrees to submit exclusively to the jurisdiction of courts based in Auckland New Zealand for all purposes of or in connection with such contracts.
- 14 INTELLECTUAL PROPERTY RIGHTS**
the Buyer shall not alter, remove or in any way tamper with any of the trade or other marks or numbers of the Seller attached to or placed upon the Goods.
- RESUPPLY AND MODIFICATIONS**
- (a) the Buyer shall not make any false representations as to the suitability of those Goods for a particular purpose, the description of those Goods, their merchantable quality or any other representation which will constitute a breach of any condition or warranty implied by law; and
 - (b) Where the Buyer resupplies the Goods, the Buyer shall not in any way without the consent of the Seller interfere with the Goods or change the composition or appearance of the Goods. Without limiting the generality of the foregoing, the Buyer shall not conceal, remove or otherwise interfere with any warnings, labels or other markings on or affixed to the Goods.
 - (c) The Buyer shall distribute to every customer all such warnings, instructions and like information relating to those Goods which the Seller has provided to the Buyer.
- 15 LICENCES AND CONSENTS**
The obtaining and maintenance in full force and effect of any necessary export or import licences, authorisations or consents in respect of the Goods is the sole responsibility of the Buyer and the Seller shall be under no liability whatsoever in respect of Goods exported or imported without any necessary licences, authorisations or consents.
- 16 MISCELLANEOUS**
- (a) The headings of these conditions of sale are provided for convenience only and shall have no effect on the interpretation thereof.
 - (a) If at any time the Seller does not enforce any of these conditions of sale or grant the Buyer time or other indulgence, the Seller shall not be construed as having waived that term or condition or its rights to later enforce that or any other term or condition.
 - (b) If a provision or part of a provision is illegal, void or unenforceable the remainder of the provision and all other provisions will continue in full force and effect.
 - (c) Reference to the Companies Act 1993 on any document supplied by the Seller shall also include reference to any subsequent amendment to this Act so as to maintain consistency in these Conditions of Sale.