

# TERMS AND CONDITIONS OF SALE IMCD US, LLC



## 1. TERMS.

(a) These terms and conditions govern all sales of products and/or services (collectively and severally, "Product") by IMCD US, LLC ("Seller") to the purchaser ("Buyer") described in the documents accompanying these terms and conditions. These terms and conditions, together with the quotations, proposals, order acknowledgments, invoices, specifications, all 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 for each sale of Product. In the event of any conflict between these terms and conditions and the provisions of any other document included in the Agreement, these terms and conditions shall control unless explicitly otherwise agreed in writing by Seller in any such other document issued by Seller.

(b) Buyer's acknowledgement, taking possession of Product, 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 and all of its 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.

(c) This Agreement sets forth the entire agreement of Seller and Buyer concerning the subject matter hereof. No other agreements or understandings, written or oral, express or implied, shall be binding on Seller and Buyer, and, except as provided in subsection (d) below, no amendment, modification or rescission of this Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification or rescission are sought to be enforced.

(d) These terms and conditions of sale may be amended or modified from time to time by Seller, by notice 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 Product prices on undelivered Product 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. 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. **IMPORT DUTIES, TAXES AND OTHER CHARGES.** Except to the extent otherwise provided in this Agreement, Buyer shall pay all taxes (excluding federal, state or local income or franchise taxes imposed on Seller) and all import duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by Seller or Buyer, imposed or levied on or with respect to this Agreement, the amounts payable hereunder, the Product or the possession, sale, use, transportation, delivery, furnishing or ownership of the Product. 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.

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 good condition within 90 days from the date of delivery. Buyer shall pay a deposit on all returnable containers. Seller shall credit the deposit, less handling fee, to Buyer's account if Buyer returns the containers F.O.B. 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 may retain the full amount of the deposit.

6. **SHIPMENT; 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 Product and similar matters shall be those specified for Incoterm Ex Works, unless expressly stated and agreed otherwise by Seller in writing. Delivery shall take place in accordance with the definitions of the latest version of the Incoterms. If and to the extent, subject to the foregoing, that (a) Seller arranges or pays for railroad tank cars, Buyer agrees to unload the cars within 48 hours (Sundays and holidays excepted) 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.

Notwithstanding delivery and the passing of risk of loss, or any other provision of this Agreement, legal and beneficial title in all Product shall not pass to Buyer until Seller has received payment in full of the price of the Product and all other Product 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 Product passes to Buyer, Buyer shall hold the Product as Seller's fiduciary agent and bailee and shall keep the Product 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 resell, dispose of or use the Product other than in the ordinary course of Buyer's business until Buyer acquires title thereto from Seller as herein provided.

Until such time as title in the Product 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 Product to Seller and, if Buyer fails to do so forthwith, enter on any premises of Buyer or any third party where Product 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, lien or adverse claim in or to any Product 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 Product 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 Product processed or mixed in 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 Article have been fulfilled.



7. **WARRANTY.** Seller warrants that Seller branded Products conform to Seller's published specifications at the time of delivery. Seller warrants that services provided by Seller will be consistent with Seller's standard specifications or, if none, with Seller's standard practices. Buyer acknowledges that Seller acts as a distributor for Products not branded by Seller ("Resale Products") and that matters relating to the conformity to specifications or quality of the Resale Products are not within Seller's control and that accordingly Seller makes no warranties with respect to such Product.

SELLER'S SOLE WARRANTY WITH RESPECT TO BRANDED PRODUCTS CONSISTS OF THE LIMITED EXPRESS WARRANTY SET FORTH ABOVE AND SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO BRANDED PRODUCTS, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OR MERCHANTABILITY AND/OR FITNESS, AND ALL SUCH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED.

SELLER MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO RESALE PRODUCTS, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OR MERCHANTABILITY AND/OR FITNESS; ALL WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED. RESALE PRODUCTS ARE SOLD ONLY ON AN "AS-IS" BASIS.

8. **ACKNOWLEDGEMENT.** Buyer acknowledges that the Product has not been tested by the Seller for safety or efficacy in any particular application unless otherwise stated in Seller's written materials furnished to Buyer. Buyer further acknowledges its responsibility to test and effectively evaluate Product to determine to Buyer's own satisfaction, whether the Product 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 must at least include testing to determine suitability from a technical as well as health, safety, and environmental standpoint. Buyer assumes responsibility for compliance with regulatory requirements related to Product handling, storage, transportation, sale, use and/or disposal. Buyer acknowledges receipt from Seller of manufacturers' technical and material safety data, in accordance with responsible distribution standards. **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 Product, except to the extent any such liability arises from gross negligence or willful misconduct on the part of Seller.**

9. **REMEDIES.** Seller's liability for nonconforming Product is exclusively limited, at Seller's option, to replacement of the defective Product or refund of the purchase price of such Product. 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 Product to which the services related in the 12 months prior to the event of the liability.

10. **LIMITATION ON LIABILITY.** IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY, CONTRIBUTION OR ANY OTHER LEGAL THEORY AND IN NO EVENT WILL SELLER BE LIABLE FOR LOST PROFITS OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING, OR USE OF THE PRODUCT SOLD HEREUNDER, INCLUDING WITHOUT LIMITATION TRANSPORTATION, HANDLING, INSTALLATION, PROCESSING OR FABRICATION CHARGES OR EXPENSES. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.

11. **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 ("Claims") asserted against or incurred by Seller in connection with the transportation, storage, sale or use of the Product by Buyer, or other acts of Buyer giving rise to Claims, including third party Claims, against Seller, including attorney's fees and out of pocket costs.

12. **CLAIMS.**

(a) **Shortages; Damaged and Defective Product:** Buyer shall be deemed to have inspected the Product upon receipt. Any claim for shortage or non-conforming Product must be made in writing to Seller within 10 days after Buyer's receipt of the Product. Any claim for non-delivery of Product must be made within 10 days after the date upon which the Product was to be delivered. All claims must state with particularity the shortage, defect or damage complained of.

(b) **Latent Defects:** As to any claim not reasonably discoverable within such 10 day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim must be in writing and received by Seller within 180 days after Buyer's receipt of the Product. Buyer shall only be able to make claims with regard to latent defects in Product if such latent defects existed at the time of delivery to Buyer. No claim may be made, and Seller shall have no liability, for any latent defect where the subject Product has been improperly handled or stored, or otherwise abused, after delivery to Buyer unless Buyer can show that such improper handling or storage or other abuse would not have affected the Product or otherwise impaired the usefulness thereof. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim.

(c) **Disputes concerning failure to meet specifications:** In case of a dispute as to whether Product meets contract specifications, Seller and Buyer shall designate a mutually acceptable independent testing company and/or surveyor to make an examination and in such case said testing company's and/or surveyor's findings shall be conclusive and binding on both parties absent manifest error (the expense of which examination shall be borne by Seller with respect to each item found not to conform to specification and by Buyer with respect to each item found to conform to specifications).

(d) **Returns:** Product may not be returned without Seller's permission and transportation for return will not be paid by Seller unless authorized in advance. Amounts owing to or payable by either party hereunder on account of returned Product shall be deemed finally reconciled on the first anniversary of the delivery of the applicable Product and any outstanding rights of either party to receive overpayments or under payments including rights to unclaimed credits or refunds shall expire on such date unless addressed prior thereto.

(e) **Seller's Obligations:** In the event that a timely and properly supported claim is made with respect to a shortage or defective or damaged Product, Seller's sole responsibility shall be, at Seller's option, to deliver conforming Product to cure such shortage or replace the defective or damaged Product or to give Buyer an allowance therefor and Buyer's obligation to accept and make payment on time for the balance of the Product delivered or to be delivered under the contract shall not be affected thereby.

13. **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 Product, 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 impracticable, 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.

14. **QUANTITY.** 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 of said products 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 upon such basis as it shall deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified. Seller reserves the right to deliver against any order in excess or deficiency up to 10% of weight or volume ordered without any adjustment in the price.

15. **PRODUCT STEWARDSHIP.** Buyer agrees that Product 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 Product. Buyer further agrees to deliver the most recent edition of Product literature, including SDSs, to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who Buyer reasonably believes can handle, use, store, transport and dispose of Products safely.

16. **COMPLIANCE WITH LAWS.** The Buyer 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 persons under any anti-terrorism, money laundering or other laws or regulations and (iii) the regime for the control of imports, exports, transfer, brokering and transit of dual-use items. The Buyer shall not directly or indirectly utilize, sell, ship or otherwise transfer, any Product to or through any country, entity or individual as prohibited under United States or other national and international regulations. Without limiting or affecting the foregoing provisions, Buyer further agrees to 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 Buyer confirms to have read and agrees to the IMCD Code of Conduct which is available at the following website: [www.imcdgroup.com](http://www.imcdgroup.com).

Buyer agrees to use its best efforts to assure that all third parties to whom Product is sold 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 Product to any such entity with respect to which Buyer has reasonable doubts that such compliance will be forthcoming.

The Buyer agrees to indemnify and hold harmless Seller, its affiliates, officers, employees, agents, and representatives, from and against all claims, proceedings, investigations, damages, losses, liabilities, penalties, costs and expenses, including reasonable attorney fees arising from any claim, investigation, suit, action, proceeding, demand, judgment or settlement based in whole or in part on any actual or alleged failure by Buyer to comply with the provisions of this section.

17. **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, patent, copyright, registered design, trade secret, or any other proprietary right owned by Seller, any of Seller's affiliates, or any other person or entity, whether associated with any Product or otherwise, unless essential to Buyer's enjoyment of the Product as intended by the Seller, or explicitly agreed in writing between any such party(ies) and Buyer. Buyer warrants not to infringe any intellectual property right of Seller or any other person or entity by using, selling, or reproducing the Product for purposes other than those intended by Seller in selling the Product to the Buyer as provided herein. When Products are made or adapted by Seller in accordance with Buyer's specifications, Buyer shall defend, indemnify, and hold Seller, and Seller's officers, employees, and agents, harmless against all costs, claims, and expenses incurred by Seller in respect of the infringement or alleged infringement by such Products of any patents, registered designs, trademarks, copyrights, trade secrets, or other proprietary rights of any other person or entity and not licensed to Buyer. Seller shall have the right to participate in the settlement of any such claim or action brought against Seller and defended by Buyer.

18. **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 section.

19. **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 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 and at equity, including, without limitation, the right to withhold shipment of any portion of the Product 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 Product 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 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.

20. **LAW AND JURISDICTION.** This Agreement shall be governed by and interpreted in accordance with the substantive law of the State of Ohio. Buyer and Seller agree that any legal suit, action, or proceeding, whether to collect payment due hereunder from Buyer or otherwise arising out of or relating to this Agreement may (and, if against Seller, must) be instituted in a State or Federal Court in the City of Cleveland, County of Cuyahoga, and State of Ohio, and Buyer waives any objection which it may have now or hereafter to the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding. 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 Product or transaction relating thereto.

21. **LIMITATION ON ACTIONS.** 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.

22. **SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and either (a) the terms of the Agreement shall be deemed modified to include provisions replacing those found not to be legal, valid or enforceable with legal, valid and enforceable provisions that are as similar as possible in content and purpose to such illegal, invalid, or unenforceable provision or (b) shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

23. **BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon inure to the benefit of the parties hereto and their respective successors and permitted assigns. Buyer may not assign any rights or claims, or delegate any duties under this Agreement, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.