

**Article 1 – GENERAL**

## Definitions:

<b>Agreement:</b>	Any agreement and/or legal act between IMCD and the Purchaser in connection with the purchase of products by the Purchaser from IMCD.
<b>Business Day:</b>	means a day (other than a Saturday, Sunday or a public holiday) when banks in France are open for business.
<b>IMCD:</b>	IMCD France SAS, Immeuble New Corner - 2 avenue du Stade de France, CS 70005 • 93458 La Plaine Saint-Denis • France
<b>Intellectual Property Rights:</b>	means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
<b>Purchaser:</b>	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.
<b>Terms and Conditions:</b>	these general terms and conditions of sale of IMCD.

- 1.1 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 to the exclusion of any other terms that the Purchaser seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, including the Purchaser's standard terms and conditions of purchase (if applicable).
- 1.2 Departures from these Terms and Conditions are only valid if they were expressly agreed in writing and signed by the duly authorised representatives of both the Purchaser and IMCD.
- 1.3 The text of the Agreement shall prevail over these Terms and Conditions in the event of a conflict.
- 1.4 IMCD may amend these Terms and Conditions at its sole discretion and the Purchaser shall be bound by the latest version of these Terms and Conditions. The latest version of these Terms and Conditions may be found online at [www.imcd.fr/fr/](http://www.imcd.fr/fr/).

**Article 2 - OFFERS AND AGREEMENTS**

- 2.1 All offers, quotes and price proposals from IMCD shall be subject to these Terms and Conditions at all times and may be amended or revoked at any time prior to the Purchaser's acceptance thereof, regardless of whether they contain a period for acceptance.
- 2.2 An Agreement shall come into existence upon timely written acceptance by the Purchaser of IMCD's offer, quotation or price proposal, as applicable. The Agreement shall exist on the basis of these Terms and Conditions, which the Purchaser is deemed to have accepted upon acceptance of IMCD's offer, quotation or price proposal, as applicable. These Terms and Conditions constitute the sole basis for commercial negotiation, in accordance with the provisions of Article L. 441-1, III of the Commercial Code. IMCD shall be entitled to rely on the accuracy of any information provided by the Purchaser for purposes of providing an offer, quotation or price proposal, including but not limited to the description and quantity of products.
- 2.3 The Purchaser acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of IMCD which is not set out in the Agreement.
- 2.4 Samples, images, descriptive matter and models shown or provided shall serve as indications and are provided for illustrative purposes only, without the products having to comply with those samples, images, descriptive matter 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.
- 2.5 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.
- 2.6 If the Purchaser has not provided security within fourteen (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 in writing, 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 shall 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.
- 3.4 For delivery ex-works, the time of delivery is the time that IMCD notifies the Purchaser in writing that the products purchased are ready for collection. The Purchaser shall act as sender and recipient of the products, within the meaning of Article L.132-8 of the Commercial Code. Consequently, IMCD shall in no case be considered as a party to the contract for the transport of the products. The Purchaser shall be personally responsible for any recourse against the carriers that he mandates in the event of shortages, damage, delays, etc.
- 3.5 In the event that IMCD ensures the transport of the products to the place of delivery designated by the Purchaser, it is the sole responsibility of the Purchaser who receives the products to check whether the transport contract has been correctly executed and, if not, to take all appropriate measures to retain recourse against the carrier. If packages are missing or arrive damaged or for any other reason, he must, in accordance with the provisions of Article L.133-3 of the Commercial Code, either make precise reservations on the delivery note and consignment note and send his complaints to the carrier by registered letter with acknowledgement of receipt within three days, not including public holidays, following receipt of the products, or make a request for an expert's report within the same time limit in accordance with the provisions of Article L.133-4 of the Commercial Code. A duplicate of the consignment note shall be given to the carrier, before his departure, who is solely responsible. In the event of non-compliance with this procedure, any consequences shall be borne solely by the Purchaser to whom the products are sent.
- 3.6 Unless expressly agreed otherwise in writing, the delivery date, time or period specified are approximate only and time shall not be of the essence. The mere fact that IMCD exceeds the delivery date, time or period provided to Purchaser shall not constitute a breach of the Agreement, shall not result in default or any liability to the Purchaser and shall not entitle the Purchaser to terminate the Agreement, to impose penalties on it or to any other remedy for

breach of contract.

- 3.7 If a delivery period has not been expressly provided, the Products shall be delivered within a reasonable period.
- 3.8 IMCD shall have the right at all times to deliver in consignments, and shall always be entitled to invoice for such partial performances separately.
- 3.9 If the Purchaser does not accept delivery, or in the case of ex-works delivery does not collect the products delivered within seven (7) 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 applicable 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.
- 3.10 If a situation provided for in Article 3.7 arises, and, despite being given a reasonable time by IMCD, the Purchaser still fails to accept/collect the products or fails to do so in time, IMCD shall, without prejudice to its other rights under applicable law, these Terms and Conditions and/or the Agreement, be entitled to:
  - (a) store the products until actual delivery/collection and charge the Purchaser for the reasonable costs (including handling and insurance) of storage; and/or
  - (b) sell the products at the best price readily obtainable and (after de-ducting all reasonable storage and selling expenses) account to the Purchaser for any excess over the price paid by the Purchaser (if any) or charge the Purchaser for any shortfall below the price under the price specified in the Agreement.

#### **Article 4 - PRICES**

- 4.1 Unless expressly agreed otherwise in writing, all prices shall be ex-works. All prices shall be exclusive of value added tax ("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 specified in the Agreement 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 shall be notified to the Purchaser within a reasonable period of time. 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, the costs of transporting or the costs of packaging or energy, any request by the Purchaser to change a collection/delivery date, any request by the Purchaser to change quantities or types of products ordered; or any delay caused by any instructions of the Purchaser in respect of the products or failure of the Purchaser to give IMCD adequate or accurate information or instructions (if applicable) and exchange rate fluctuations.

#### **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 shall be returned to IMCD in perfect condition after use at Purchaser's sole cost and expense. Additionally, Purchaser shall, unless otherwise agreed in writing, provide to IMCD a deposit, in the amount advised by IMCD, to cover the return of packaging used to transport the Products to the Purchaser. 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 to the Purchaser. Furthermore, the deposit shall be forfeited, if returnable packaging provided by IMCD is not returned after two years. Only if the returnable packaging concerns intermediate bulk containers, the Purchaser shall be charged a reasonable rent from thirty (30) days after delivery, in addition to the deposit. This rent shall be charged and invoiced to the Purchaser after the intermediate bulk containers have been returned to IMCD. IMCD shall have the right to deduct the rental charges 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 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 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 3.9.

#### **Article 6 - RETURNS, COMPLAINTS AND REMEDIES**

- 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 As an essential part of any Agreement and a basic principle of these Terms and Conditions, the Purchaser acknowledges and expressly accepts to be obliged to check the conformity of the products during their delivery, pointing out any visible non-conformity - including but not limited to quantity, quality, documentation and labeling on the delivery note which shall be signed by the carrier. Lacking of such (signed) notice, the products shall be deemed definitively accepted free of such non-conformity and the Purchaser cannot claim any subsequent non-conformity of the delivered products, that should have been discovered with due care during delivery.
- 6.4 Moreover, the Purchaser has a further essential and material contractual duty to - immediately (i.e. without undue delay) and in any event prior to any use and/or reselling - test and effectively evaluate, among others, whether: (i) the products (including samples and models) meet the specifications, as provided by IMCD; (ii) the products and/or any related technical support and information, as provided by IMCD, are suitable for Purchaser's intended uses and applications. The Purchaser's obligation to inspect, test and evaluate the delivered products as described herein shall, among others, consist out of an application-specific analysis and shall, at least, include testing to determine suitability from a technical as well as health, safety, and environmental standpoint. The Purchaser in breach of these obligations cannot claim any consequent non-conformity and/or defects of the delivered products.

The Purchaser is obliged to notify IMCD of any discovered defect immediately in writing with a description of the defect. Immediateness means that defects are notified at the latest within three (3) working days after delivery or - in the case of a latent defect (i.e. a defect which was not recognisable during the inspection) - at the latest within three (3) working days after discovery of the defect. With regard to a professional purchaser of the same specialty, IMCD excludes any guarantee for latent defects. Pursuant to Article 2254 of the Civil Code and notwithstanding Article 24 of these Terms and Conditions, any action relating to the conformity of a product sold by IMCD shall be barred after one (1) year from delivery of the product. Any action relating to a latent defect in a product sold by IMCD shall be barred after one (1) year from discovery of the defect. Further, the Purchaser must grant IMCD access to the defective products for IMCD's own examination of the defective products, for which the Purchaser, at its own expense, must store the products properly and in the original packaging until such examination. The Purchaser in breach of these obligations cannot claim any consequent non-conformity and/or

defects of the delivered products.

6.5 Submitting complaints shall not release the Purchaser from its payment obligations.

6.6 If complaints are 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.

#### **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 shall lapse if the Purchaser fails to fulfil its obligations under the Agreement and/or these Terms and Conditions. Invoking the warranty shall 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 shall 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 willful recklessness by IMCD and/or by others acting on IMCD's instructions.
- 8.2 In any case, 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 applicable 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 shall 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 Purchaser shall 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.
- 8.6 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.

#### **Article 9 – BUSINESS ETHICS AND COMPLIANCE WITH LAWS**

- 9.1 Purchaser shall, in purchasing goods or services, act in the best interests of IMCD and shall not, without the prior written consent of IMCD, participate in any business activity which may create a conflict of interest between the Purchaser and IMCD.
- 9.2 Purchaser acknowledges it has accessed and read the [ESG Standards for IMCD Business Partners](#) and agrees to implement the requirements set forth therein throughout its organisation. The purchase of services or goods from IMCD pursuant to this Agreement will take place in compliance with the ESG Standards. Purchaser will inform IMCD immediately if it becomes aware of anything that may indicate a violation or any suspicion of a violation of the ESG Standards for Business Partners.
- 9.3 Without prejudice to the foregoing in this Article, 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, including, without limitation, the United States Foreign Corrupt Practices Act and the United Kingdom Bribery Act 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 end-users, 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.
- 9.4 The Purchaser shall procure that any third parties to whom the products from IMCD shall be supplied, whether in original form or as intermediate or end-product, are under the same obligations as set out in this Article such that all third parties down the supply chain, as far as the end-user, are under the same strict compliance.
- 9.5 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.

#### **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, 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 event beyond IMCD's control which could not reasonably be foreseen at the time of the conclusion of the Agreement and the effects of which cannot be avoided by appropriate measures, in accordance with Article 1218 of the Civil Code. It is specified that the following, without limitation, will be considered as cases of force majeure, without IMCD having to establish that they have the characteristics defined in Article 1218 of the Civil Code: war (declared or undeclared) regardless of the countries involved in the conflict, affecting the manufacture and marketing of the products, civil war, riot and revolution, riots, acts of piracy, mobilisation of personnel for military duties; sabotage, requisition, various governmental measures such as confiscation, nationalisation, embargo, expropriation, import or export prohibition as well as refusal to issue import or export licenses, regardless of the authority from which this refusal emanates; natural disaster such as violent storm, cyclone, earthquake, tidal wave, flood, destruction by lightning or nuclear disaster; epidemic or pandemic, i.e. the development and spread of a contagious disease on national or international territory; measures taken by the competent authorities in France and/or abroad to limit the spread of an epidemic or a pandemic in the context of a declaration of a state of health emergency in the event of a health disaster which, by its nature and seriousness, endangers the health of the population, in the context of a serious health threat or outside of any declaration of a state of health emergency, such as, in particular, measures to prohibit and/or restrict movement of people and vehicles, to confine towns or some of them, to temporarily close one or more categories of establishments receiving

the public (businesses, shops, etc.), to regulate the conditions of access to and presence in one or more categories of establishment receiving the public, etc.; accident, in particular of tools, machine breakdown, fire, explosions, destruction of machines, plants and installations of any kind; interruption or delay in transport, failure of any carrier, energy restrictions, impossibility of being supplied for any reason whatsoever; damage to operating equipment, disruption of production, scrap during manufacture; proven shortage of raw materials, packaging or any other element necessary for the production or packaging of the products, quality defect or poor quality of raw materials; default of a third party, including no delivery and any defective or late delivery by IMCD's suppliers; boycotts, strikes and lock-outs in any form, work-to-rule, occupation of factories and premises, work stoppages occurring in IMCD's companies; computer viruses and/or cyber-attacks; act of authority, whether lawful or unlawful, arbitrary or otherwise; changes in legislation and/or government measures and any other events beyond the control of IMCD.

- 10.3 If IMCD suspends performance of the Agreement in accordance with the provisions of this Article, the Purchaser shall, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or the security required in accordance with Article 2.5 of these Terms and Conditions up to the new delivery date.

**Article 11 – EXCLUSION OF THE PENALTIES**

- 11.1 IMCD shall not accept any predetermined penalty, for any reason whatsoever, unless it has given its prior written consent,
- 11.2 notwithstanding any clauses or provisions to the contrary that may appear in purchasing terms and conditions or any other document issued by the Purchaser.
- 11.3 Purchaser shall provide IMCD with all documents enabling a contradictory analysis of the alleged breach and attesting to the damage actually suffered and in particular at least the following documents: the order number concerned, the products concerned, the quantity concerned by the incident, the photocopy of the dated and signed consignment note, the photocopy of the dated and signed delivery note, the precise and detailed nature of the alleged breach.
- 11.4 Furthermore, it is forbidden to automatically deduct from the amount of the invoice drawn up by IMCD the penalties or discounts corresponding to the non-observance of a contractual commitment. Thus, any automatic debit, in any form whatsoever, on the part of the Purchaser in violation of these provisions shall be deemed to be a payment incident authorizing IMCD to refuse any new order, to stop deliveries corresponding to orders in progress and to suspend the payment of rebates and other financial benefits. IMCD further reserves the right to deduct from the rebates or service fees due any amount that the Purchaser has automatically deducted.

**Article 12 - PAYMENT**

- 12.1 Unless agreed otherwise in writing, payment must be made within thirty (30) days of the invoice date, without any discount and/or setoff, in the currency specified on the invoice.
- 12.2 Invoices are issued by IMCD as soon as the products are dispatched and comply with the invoicing rules set out in Article L.441-9 of the Commercial Code. They are payable at the registered office of IMCD, unless otherwise agreed. Invoices must be exclusively paid by bank transfer. In accordance with the provisions of Article L.441-10, II of the Commercial Code, any failure by the Purchaser, whether partial or total, to fulfil its payment obligations or any delay in payment in relation to the due date indicated on the invoice, shall result in: 1) the automatic payment of a penalty calculated at 3 times the legal interest rate in force on the due date, 2) the payment of a fixed indemnity for collection costs in the amount of 40 euros. It is specified that this fixed compensation is not limited to the amount of other costs that may be incurred by IMCD for the purpose of recovering these invoices. The interest shall start to run from the date of payment shown on the invoice and shall continue to run until the day of full payment of all sums due. Any month started shall be due in full. 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 (which the Purchaser agrees is a fair and reasonable pre-estimation). Moreover, the Purchaser may be obliged to pay the recovery costs incurred, interest for late payment and possible damages.
- 12.3 Without prejudice to the provisions of Article 6.3 and Article 6.4, complaints about invoicing or disputed amounts may only be made within the payment term. Complaints shall be submitted in writing. The submission of complaints shall not suspend the Purchaser's payment obligation in respect of any undisputed amounts.
- 12.4 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.
- 12.5 The Purchaser shall be unable to offset any debt to IMCD against any claim of the Purchaser against IMCD.

**Article 13 - SUSPENSION AND TERMINATION**

- 13.1 Without prejudice to the provisions of Article 10 and in respect of the mandatory provisions of Article L. 622-13 of the Commercial Code, IMCD may, without prejudice to the right to claim compensation, suspend the fulfilment of its obligations under the Agreement either wholly or in part or terminate the Agreement either wholly or in part, without need for a court order, 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 deemed to be in notorious insolvency;
  - (e) the Purchaser makes a payment arrangement with one or more of its creditors;
  - (f) the Purchaser, if a natural person, dies, is placed under guardianship or, in the context of a legal person, is put into administration; or
  - (g) the Purchaser's business is sold or dissolved.
- 13.2 If, in accordance with Article 13.1, IMCD suspends performance of the Agreement, the Purchaser shall, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 2.5 of these Terms and Conditions up to the new delivery date.
- 13.3 If, in accordance with Article 13.1 and the provisions of Article L. 622-7 of the Commercial Code, 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 and may also claim back products corresponding to previous unpaid orders, whether or not their payment is due, offset against any sums already paid, without prejudice to its right to compensation.
- 13.4 If one of the situations described in Article 13.1 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.
- 13.5 Any deterioration in the Purchaser's credit may, at any time, justify, depending on the risks incurred, the setting of a ceiling on the Purchaser's overdraft,

the requirement of certain payment deadlines, advanced payment or certain guarantees. This will be the case, in particular, if a transfer, management lease, pledge or contribution of its business, or a change in control or structure of its company (merger, etc....) is likely to have an adverse effect on the Purchaser's credit. In accordance with the provisions of Article L.622-7 of the Commercial Code and by express agreement, in the event of the opening of safeguard proceedings, receivership or liquidation of a Purchaser, the amount not yet paid of invoices that it may have issued in respect of services provided to IMCD and that of any price reductions that may be due shall be automatically offset against the sums that it still owes to IMCD, which shall become immediately payable.

- 13.6 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 14 - RESERVATION OF TITLE**

- 14.1 The products which IMCD supplies to the Purchaser shall 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.
- 14.2 If the products, subject to the reservation of title, have been resold by the Purchaser, whether or not after processing, IMCD's claim shall automatically be transferred to the claim for the price of the products thus sold by the Purchaser. The Purchaser hereby assigns to IMCD all claims arising from the resale of unpaid products under reservation of title. In the event of safeguard proceedings, receivership or liquidation of the Purchaser, the products may be claimed, in accordance with the legal and/or regulatory provisions in force. In the event that the products are claimed for partial or total non-payment, the goods in stock shall be deemed to correspond to the unpaid claims. In accordance with Article L.624-16 of the Commercial Code, notwithstanding any clauses to the contrary, this reservation of title clause is enforceable against third parties. IMCD is already authorised by the Purchaser, who accepts, to draw up an inventory and/or to sequester the unpaid products held by it. Any deposits previously paid shall remain the property of IMCD as a penalty clause. The Purchaser shall be held solely responsible for all risks of deterioration, loss, partial or total destruction, whatever the cause of the damage, even if it is a case of force majeure.
- 14.3 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.
- 14.4 If one of the situations described in Article 13.1 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 shall 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.
- 14.5 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 14.4, or to offset those costs against its performance.
- 14.6 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 14.1 have been fulfilled.

**Article 15 - INTELLECTUAL PROPERTY**

- 15.1 The Agreement and these Terms and Conditions do not entail any grant, transfer or licensing of any Intellectual Property Rights to the Purchaser.
- 15.2 The Purchaser may not mention or use any Intellectual Property Rights belonging to IMCD or to third parties, except with the express, written and prior authorisation of the holder of these rights and solely within the framework of the Agreement. IMCD reserves the right to oppose, stop or demand compensation for any improper, unauthorized or unfair use, constituting an act of commercial parasitism or contrary to IMCD's image.
- 15.3 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. The Purchaser who becomes aware of an infringement of any Intellectual Property Right belonging to IMCD or third parties that it is authorised to use, must inform IMCD immediately by e-mail, confirmed by registered letter with acknowledgement of receipt. In addition, the Purchaser shall inform IMCD, as soon as it becomes aware of it, of any legal action brought against it in matters of Intellectual Property concerning the products and shall not take any measure without first referring to IMCD, which shall advise on the action to be taken, if necessary in agreement with the holder of the rights.

**Article 16 - CONFIDENTIALITY**

If IMCD discloses or grants to the 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 shall 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 17 - PERSONAL DATA**

- 17.1 IMCD and the Purchaser undertake, in the context of the collection and processing of personal data, to comply with the provisions of Law No. 78-17 of January 6, 1978 relating to data processing, files and freedoms, in particular as amended by Order No. 2018-1125 of December 12, 2018, and Regulation 2016/679/EU of April 27, 2016 "on the protection of natural persons with regard to the processing of personal data and on the free movement of such data".
- 17.2 17.2 IMCD, the data controller, implements the processing of personal data for the management of its relations with its customers, including the Purchaser, and for the performance of the agreements concluded with the latter. The information collected (for example, the surnames, first names, e-mail addresses and telephone numbers of the Purchaser's employees and collaborators) is essential for this processing and is intended for the relevant departments of IMCD and, where applicable, its service providers and/or subcontractors. They are kept for the entire duration of the commercial relationship and five years from the end of the relationship.
- 17.3 17.3 The employees and collaborators of the Purchaser have a right of access, rectification and deletion of their personal data, a right to limit the processing, a right to object on legitimate grounds to the processing of data, a right to data portability, a right to issue post-mortem advance directives, by sending an e-mail to the IMCD at [privacy@imcd.fr](mailto:privacy@imcd.fr) or a letter to IMCD France SAS, Immeuble New Corner, 2 avenue du Stade de France, 93458 La Plaine Saint-Denis Cedex accompanied by a copy of their identity card. They also have the right to lodge a complaint with the CNIL. The Purchaser undertakes to inform its employees and collaborators of this provision.



**Article 18 - 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 the 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 shall 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 19 - NOTICE**

- 19.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party:
  - (a) personally or sent by commercial courier, at its principal place of business with a copy to its registered office (if a company) or (in any other case) the address set out in the Agreement or otherwise provided by a party; or
  - (b) sent by fax or email to the other party's main fax number or email address, respectively.
- 19.2 Any notice or other communication shall be deemed to have been duly received if delivered personally, when left at such address or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or email, on the next Business Day after transmission.

**Article 20 - ASSIGNMENT**

- 20.1 IMCD may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Agreement or these Terms and Conditions and may subcontract or delegate in any manner any or all of its obligations under the Agreement or these Terms and Conditions to any third party.
- 20.2 Purchaser shall not, without the prior written consent of IMCD, assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Agreement or these Terms & Conditions.

**Article 21 - NO PARTNERSHIP OR THIRD-PARTY RIGHTS**

Nothing in the Agreement is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way. A person who is not a party to the Agreement shall not have any rights under or in connection with it.

**Article 22 - WAIVER AND CUMULATIVE REMEDIES:**

A waiver of any right under the Agreement is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy. Unless specifically provided otherwise, rights arising under the Agreement are cumulative and to not exclude rights provided by law.

**Article 23 - AUTHORITY**

Purchaser represents and warrants to IMCD that its signatory to the Agreement has been duly authorised by, and upon execution will constitute a valid and legally binding agreement of, the Purchaser enforceable against the Purchaser in accordance with its terms. Specifically, the Purchaser represents and warrants that the signatory to the Agreement has authority to bind the Purchaser to an arbitration agreement for purposes of Article 25.

**Article 24 - COMMERCIAL DISPUTES - LIMITATION PERIOD**

Any dispute on the part of the Purchaser relating to the whole of the commercial relationship with IMCD must be formulated at the latest within twelve (12) months following the expiry of the calendar year during which the dispute arose, without prejudice to the specific provisions of article 6.4 concerning actions relating to conformity of the products and latent defects. Failing this, and by express derogation from the provisions referred to in Article L.110-4 of the Commercial Code, no claim or dispute may be presented and shall therefore be considered strictly inadmissible and the Purchaser's action time-barred.

**Article 25 - APPLICABLE LAW AND DISPUTE RESOLUTION**

The laws of France shall apply exclusively to all Agreements and to these Terms and Conditions, 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 the Agreement or these Terms and Conditions, including disputes concerning the existence and validity thereof, shall, be submitted to settle in arbitration in accordance with the rules of Arbitration of the International Chamber of Commerce. In that connection, the following applies:

- a) the place of arbitration shall be Paris;
- b) the arbitral tribunal shall be composed of one arbitrator, unless otherwise agreed by the Parties in writing;
- c) the tribunal shall decide in accordance with the rules of law;
- d) any arbitration award or decision shall be final and binding on the Parties;
- e) no arbitral award, or any part thereof, shall be published in any form.

Subject to the agreement of both Parties, and by derogation to the Arbitration, Parties may bring any dispute as described in this Article 25 before the competent court in Paris, France.