

GENERAL TERMS AND CONDITIONS OF SALE IMCD PHILIPPINES CORPORATION

Version June 2016

1. GENERAL

1.1 Unless expressly agreed otherwise in writing, these Terms and Conditions shall apply to every legal relationship between IMCD Philippines Corporation, Inc. (TIN 008-642-070-000), further referred to as "IMCD" or "Seller", and the customer who will be purchasing IMCD's goods ("IMCD Goods"), further to be referred as the "Buyer". Departures from these Terms and Conditions must be expressly agreed in writing. All previous Terms and Conditions shall be superseded.

1.2 The applicability of general terms and conditions used by Buyer is expressly ruled out.

2. QUOTES AND AGREEMENTS

2.1 All quotes from IMCD shall be without any obligation on the part of IMCD to accept. All quotes shall furthermore be revocable, regardless of whether they contain a period for acceptance or validity or whether the Buyer has made any offer to purchase IMCD Goods. IMCD shall be under no obligation to accept any offers from Buyer.

2.2 All verbal supplements, promises or changes shall be binding only if they have been made by authorized persons at IMCD and confirmed in writing by IMCD. In entering into this Agreement, the Buyer acknowledges that it does not rely on any such representation, supplements, promises or changes which are not so confirmed.

2.3 Samples and models shown or provided shall serve as indications only, without the IMCD Goods having to comply with those samples and models. Minor variations in stated size, weight, number, colour and such like shall not be considered to be defects. Commercial practice shall determine whether variations are minor. The Buyer acknowledges and agrees that where a sample of the IMCD Goods has been shown to and inspected by the Buyer and the sole purpose of so doing was to enable the Buyer to judge the quality of the sample, doing so does not constitute any such sale a sale by sample.

3. PRICE INCREASES

Seller reserves the right to increase the price of the IMCD Goods by giving notice at any time before delivery.

4. WEIGHT AND VOLUME OF GOODS

The weight and volume of IMCD Goods delivered shall be determined at the works or store of Seller or Seller's Agent. The weight and volume so determined and declared by Seller or Seller's Agent shall be deemed to be final and conclusive of the weight and volume of the goods delivered, unless Buyer notifies Seller in writing of any discrepancy in accordance with Article 14 below.

5. QUANTITY TOLERANCES

Seller reserves the right to deliver against any order in excess or deficiency up to 10% of weight of volume ordered without any adjustment in the price.

6. WARRANTIES AND LIABILITIES

6.1 Seller warrants that the IMCD Goods shall comply with Seller's specification for the IMCD Goods in question as current from time to time. Seller does not warrant the fitness of the IMCD Goods for any particular purpose, even though that purpose be known to the Seller, and no such warranty is to be implied from the name or description under which the IMCD Goods are sold.

6.2 Subject as aforesaid and to the extent permitted by law, all warranties, conditions and statements, express or implied, by statute or common law or arising from conduct or a previous course of dealing or otherwise are excluded.

6.3 Seller's liability in contract or tort for any reason whatsoever, arising (whether or not from Seller's own negligence) directly or indirectly out of the supply or use of the IMCD Goods, or of the packages or pallets or containers by which the goods are delivered, shall, to the extent permitted by law, be limited to the value of the IMCD Goods supplied.

6.4 IMCD shall be liable only for direct damage resulting from an intentional act or wilful recklessness, proven by Buyer, on the part of IMCD and/or its managerial staff forming part of the board of directors or management, during the fulfillment of the obligations arising from any agreement concluded between IMCD and Buyer.

6.5 IMCD shall never be liable for:

- indirect loss of any kind, including consequential loss and/or
- non-material loss suffered by Buyer or by a third party as a result of IMCD, or a person for whom it is vicariously liable under the law, failing in the performance of the Agreement.

6.6 Buyer shall in any case be solely liable for damage, of whatever nature and in whatever form, which occurs after the IMCD Goods delivered by IMCD have been treated and/or processed.

6.7 The liability of IMCD shall 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 and the Buyer shall not be entitled to make any other claim against IMCD for any reason whatsoever..

6.8 Buyer must compensate and hold IMCD harmless for, and indemnify it against, all third-party claims, for whatever reason, in connection with compensation for any and all damage, costs, expenses, interest, losses and/or liabilities arising out or in connection with the IMCD Goods delivered by IMCD, Buyer's use thereof and/or Buyer's use or application of any information disclosed or provided by or on behalf of IMCD.

6.9 In addition, Buyer agrees to comply with all of its obligations under applicable laws of the Philippines. In particular, but without limitation, Buyer shall provide, on a timely basis, to Seller all relevant new information regarding hazards in its use(s) of the IMCD Goods. Buyer shall comply with any safety information on the IMCD Goods supplied to it and ensure that Buyer's customers are provided with all the information required to use their products safely.

7. FORCE MAJEURE

7.1 In the event that, due to force majeure, IMCD is prevented from performing the Agreement, or performance becomes more costly for IMCD, IMCD shall have the right to suspend the Agreement for the duration of the force majeure situation, or to terminate the Agreement in full or in part, without IMCD being obliged to pay any compensation.

7.2 The term "force majeure" shall be understood to mean any circumstance, both foreseen and unforeseen, as a result of which Buyer can no longer reasonably require performance of the Agreement. Such circumstances shall in any case be understood to include (but not limited to) strike, excessive staff sickness, interruptions in production, destruction of machinery, equipment and any kind of installation, transport problems, fire, floods, explosions 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, Acts of God, 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.

7.3 If IMCD suspends performance of the Agreement in accordance with the provisions of the first paragraph of this Article, Buyer must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or the duration of any security required in accordance with Article 11.2 of these Terms and Conditions up to the new delivery date.

8. SUITABILITY OF STORAGE FACILITIES AND COLLECTING VEHICLES

8.1 In the case of IMCD Goods conveyed by ship, road or rail tanker or bulk container, Seller reserves the right at any time without notice to refuse to make delivery of any quantity of the IMCD Goods without incurring any liability as a result thereof, if, in the opinion of Seller, Buyer's storage tank or other installation (or any valve, filling line, pump or other equipment of Buyer required to be used in connection therewith) into which such quantity of the goods would be transferred on delivery is unsuitable by reason of inaccessibility to such transport, or dangerous to persons or property, or does or would contravene any statute, regulation, byelaw or other rule having the force of law. In such event, Seller shall be entitled to recover from Buyer all reasonable freight and other costs payable by Seller. Where, however, delivery is made by Seller of any quantity of the IMCD Goods conveyed by ship or by road or rail tanker, such delivery shall not in any way be deemed an admission of the part of Seller as to the suitability of Buyer's storage tank or installation as aforesaid.

8.2 Although Seller may inspect any collection vehicle used by Buyer, or anyone acting on their behalf, to check its safe condition, Seller shall neither be responsible for the condition of such vehicle nor liable for any damage or loss resulting from such condition.

9. DELIVERY

9.1 The delivery period stated by IMCD are approximate only and shall not be a deadline. The mere expiry of the delivery period shall not constitute a breach of contract. IMCD shall comply with the delivery period as far as possible. Exceeding the delivery period shall not give Buyer any right to compensation. The IMCD Goods may also be delivered in advance of the quoted delivery date.

9.2 If a delivery period has not been expressly agreed upon, a reasonable delivery period shall apply, beginning from the time that the Agreement is formed.

9.3 IMCD shall have the right at all times to deliver in consignments, and shall always be entitled to make and invoice for such partial deliveries separately.

9.4 Delivery shall take place in accordance with the definitions of the latest version of Incoterms. In the event of a conflict between these Terms and Conditions and the Incoterms, these Terms and Conditions shall prevail.

9.5 If Buyer does not accept, the IMCD Goods delivered, or does not do so on time, it shall be in default without notice of default being required, and IMCD shall in any case be entitled to invoice for the agreed price. IMCD shall then also be entitled, without prejudice to its other rights under the law, to store the IMCD Goods at the Buyer's expense and risk; all costs arising there from, including increases in duties, levies, premiums and the such like, shall be payable by Buyer. Furthermore, should Buyer fail to take delivery of the IMCD Goods, or any part thereof, at the times stated for delivery by reason of any cause, then Seller shall be entitled to cancel such delivery and all other outstanding deliveries or instalments and to charge Buyer for any loss suffered. Upon cancellation of delivery, IMCD shall be entitled to deal with the IMCD Goods as it deems fit.

10. RISK AND PROPERTY

10.1 Risk of damage to or loss of the IMCD Goods shall pass to the Buyer:

(a) in the case of IMCD Goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the IMCD Goods are available for collection; and

(b) in the case of IMCD Goods to be delivered otherwise than at the Seller's premises, at the time of delivery or, if the Buyer wrongfully fails to take delivery of the IMCD Goods, the time when the Seller has tendered delivery of the IMCD Goods.



- 10.2 Notwithstanding delivery and the passing of risk in the IMCD Goods, or any other provision of these Terms and Conditions, legal and beneficial title in the IMCD Goods shall not pass to Buyer until Seller has received in cash or cleared funds payment in full of the price of the IMCD Goods and all other IMCD Goods agreed to be sold by Seller to Buyer for which payment is then due.
- 10.3 Until such time as title in the IMCD Goods passes to Buyer, Buyer shall hold the IMCD Goods as Seller's fiduciary agent and bailee and shall keep the IMCD Goods separate from those 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 goods in any manner.
- 10.4 Until such time as title in the IMCD Goods passes to Buyer, Seller may at any time require Buyer to deliver up the IMCD Goods to Seller and, if Buyer fails to do so forthwith, enter on any premises of Buyer or any third party where the IMCD Goods are stored and repossess the IMCD Goods.
- 10.5 Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the IMCD Goods which remain 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.
- 10.6 If Buyer or Buyer's agent forms a new product from, or partly from, the IMCD Goods delivered to it by IMCD, the ownership of such product shall vest with IMCD. Furthermore, Buyer or Buyer's agent shall keep the product for IMCD at Buyer's cost and expense, and IMCD shall always remain the owner until all the obligations referred to in this Article have been fulfilled.
- 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. If payment in full is not made within the period stated, the Buyer shall be in breach of this Agreement and shall, subject to the applicable statutory maximum prescribed interest rate, be liable to pay interest at the rate of 10% per annum on the amount outstanding as from the day of the default until the day of payment in full.
- 11.2 IMCD shall be entitled at all times, before starting or continuing its performance, to require security from Buyer for the fulfillment of both its payment and other obligations. The security shall be provided in the manner stipulated by IMCD. If Buyer has not provided security within 14 days of a request to that effect, in the manner stipulated by IMCD, all amounts owed by Buyer to IMCD shall be due and payable in full and immediately, without prior notice of default being required.
- 11.3 In the event of non-payment or incomplete or late payment of an amount due and payable, failure to fulfill any other obligation arising from this Agreement, or failure to do so fully and/or in time, suspension of payment, a moratorium or application for such, bankruptcy or petition for such, or Buyer being placed under guardianship, dying or its business being wound up, IMCD shall have the right, without notice of default and without judicial intervention, to suspend performance of the Agreement or to terminate the Agreement in full or in part, and to claim back, as its property, any IMCD Goods delivered but not yet paid for in full, offset against any sums already paid, without prejudice to its right to compensation. If one of the situations described in the previous sentence arises, all amounts owed by Buyer to IMCD shall be due and payable in full and immediately, without prior notice of default being required.
- 11.4 All legal costs incurred by IMCD shall be payable by Buyer on a solicitor/client basis.
- 11.5 Without prejudice to the provisions of Article 14, 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 Buyer's payment obligation.
- 11.6 Payments shall cover firstly legal costs, other costs and interest payable, and then the outstanding principal sums, starting with the most outstanding principal sums, regardless of any instructions to the contrary from Buyer.
- 11.7 If, in accordance with the provisions of paragraph 11.3 of this Article, IMCD suspends performance of the Agreement, Buyer must, at the request of IMCD, extend any letters of credit prescribed by the Agreement and/or security required in accordance with Article 11.2 of these Terms and Conditions up to the new delivery date.
- 12. TAXES**
- The Seller's invoice will normally include sales tax and other taxes at the prevailing rate. Where Buyer has represented to Seller that IMCD Goods being delivered to Buyer are not subject to sales tax or other taxes, Buyer shall produce all evidence as may be required by the competent authority e.g. that such IMCD Goods have been exported, and shall indemnify and hold Seller harmless in respect of all sales tax or other taxes and goods and services tax charged to Seller by the competent authority in respect of such IMCD Goods together with all interest charges, penalties, fines and other costs incurred by the Seller as a result of Buyer either eg. not exporting such IMCD Goods or failing to provide the relevant evidence required by the competent authority within the time prescribed. The Buyer shall be responsible for payment of all taxes including sales tax, service tax and goods and services tax
- 13. PACKAGES, PALLETS AND CONTAINERS**
- 13.1 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 at Seller's expenses to the works or depot named by Seller, and Buyer shall notify Seller of the date of dispatch thereto. 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. If Buyer fails within a reasonable period of time, and in any case within three months, to return any such package or pallet or container in good order and condition, Buyer shall pay the cost of replacement thereof. IMCD shall have the right to deduct rent from the deposit.
- 13.2 The loading or filling of transport equipment and/or packaging made available by Buyer shall take place at Buyer's expense and risk. If IMCD should nonetheless be liable, the provisions of Article 6 of these Terms and Conditions shall then be fully applicable.
- 13.3 IMCD shall have the right to refuse to load equipment and/or fill packaging if it does not fulfil the requirements which may be reasonably set in connection with safety.
- 13.4 In the case referred to in Article 13.3, 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 9.5.
- 13.5 If Buyer does not promptly discharge road vehicles, or does not promptly discharge and return rail wagons, Seller shall have the right to charge Buyer demurrage at the prevailing rate in respect of consequent delays.
- 14. CLAIMS/INSURANCE/RETURNS**
- 14.1 All claims for damage to or partial loss of IMCD Goods in transit must be submitted in writing to carrier and Seller or Seller's Agent within three days of delivery and the delivery note must be endorsed accordingly.
- 14.2 All claims for non-delivery of the whole of any consignment, or of any separate package forming part of a consignment must be submitted in writing to the carrier and Seller or Seller's Agent within seven days of receipt by Buyer or Buyer's Agent of Seller's invoice or advice note, whichever is the earlier.
- 14.3 As soon as reasonably practicable and in any event within seven days of receipt of the IMCD Goods, Buyer shall examine them for the purpose of ascertaining whether they conform to the contract, and if such IMCD Goods do not conform, promptly give written notice thereof to Seller with sufficient particulars; Buyer shall permit Seller to investigate the matters relevant to such notification before the remainder of the IMCD Goods comprised in the same consignment are used or pursuing any claim in respect of the IMCD Goods.
- 14.4 In the absence of notification as a claim or otherwise in accordance with 14.1, 14.2 or 14.3 above, the goods shall be deemed to have been delivered and accepted in conformity with the contract.
- 14.5 The insurance costs shall be payable by IMCD only if provided for by the definitions of an Incoterm declared applicable. In that case, however, IMCD shall not be obliged to do any more with regard to the insurance to be taken out, than to take out insurance up to values equivalent to the net invoice sum.
- 14.6 The insurance to be taken out shall insure against normal business risk only, and therefore not against exceptional risks and/or acts of war. The liability of IMCD shall not, in any case, extend beyond the cover provided by the insurance. If IMCD should nonetheless be liable beyond the cover provided by such insurance, the provisions of Article 6 of these Terms and Conditions shall be fully applicable.
- 14.7 In the event of damage or loss in transit in cases where risk remains with IMCD, IMCD shall submit a claim to the insurer. After IMCD has received the payment from the insurer, it shall pay relevant sums to Buyer.
- 14.8 Without duly authorised prior written consent on its part, IMCD shall not be obliged to accept returns from Buyer. If IMCD Goods are returned without the duly authorised prior written consent of IMCD, their dispatch and storage after their return shall be at Buyer's expense and risk.
- 14.9 The risk in returned IMCD Goods shall continue to be borne by Buyer until IMCD has accepted the return and the returned IMCD Goods in writing, to which acceptance IMCD may attach conditions.
- 14.10 Complaints about IMCD Goods which have already been treated and/or processed in any way after delivery shall not be accepted.
- 14.11 If a complaint is submitted in time and in accordance with these Terms and Conditions, and IMCD is reasonably of the opinion that it has been sufficiently demonstrated that the IMCD Goods are not suitable for their intended use, IMCD shall be free to choose either to deliver what is lacking so that the IMCD Goods are then suitable for the intended use or to redeliver the IMCD Goods 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 guarantee obligation fully and shall not be obliged to pay any further compensation. Replaced IMCD Goods shall become the property of IMCD.
- 14.12 The guarantee on IMCD Goods delivered by third parties may never extend beyond the guarantee that is provided to IMCD by the manufacturer or importer of those IMCD Goods.
- 14.13 Any claim under this Article shall in any case lapse once three months have passed since receipt of the goods supplied.
- 15. TRADE MARKS AND PATENTS**
- 15.1 Nothing contained in this Agreement, whether express or implied, shall be deemed to confer any rights upon Buyer to apply any trade mark, patents, copy right or any other intellectual property right owned by Seller or any of Seller's associated companies to any IMCD Goods supplied under this contract, unless explicitly agreed in writing between Seller and Buyer. Buyer warrants not to infringe any intellectual property of Seller by reason of its importation and/or use of the IMCD Goods.
- 15.2 When IMCD Goods are made or adapted by Seller in accordance with Buyer's specifications, Buyer shall indemnify Seller against all costs, claims and expenses incurred by Seller in respect of the infringement or alleged infringement by such IMCD Goods of any patents, registered designs, trademarks or other rights belonging to third parties.
- 16. NON-ASSIGNABILITY**
- This Agreement is not assignable by Buyer without Seller's prior consent in writing.
- 17. CONVERSION**
- If, and insofar as, any stipulation in these Terms and Conditions cannot be relied upon, that stipulation shall have a significance as similar as possible in terms of contents and purpose, so that the stipulation concerned may be relied upon.
- 18. PROPER LAW AND JURISDICTION**
- The construction, validity and performance of this contract shall be governed by the law of the Philippines and any dispute shall be resolved by the Philippine courts.



19. COMPLIANCE WITH LAWS

- 19.1 The Buyer shall comply with all applicable laws including but not limited to laws and conventions relating to (i) competition law, (ii) anti-bribery, and anti-corruption, and (iii) 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 Buyer 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.
- 19.2 Without prejudice to other provisions in this Article, the Buyer 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 Buyer confirms to have read and agrees to the IMCD Code of Conduct which is available at the following website: www.imcdgroup.com
- 19.3 The Buyer 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 such that all third parties down the supply chain, as far as the end-user, are under the same strict compliance.
- 19.4 The Buyer 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, judgement or settlement arising out of Buyer's failure to adhere to the provisions of this Article.

20. 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 Article.

21. GENERAL

- 21.1 A notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the other party giving notice.
- 21.2 No waiver by the Seller of any breach of this Agreement by the Buyer shall be considered as a waiver of any subsequent breach of the same or other provision.
- 21.3 If any provision of these Terms and Conditions is held by a court or other competent authority to be invalid or enforceable in whole or in part the validity of the other provisions of these Terms and Conditions and the remainder of the provisions in question shall not be affected.
- 21.4 IMCD reserves its right to amend, add to or substitute the provisions of these Terms and Conditions from time to time. For the latest version of IMCD's Terms and Conditions, please visit our website www.imcdgroup.com/worldwide/philippines.