

# EMS-CHEMIE (UK) Ltd.

## 1 DEFINITIONS

In these Conditions the following expressions shall have the following meanings:

- "Seller" shall mean EMS-CHEMIE (UK) Ltd. and also where the context so permits any sub-contractor for the said Company.
- "Goods" shall mean the goods (or any instalment or part of them) to be supplied pursuant to the Contract and where the context so permits include raw materials processed materials or fabricated products whether of the manufacture of the Seller or not.
- "Supply" shall where the context so permits include a sale, lease, hiring or loan of Goods.
- "Buyer" shall mean the person, firm or company with whom any contract to supply goods is made by the Seller.
- "In writing" shall mean either by letter received at EMS-CHEMIE (UK) LTD, Darfin House, Priestly Court, Staffordshire Technology Park, Stafford, ST18 0LQ or by e-mail to welcome@uk.emschem.com. In either case where there is any doubt as to receipt, the onus shall be upon the sender of the notification to prove receipt.

## 2 GENERAL

These Conditions shall be deemed to be incorporated in all contracts of the Seller to supply Goods and in the case of any inconsistency between any letter tender or quotation incorporating or referring to these Conditions and any other communication between the Buyer and the Seller, these Conditions shall prevail unless expressly varied in writing and signed by a director on the Seller's behalf. Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict rights of the Seller under the Contract. If in any particular case any of these Conditions shall be held invalid or shall not apply to the Contract the other conditions shall continue in full force and effect. A statutory provision includes a reference to the statutory provision as replaced, modified or re-enacted from time to time before or after the date of these Terms and Conditions of supply and any other subordinate legislation made under the statutory provision before or after the date of these Terms and Conditions of supply.

## 3 ORDERS

Notwithstanding that the Seller may have given a detailed quotation no order shall be binding on the Seller unless and until it has been accepted in writing by the Seller using its Sales Order Acknowledgement.

## 4 PRICES

- The price payable for the Goods shall be the list price of the Seller current at the date of delivery and in the case of an order for delivery by instalments the price payable for each instalment shall be the list price of the Seller current at the date of delivery of such instalment. Unless otherwise expressly stated in writing to be firm for a period, any price set out in any quotation or order acknowledgement shall be considered as solely for information and shall not constitute a representation or contractual obligation on the part of the Seller that it will deliver the Goods at that price.
- Unless otherwise agreed in writing all prices are inclusive of carriage and insurance to the works of the Buyer if situated within the United Kingdom or to a United Kingdom port if for export. No reduction in price is allowed for delivery ex-works of the Seller.
- All prices are exclusive of Value Added Tax and any other duty or tax applicable thereto.

## 5 ADDITIONAL COSTS

The Buyer agrees to pay for any loss or extra cost incurred by the Seller through failure or delay in taking delivery or through any act or default on the part of the Buyer, its servants, agents or employees.

## 6 TERMS OF PAYMENT

- The standard terms of payment of the Seller in the United Kingdom, are 30 days from end of month following date of invoice, and these shall be deemed to be incorporated in all contracts of the Seller to which these Conditions apply and payments shall be in accordance with such standard terms of payment.
- If the Goods are delivered in instalments the Seller shall be entitled to invoice each instalment when it is delivered and payment of that invoice shall be due notwithstanding non-delivery of other instalments or other default on the part of the Seller.
- If the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of the Goods at specified times a default by the Buyer in the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due forthwith.
- The price of the Goods shall be due in full to the Seller in accordance with the terms of the order and the Buyer shall not be entitled to exercise any set off, lien or any other similar right or claim.
- The time of payment shall be of the essence of the Contract.
- Without prejudice to any other rights it may have the Seller is entitled to charge interest at 5% per annum above the current base rate of the Bank of England from time to time prevailing on overdue payments.

## 7 DELIVERY

- Any period quoted for delivery shall be the period within which the Goods are intended to be delivered at the Buyer's works or at a United Kingdom port as the case may be and shall be calculated from the time of the acceptance by the Seller of the order or from the receipt of all necessary information enable the Seller to manufacture or procure the manufacture of the Goods whichever shall be the later and the Buyer shall take delivery of the Goods within that period.
- All times, dates or periods given for delivery of the Goods are given in good faith but without any responsibility on the part of the Seller. Time of delivery shall not be of the essence of any contract nor shall the Seller be under any liability for delay in delivery whether occasioned by the negligence of the Seller or any other circumstances whatsoever whether or not beyond the Seller's reasonable control unless otherwise expressly agreed in writing at or before the date of the order in which case the Seller's liability shall be limited to such liquidated damages as may be specifically agreed at or before that date.
- Where the Goods are handed to a carrier for carriage to the Buyer or to a United Kingdom port for export any such carrier shall be deemed to be the agent of the Seller and not of the Buyer for the purposes of Sections 44, 45 and 46 of the Sale of Goods Act 1979.
- Where the Goods are sold f.o.b. responsibility of the Seller shall cease immediately the Goods are placed on board ship and the Seller shall be under no obligation to give the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.
- No claims (whether in contract negligence or otherwise) for non-delivery, loss or damage to the Goods occurring prior to delivery or that the Goods are not in accordance with the contract will be accepted by the Seller unless notified in writing by the Buyer to the Seller (with a copy to the carrier if the Seller's own vehicles have not been used to deliver the Goods:- i) within three days of delivery (whether partial or otherwise) for loss, damage or non-compliance with the contract, or ii) within ten days of the date of the invoice for non-delivery.
- In the event of a valid claim for non-delivery, loss, damage or non-compliance with the contract the Seller undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, loss, damage or non-compliance.
- If the Buyer shall fail to give notice in accordance with Condition 7 (e) above the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same accordingly and all claims in respect of non-delivery, loss, damage, defect or non-compliance shall (save as set out in condition 10 below) thereafter be wholly barred.
- Unless otherwise expressly agreed in writing at or before the date of the order the Buyer shall accept as good tender Goods falling short of or exceeding the stipulated weight by not more than 10%. Payment shall be made on the basis of the stipulated weight unless within three days after delivery the Buyer shall give notice in writing to the Seller requiring the Goods to be reweighed in the presence of the Seller's representative (the costs of any such reweighing to be borne in any event by the Buyer).
- Where the Buyer orders goods for delivery on a specified date but does not accept delivery within 3 months of such specified delivery date the Seller reserves the right to deliver the goods and invoice the Buyer for them.
- If for any reason the Buyer is unable to accept delivery of the Goods at the time when the Goods are due and ready for delivery the Seller may at its sole discretion without prejudice to its other rights and for such period as the Seller may determine store the Goods at the Buyer's risk and take all reasonable steps to safeguard and insure them at the Buyer's cost, provided that the Buyer shall be immediately informed thereof.

## 8 PASSING OF TITLE AND RISK

- From the time of delivery the Goods shall be at the Buyer's risk who shall be solely responsible for their custody and maintenance but unless otherwise expressly agreed in writing the Goods shall remain the Seller's property until all payments to be made by the Buyer under the contract and any other contract between the Seller and the Buyer and on any other account whatsoever have been made in full and unconditionally. Whilst the Seller's ownership continues the Buyer shall keep the Goods labelled as belonging to the Seller and separate and identifiable from all other goods in its possession as bailee for the Seller.
- The Buyer may only resell the Goods to the Buyer's customers in the ordinary course of the Buyer's business as a trustee for the Seller. In the event of any resale by the Buyer of the Goods the Seller's beneficial entitlement shall attach to the proceeds of sale or other disposition thereof so that such proceeds or any claims therefore shall be assigned to the Seller and until such assignment shall be held on trust in a separate identified account for the Seller by the Buyer and

such proceeds shall not be mingled with other monies or paid into any overdrawn bank account and shall at all times be identifiable the Seller's monies.

- Without prejudice to the equitable rules as to tracing, in the event of failure to pay the price in accordance with the contract the Seller shall have power to resell the Goods such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise and for such purpose the Seller and its servants and agents may forthwith enter upon any premises or land occupied or owned by the Buyer to remove the Goods.
- Pending payment of the full purchase price of the Goods the Buyer shall at all times keep the Goods comprehensively insured against loss or damage by accident, fire, theft and other risks usually covered by insurance in the type of business carried on by the Buyer in an amount at least equal to the balance of the price for the same from time to time remaining outstanding. The policy shall bear an indorsement recording the Seller's interest.
- The Seller is hereby licensed to enter upon any premises in the ownership, possession or control of the Buyer at any time to recover the Goods whilst the Seller's ownership thereof continues.

## 9 CONDITIONS AND WARRANTIES

- Every description or specification of the Goods is given in good faith based on average results of standard tests but any conditions or warranties express or implied that the Goods shall correspond with such description or specification are hereby expressly negated and the Contract shall not constitute a sale by description.
- Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality or fitness of the Goods for any particular purpose even if that purpose is made known expressly or by implication to the Seller are hereby expressly negated.
- Notwithstanding that a sample of the goods or of drawings or illustrations thereof may have been exhibited to and inspected by the Buyer or that results of standard tests upon a sample are furnished to the Buyer it is hereby declared that such sample was so exhibited and inspected or tested solely to enable the Buyer to judge for himself the quality of the bulk and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the sample or as to their quality condition or sufficiency for any purpose.
- In any event, and notwithstanding anything in these Conditions, in no circumstances shall the Seller be liable, in contract, tort (including negligence or breach of statutory duty) or otherwise, whatever the cause, (1) for any increased costs or expenses, (2) for any loss of profits, business, contracts, revenues, or anticipated savings, or (3) for any special, indirect or consequential damage of any nature.
- It is a condition of sale that the Buyer will respect sanction regulations if any to which the Buyer and the Seller shall be subject.
- By entering into an agreement to purchase the Goods the Buyer warrants that it will abide by sanction regulations if any to which the Buyer and the Seller shall be subject.

## 10 DEFECTIVE GOODS

- In substitution for all and any other rights which the Buyer would have had but for these Conditions, in the event of a defect in the Goods appearing within four weeks of delivery (provided that defect would not have been obvious on reasonable inspection and provided that the Buyer has paid for the Goods), the Seller will: i) if the Goods were manufactured by the Seller, replace the Goods ii) if the Goods were not manufactured by the Seller, assign to the Buyer any warranty given to the Seller by its supplier or, at its option, credit to the Buyer's account the price paid by the Buyer.
- In order to exercise its rights under this paragraph the Buyer shall inform the Seller within seven days of the date when such defect appeared or ought reasonably to have been discoverable and shall return the defective Goods carriage paid to the Seller's works.
- Nothing herein shall impose any liability upon the Seller in respect of any defect in the Goods arising out of the acts, omissions, negligence or default of the Buyer, its servants or agents including in particular but without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of the Seller as to storage and handling of the goods.
- Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.
- Nothing herein shall have the effect of excluding or restricting the liability of the Seller for death or personal injury resulting from its negligence insofar as the same is prohibited by United Kingdom statute.

## 11 REPRESENTATIONS

These conditions replace any representation or warranty which may have been made by the Seller (or its agents or employees) in writing or orally before the formation of the contract between the Seller and the Buyer and the Buyer agrees (1) not to rely at any future time on any such prior representation or warranty and (2) that any such prior representation or warranty is hereby rendered null and void and of no force or effect. All other representations and warranties (whether written or oral, express or implied by statute, common law or otherwise) other than those set out in these Conditions are hereby excluded.

## 12 FORCE MAJEURE

The Seller shall be entitled to delay or cancel delivery or to reduce the amount of Goods delivered if and to the extent that it is prevented from or hindered in or delayed in manufacturing obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including (but not limited to) strikes, lock-outs, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources of supply, international sanctions to which the Buyer and the Seller are or shall be subject.

## 13 STOPPAGE OF DELIVERIES

If the Buyer fails to pay on the due date for payment any sums due to the Seller whether in respect of the Goods or on any other account whatsoever or enters into a Deed of Arrangement or compounds with its creditors or if a receiving order is made against the Buyer or commit any act of bankruptcy or if any bankruptcy petition is presented against him or (if the Buyer is a partnership) against any of its partners or (if the Buyer is a company) it goes into liquidation whether compulsory or voluntary or if an administrative receiver or administrator is appointed or if the Buyer becomes otherwise insolvent or the Buyer suffers anything analogous to the foregoing under the law of its domicile or place of incorporation the Seller may:-

- stop any Goods in transit and suspend deliveries,
- hold by way of lien all materials or other property of the Buyer in the possession of the Seller in respect of work carried out or to be carried out by the Seller for the Buyer or for the general balance of account for the time being owing to the Seller by the Buyer,
- determine the contract.
- in any case this clause 13 shall operate such that any payment then outstanding whether or not contractually due at the date of any breach in this clause 13 or any other breach under these Terms and Conditions shall become immediately due for payment.

Nothing in this clause shall prejudice any other right of the Seller.

## 14 CANCELLATION

Save as provided in clause 13 hereof contracts or orders may not be cancelled except by agreement in writing of both parties and upon the payment to the Seller of such amount as may be necessary to indemnify the Seller against all loss resulting from the said cancellation.

## 15 INTELLECTUAL PROPERTY

The Buyer shall indemnify the Seller against all costs, claims, losses, expenses and damages incurred by the Seller or for which it may be liable due to or arising directly or indirectly out of any infringement or alleged infringement of patents, trade marks, copyright, design right or other intellectual property right occasioned by the importation, manufacture or sale of the Goods if made to the specification or special requirements of the Buyer.

## 16 PROPER LAW

The contract shall in all respects be governed by English law and the Seller and the Buyer agree to submit to the non-exclusive jurisdiction of the English Courts.

## 17 ARBITRATION

Any dispute and matters in difference between the Seller and the Buyer arising out of or in connection with any contract between them may be referred at the option of the Seller to final and binding arbitration in Manchester, England before a single arbitrator to be agreed between the parties and in default of agreement appointed by the President for the time being of the Chartered Institute of Arbitrators or any person to whom such President has delegated the power to make such appointments. Any such reference to arbitration shall be subject to the Arbitration Act 1996 or any statutory modification or re-enactment thereof. Any award made pursuant to such reference to arbitration shall be enforceable in the same manner as a judgement or order of a court of competent jurisdiction.