

Longfield Chemicals Limited Terms of Sale

DEFINITIONS

"Buyer" means the person intending to purchase Product from the Seller.

"Contract" means the contract between the Seller and the Buyer for the sale and purchase of Product incorporating these Terms of Sale.

"Order" means the Buyer's order for the Product, as set out in the Buyer's purchase order form or the Customer's written acceptance of the Seller's quotation, as the case may be.

"Product" means the product(s) ordered by the Buyer and available from the Seller.

"Seller" means Longfield Chemicals Ltd, company number 00925463 whose registered office is at Suite 1, Floor 1, Chelford House, Rudheath Way, Gadbrook Park, Northwich, Cheshire, CW9 7LN

"Specification" means the specification of the Product, if any, as agreed in writing between the Seller and the Buyer.

TERMS OF SALE

1. *Basis of the sale*

- 1.1 These Terms of Sale shall apply to the Contract to the exclusion of any other terms that the Buyer may seek to impose or incorporate, or which are implied by law, trade custom or course of dealing.
- 1.2 The Order constitutes an offer by the Buyer to purchase the Product in accordance with these Terms of Sale. The Buyer is responsible for ensuring that the terms of the Order and any applicable Specification are complete and accurate.
- 1.3 The Order shall only be deemed to be accepted by the Seller when it issues a written acceptance of the Order, at which point the Contract comes into existence.
- 1.4 Any quotation provided by the Seller shall not constitute an offer and the Seller reserves the right not to accept an Order or to amend and re-issue a quotation prior to the Order being accepted in accordance with paragraph 1.3 above. (All quotations are provided on an unsold basis, meaning that the Seller cannot guarantee that the Product and prices will still be available at the time the Order is received.)

2. *Specification*

- 2.1 The Buyer shall be responsible to the Seller for ensuring the accuracy of the terms of any order (including any applicable Specification) submitted by the Buyer.
- 2.2 The quantity, quality and description of the Product and any Specification shall be as set out in the Seller's quotation (if accepted by the Buyer) or the Buyer's order (if accepted by the Seller) or the Seller's written order acknowledgement (if accepted by the Buyer).

3. *Price of the Product*

- 3.1 The price of the Product shall be the Seller's quoted price or, where no price has been quoted (or a quoted price is no longer valid), the price stated in the order acknowledgement, or where there is no order acknowledgement, the price listed in the Seller's published price list current at the date of acceptance of the order.
- 3.2 The Buyer shall pay the Seller any excise duty, VAT or equivalent tax in addition to the price.
- 3.3 The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Product to reflect any increased costs due to:
- (a) a Force Majeure Event (as defined in paragraph 11 below); or
 - (b) any request by the Buyer to change the delivery date, quantity or type of Product ordered.

4. *Invoicing and Payment*

- 4.1 The Seller may require the Buyer to pay cash on or before delivery. Otherwise and subject to any special terms agreed in writing between the Buyer and the Seller, the Seller will invoice the Buyer for the price of the Product on or at any time after delivery of the Product, unless the Product is to be collected by the Buyer or the Buyer wrongfully fails to take delivery of the Product, in which event the Seller shall be entitled to invoice the Buyer for the Price at any time after the Seller has notified the Buyer that the Product is ready for collection or (as the case may be) the Seller has tendered delivery of the Product.
- 4.2 Unless the terms for payment of the price are as stated and agreed in an order acknowledgement the Buyer shall pay the price of the Product within 30 days of the date of the Seller's invoice, and in any event such payment shall be made without any deduction or set-off. The Seller shall be entitled to recover the price in accordance with the Contract, notwithstanding that delivery may not have taken place and property in the Product has not passed to the Buyer.
- 4.3 Time for payment of the Price shall be of the essence of the Contract.
- 4.4 Payment shall be made in full and in cleared funds to the bank account nominated in writing by the Seller. The Buyer should verify any purported changes to the nominated bank account with an authorised representative of the Seller. Receipts for payment will be issued only on request.
- 4.5 If the Buyer fails to make payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller may (at its absolute discretion) cancel the Contract or suspend any further deliveries to the Buyer, appropriate any payment made by the Buyer to such of the Product (or product supplied under any other contract between the Buyer and the Seller) as the Seller may think fit (notwithstanding any purported appropriation by the Buyer) and charge the Buyer interest (both before and after any judgement) on the amount unpaid at 5% above the base rate of HSBC Bank PLC prevailing from time to time and accruing daily until payment in full is made.
- 4.6 If the Buyer fails to make payment on the due date then, without limiting any other right or remedy available to the Seller, the Seller shall be entitled to a full indemnity from the Buyer in respect of any costs incurred by the Seller or its agents with regard to the recovery or attempted recovery of the sums due to it from the Buyer.

- 4.7 In the case of the Buyer and Seller agreeing in writing that the Product delivered is to be consignment stock, a weekly return of the stock used and stock remaining must be submitted by the Buyer to the Seller within 2 working days of the end of each week whereupon the Seller may invoice the Buyer in respect of the stock used, though if any such consignment stock is unused after 90 days after the end of the calendar month in which delivery took place the Seller may invoice the Buyer in respect of that stock, and in all cases the Buyer shall be liable for payment of any such invoice in accordance with the abovementioned terms. All consignment stock shall be held by the Buyer in accordance with the provisions of paragraph 10 below.

5. *Reception Facilities*

The Buyer shall provide safe and sufficient facilities for the reception and storage of Product and will indemnify the Seller, its employees, contractors and agents against any damages, claims, costs or expenses arising out of or in connection with a breach of this condition.

6. *Statutory and Other Requirements*

The Buyer warrants that it has complied and undertakes to continue to comply with the requirements of all applicable laws, including but not limited to the Health & Safety at Work Act 1974, and with the requirements of any competent authorities in so far as they relate to the receipt, handling and storage of the Product.

7. *Safety Data*

The Seller will on request send the Buyer health and safety data as known to it relating to the handling and use of the Product. The Buyer shall forthwith notify the Seller if the Buyer has not received such information by the delivery date. The Buyer shall provide this information to anyone handling or using or who may be exposed to the Product.

8. *Warranties and liability*

- 8.1 The Seller warrants that the Product shall conform in all material respects with any Specification agreed in writing by the Seller.
- 8.2 No warranty is given as to the quality or composition of Product described as non-prime ("NP") or off-grade ("OG"), for which no certificate of analysis will be supplied, or that it will correspond with any sample provided or be fit for any particular purpose. Such Product is "sold as seen".
- 8.3 Subject as expressly provided in these Terms all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 8.4 It is the Buyer's responsibility to take reasonable steps to inspect and test the Product upon delivery and in any event before its use. The Buyer must not use or resell Product where the Buyer is aware (or ought reasonably to be aware) that there is a defect in the quality or condition of the Product or of its failure to correspond with Specification and should notify the Seller as soon as it becomes aware of the issue.

- 8.5 A claim by the Buyer which is based on any defect in the quality or condition of the Product or its failure to correspond with Specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect. If delivery is not refused, and the Buyer does not notify the Seller accordingly, the Buyer shall not be entitled to reject the Product and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Product had been delivered in accordance with the Contract.
- 8.6 Where a valid claim in respect of any of the Product which is based on a defect in the quality or condition of the Product or its failure to correspond with Specification is notified to the Seller in accordance with these Terms of Sale, the Seller may replace the Product (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Product (or a proportionate part of the price), in which case the Seller shall (without prejudice and with no admission of liability) have no further liability to the Buyer.
- 8.7 Nothing in the Contract excludes or limits any liability which cannot legally be limited, including liability for:
- (a) breach of its obligations arising under section 12 Sale of Goods Act 1979 or section 2 Supply of Goods and Services Act 1982;
 - (b) personal injury or death;
 - (c) defective products under the Consumer Protection Act 1987; or
 - (d) for its fraud or fraudulent misrepresentation.
- 8.8 Subject to paragraph 8.7, the Seller's total liability to the Buyer shall not exceed the lesser of: (a) the price of the Product payable under the Contract; and (b) where the Product is delivered in instalments, the price of the Product payable under the Contract in respect of the instalment delivered (or not delivered) in breach of the Contract (and where the Contract does not provide a price per instalment it shall be a proportionate part of the total price stated in the Contract for the Product).
- 8.9 Subject to paragraph 8.7, the following types of loss are wholly excluded:
- (a) loss of profits;
 - (b) loss of sales or business;
 - (c) loss of agreements or contracts;
 - (d) loss of anticipated savings;
 - (e) loss of or damage to goodwill; and
 - (f) indirect or consequential loss.
- 8.8 The limitations on liability in this paragraph 8 apply to every liability arising under or in connection with the Contract including liability in contract, tort (including negligence), misrepresentation, restitution or otherwise.

9. Pallets

Where deliveries of Product are made on the Seller's returnable pallets the Buyer undertakes to keep such pallets in good condition and to make them available for collection by or on behalf of the Seller if requested.

10. *Delivery, Risk and Title and Inspection*

- 10.1 Delivery of the Product shall take place:
- (a) where the Seller or its carrier undertakes delivery of the Product, upon unloading from the Seller's (or its carrier's) vehicle, ship or other transport at the premises stated in the order or as otherwise agreed in writing by the Seller.
 - (b) where the Buyer or its carrier undertakes to collect the Product: upon loading onto the Buyer's (or its carrier's) vehicle or other transport at the premises specified by the Seller.
- 10.2 Any dates quoted for delivery are approximate only and time for delivery is not of the essence of the Contract.
- 10.3 If the Seller fails to deliver the Product, its liability shall be limited to the costs and expenses incurred by the Buyer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Product.
- 10.4 The Seller shall have no liability for any failure to deliver the Product to the extent that such failure is caused by a Force Majeure Event (as described in paragraph 11 below) or the Buyer's failure to provide the Seller with adequate delivery instructions or any other instructions that are relevant to the supply of the Product.
- 10.5 The Product shall be at the Buyer's risk from the time of delivery.
- 10.6 Notwithstanding delivery and the passing of risk in the Product, or any other provision of these Terms of Sale, the property in the Product shall not pass to the Buyer until the Seller has received in cash or other cleared funds payment in full of the price of the Product and all other goods agreed to be sold by the Seller to the Buyer for which payment is then due.
- 10.7 Until such time as the property in the Product passes to the Buyer, the Buyer shall hold the Product as the Seller's fiduciary agent and bailee, and shall keep the Product separate from that of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the Product in the ordinary course of its business.
- 10.8 In the case of consignment stock, the Seller shall have the right to inspect the stock at any time on giving to the Buyer reasonable notice.
- 10.9 Until such time as the property in the Product passes to the Buyer (and provided the Product is still in existence and has not been resold), the Seller may at any time require the Buyer to deliver up the Product to the Seller and, if the Buyer fails to do so forthwith, enter on any premises of the Buyer or third party where the Product is stored and repossess the Product. The Seller shall be entitled to recover as a debt from the Buyer the costs of such repossession.
- 10.10 The Buyer shall not be entitled to pledge, create a lien over or in any way charge by way of security for any indebtedness any of the Product which remains the property of the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without limiting any other right or remedy of the Seller) forthwith become due and payable.

11. *Force Majeure*

The Seller shall not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Product, if the delay or failure was due to any cause beyond the Seller's reasonable control (a "Force Majeure Event").

Without limiting the foregoing, the following shall be regarded as Force Majeure Events: acts of God, fire, flood, adverse weather conditions, pandemic, war, acts of terrorism, acts of government, local government or regulatory bodies, strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery.

12. *Waiver*

12.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

12.2 A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not waive that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

13. *Assignment*

The Seller may at any time assign, mortgage, charge or subcontract all of its rights and obligations under the Contract. The Buyer may not assign or deal in any manner with any of its rights or obligations under the Contract without the written consent of the Seller, such consent not to be unreasonably withheld or delayed.

14. *Termination*

The Seller may, without prejudice to its other rights or to those provisions of this Contract intended to survive termination, either suspend deliveries or terminate the Contract without any liability to the Buyer if:

- (a) the Buyer fails to pay the Seller on the due date or commits a breach of any other obligation under the Contract; or
- (b) the Buyer makes a composition or voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) enters administration or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction), or a moratorium comes into force in respect of the Buyer (within the meaning of the Insolvency Act 1986), or an encumbrancer takes possession of, or a receiver is appointed over of any of the property or assets of the Buyer, or the Buyer ceases, or threatens to cease, to carry on business, or the Seller reasonably apprehends that any of the events mentioned in this clause (b) is about to occur in relation to the Buyer; and in all such circumstances all sums payable by the Buyer to the Seller on any account whatsoever shall become immediately due and payable.

15. *Severability*

If any provision of the Contract or these Terms of Sale is invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of the Contract or these Terms of Sale, which will remain in full force and effect.

16. *Governing Law*

The Contract and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and be construed in accordance with the law of England and Wales and the parties accept the exclusive jurisdiction of the courts of England and Wales.

17. *Amendments*

Any amendment to the Contract or these Terms of Sale shall only be effective if made in writing and signed by the Seller and the Buyer.

18. *Third Party Rights*

The Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract and the rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.