

AMERICHEM EUROPE LIMITED: TERMS AND CONDITIONS OF PURCHASE

1. Interpretation

1.1 In these Conditions:-

'Applicable Law' means any (a) statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal), (b) rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/or(c) industry code of conduct or guidelines, which in any of the foregoing cases relates to the Contract or the Goods;

'Conditions' means the terms and conditions of purchase set out in this document;

'Confirmation of Order' means as set out in clause 2.2;

'Confidential Information' means all information in respect of the Purchaser's business including know-how and other matters connected with the Goods, and any other information which, if disclosed, will be liable to cause harm to the Purchaser;

'Contract' means the contract between the Supplier and the Purchaser for the sale and purchase of the Goods which shall be made on these Conditions;

'Goods' means any goods which the Supplier is to supply to the Purchaser (including any of them or any part of them) as identified in the relevant Confirmation of Order;

'Intellectual Property Rights' means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions;

'Preliminary Purchase Order' means as set out in clause 2.2;

'Purchaser' means Americhem Europe Limited;

'Supplier' means the person(s) or company to whom the Purchaser's order is addressed.

1.2 Any reference in these Conditions to the neuter shall include the masculine and feminine and to the singular shall include the plural if the context so requires.

1.3 Any reference to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as reference to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.

1.4 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.5 Unless the context otherwise requires references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).

1.6 Any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. **Formation**

2.1 Subject to any variation under **Condition 2.4**, these Conditions form part of the Contract to the exclusion of all other terms and conditions (including any terms or conditions which the Supplier purports to apply under any quotation, confirmation of order or similar document). Delivery of the Goods will be deemed conclusive evidence of the Supplier's acceptance of these Conditions.

2.2 Following any expression of interest by the Purchaser in purchasing Goods (a "Preliminary Purchase Order"), the Supplier shall offer to supply such Goods to the Purchaser on the terms of these Conditions and such Preliminary Purchase Order exclusive of all other terms and conditions that the Supplier may purport to apply. The Purchaser shall be entitled to accept the Supplier's offer through the issue of an acknowledgement of order (a "Confirmation of Order"), and if the Purchaser accepts such offer verbally, it shall be entitled to issue a Confirmation of Order by email.

2.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement of order or similarly titled document will form part of this Contract simply as a result of a reference to such document in any Contract.

2.4 The Purchaser shall be entitled to vary these Conditions from time to time and shall make any such changes available on its website (www.americhem.com), save that no such variation shall affect any existing Contracts made on the basis of these Conditions. Any variation to any Contract made on the basis of these Conditions shall have no effect unless expressly agreed in writing and signed by a director of the Purchaser.

2.5 These Conditions (as modified in accordance with **Condition 2.4**) embody the entire understanding of the parties and supersede any prior promises, representations, undertakings or implications. Neither party has entered into any Contract in reliance upon, and it shall have no remedy in respect of, any representation or statement which is not expressly set out in such Contract. Nothing in this **Condition 2.5** shall be interpreted or construed as limiting or excluding the liability of either party for fraud or fraudulent misrepresentation.

2.6 Except where the Purchaser has the right to do so under any Contract or in law, if the Purchaser wishes to cancel or modify a Contract it may do so subject only to payment of the reasonable costs directly incurred by the Supplier in respect of any partial manufacture of Goods and for any raw materials irrevocably allocated to that Contract. The Supplier may not cancel or modify the Contract unless the Purchaser otherwise agrees in writing.

3. **Delivery**

3.1 Delivery must be made on the date and time specified in the Contract and time shall be of the essence of the Contract (or if no times are specified, during the

Purchaser's normal hours of business on the date specified in the Contract). Where products are reserved in bulk and delivered as part of separate instalments at the request of the Purchaser, each separate instalment shall be deemed to constitute an individual Contract and must be delivered on the date and time specified in the Contract or otherwise agreed with the Purchaser in writing.

- 3.2 Unless otherwise agreed in writing by an authorised representative of the Purchaser, delivery of the Goods shall be made carriage paid at the address designated by the Purchaser and delivery shall occur when the Goods have been unloaded in good condition at the said address. The Supplier will off-load the Goods at its own risk and cost to the location directed by the Purchaser.
- 3.3 If the Goods or any instalment of the Goods are not delivered within the date or at the time required pursuant to **Condition 3.1**, then without prejudice to any right or remedy which shall have accrued to it under the Contract or which shall accrue to it in respect of such late delivery or otherwise, the Purchaser shall be entitled by notice in writing forthwith to:
 - 3.3.1 require the Supplier to pay to the Purchaser on demand as liquidated damages and amount as set out in the Contract for each period of time specified in the Contract by delivery of the Goods is delayed. The parties agree that the liquidated damages are a genuine negotiated pre-estimate of the Customer's loss resulting from delay in delivery of the Goods and will not be regarded as penalty provisions. The Supplier waives any right to question or challenge the validity of the obligation to pay the liquidated damages; and/or
 - 3.3.2 cancel the Contract or, at its option, any part thereof remaining unfulfilled and obtain a refund from the Supplier, and to reject all the Goods the subject of the Contract or such part thereof as may be affected by such cancellation and refund.
- 3.4 The Supplier will ensure that:
 - 3.4.1 the Goods are accurately marked in accordance with the Contract and any Applicable Laws and the Purchaser's instructions and are properly packed and secured so as to reach their destination in an undamaged condition;
 - 3.4.2 the delivery is accompanied by a prominently displayed delivery note which shows any order number stipulated by the Purchaser, the date of the order, the type and quantity of Goods (including any relevant code numbers), any special storage instructions and, where delivery by instalments is permitted under **Condition 3.1**, the outstanding balance of Goods remaining to be delivered; and
 - 3.4.3 on or before Delivery the Purchaser is provided in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the Goods supplied whether in use or otherwise and thereafter information concerning any changes in such properties or ingredients. The Purchaser will rely on the supply of such information from the Supplier in order to satisfy its own obligations under any relevant Applicable Laws.
- 3.5 Unless otherwise agreed in writing by an authorised representative of the Purchaser, samples of each item of the Goods ordered must be submitted to the

Purchaser for approval at no charge to the Purchaser and no liability will be accepted by the Purchaser to pay for any Goods produced prior to approval of samples.

- 3.6 The Purchaser will have the right to carry out inspections and tests on any Goods at any time on or after delivery of such Goods for the purposes of establishing whether such Goods comply with the requirements of the Contract. The Supplier shall give the Purchaser all such assistance as the Purchaser may reasonably request so that the Purchaser can undertake such inspections and tests. Notwithstanding any such inspections and tests, the Supplier will remain fully responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Supplier's obligations under the Contract.
- 3.7 The Purchaser will be deemed not to have accepted any of the Goods delivered by the Supplier by virtue of delivery of the Goods. Notwithstanding any inspection or testing of Goods by the Purchaser, the Purchaser reserves the right to reject the Goods in respect of any patent defect in the Goods which is apparent within 30 days of delivery, or in respect of any latent defect in the Goods which becomes known within 90 days of delivery, and in such circumstances the Purchaser will be entitled to cancel the relevant Contract under which the Goods were supplied.

4. **Force Majeure**

- 4.1 The Purchaser reserves the right to cancel or reduce the volume of Goods ordered if it is prevented from or hindered in the carrying on of its business through any circumstances beyond its control.
- 4.2 Without prejudice to the generality of **Condition 4.1** the following shall be included as causes beyond the Purchaser's control:
- 4.2.1 governmental actions, war, threat of war, riot, civil disturbance, sabotage or requisition, theft or malicious damage;
 - 4.2.2 Act of God, fire, flood, storm, extreme weather condition, epidemic or accident;
 - 4.2.3 import or export regulations or embargoes;
 - 4.2.4 strikes, lockouts and labour disputes including disputes involving the Purchaser's work-force; or
 - 4.2.5 inability to obtain or delay in obtaining supplies of adequate or suitable material, fuel, power, parts, machinery or labour.

5. **Risk/Title**

- 5.1 Without prejudice to any right to reject the Goods pursuant to these Conditions, title to and the risk in the Goods shall pass to the Purchaser upon delivery.

6. **Price**

- 6.1 The price for the Goods shall be the price agreed by an authorised representative of the Purchaser in writing, or if none, the price set out in the Supplier's published price list current at the date of delivery or deemed delivery which must be confirmed with the Purchaser prior to dispatch.
- 6.2 The price will be inclusive of all packing and delivery charges, duties and VAT or other sales tax.

7. **Payment**

- 7.1 The Supplier shall provide the Purchaser with such VAT valid invoices, advice notes, delivery notes, statements and other documentation as the Purchaser may from time to time specify.
- 7.2 Unless otherwise agreed in writing by a director of the Purchaser, the Purchaser will pay for the Goods on the last working day of the second month following the month in which the Goods are delivered or in which a correct invoice therefore is received, whichever is the later. The Supplier shall issue the invoice after delivery.
- 7.3 The Purchaser reserves the right to deduct from or offset against any monies due or becoming due to the Supplier in respect of this Contract the monies due from the Supplier to the Purchaser on any account in respect of materials supplied, services rendered or otherwise.
- 7.4 If any sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum will bear interest from the due date until payment is made in full, both before and after any judgment, at 3% per annum over Barclays Bank plc base rate from time to time. The Supplier is not entitled to suspend deliveries of the Goods as a result of any sums being outstanding if such sums are disputed in good faith.
- 7.5 Earlier payment by the Purchaser will be without prejudice to the Purchaser's rights to reject the Goods if applicable pursuant to **Condition 3.7** or any other rights or remedies the Purchaser may have against the Supplier.

8. **Quality and Defective Goods**

- 8.1 The Supplier warrants that (subject to the other provisions of these Conditions) upon delivery the Goods will:
- 8.1.1 be the best quality, materials and workmanship free from defects;
 - 8.1.2 be fit for the purpose for which they are required;
 - 8.1.3 conform to any description or sample given by the Supplier or specification stipulated by the Purchaser;
 - 8.1.4 be supplied to the Purchaser with a certificate of conformance or certificate of analysis if required by the Purchaser;
 - 8.1.5 comply with terms, conditions and provisions of and applicable to the Contract;
 - 8.1.6 comply in all Applicable Laws which may be in force at the time relating to their design, construction or quality;
 - 8.1.7 not infringe any Intellectual Property Rights owned by any third party; and
 - 8.1.8 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.
- 8.2 The Supplier will comply with all Applicable Laws in performing its obligations under the Contract. In particular but without prejudice to the generality of the foregoing, the Supplier warrants that (subject to the other provisions of these Conditions) upon delivery the Goods will be compliant with the requirements of

REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation 1907/2006) as amended. The Supplier shall provide the Purchaser with a REACH compliant safety data sheet (where applicable) relating to any Goods outlining the uses and risk measures needed to address risks to human health or environment.

8.3 Without prejudice to any other rights or remedies of the Purchaser (whether express or implied), if any Goods do not conform with any of the terms of **Conditions 8.1** and **8.2**, the Purchaser may at its option (whether or not the Goods have been accepted):

8.3.1 terminate the relevant Contract for such Goods immediately by giving written notice to that effect to the Supplier and require the Supplier to promptly refund the Price for such Contract where paid, and, at the Purchaser's discretion, terminate all other Contracts for the purchase of Goods with the Supplier by giving written notice to that effect to the Supplier and requiring the Supplier to promptly refund the Price for such Contracts where paid; or

8.3.2 require the Supplier to promptly replace the relevant Goods free of charge;

and, in either case, the Purchaser will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the Purchaser as a result of the non-conformity of the Goods with any of the terms of **Conditions 8.1** and **8.2**, including in particular all liabilities, losses, damages, costs and expenses incurred by the Purchaser as a result of any product recall that the Purchaser may initiate or be otherwise required to conduct, in respect of which the Supplier will provide the Purchaser with all such assistance as the Purchaser may require.

9. **Liability**

9.1 Without prejudice to any other right or remedy available to the Purchaser against the Supplier, the Supplier hereby undertakes to indemnify and keep the Purchaser indemnified against:

9.1.1 any loss, damage or injury to the Purchaser of whatever nature whether direct, indirect or consequential; and

9.1.2 any claim in respect of loss, damage or injury of whatever nature whether direct, indirect or consequential made against the Purchaser by any third party; and

9.1.3 any costs (including legal costs on a full indemnity basis), expenses, liabilities, demands and proceedings arising in connection therewith;

where any of the same result directly or indirectly from the Supplier's breach of or failure to comply with any terms of this Contract or any negligent act or omission of the Supplier or any breach of statutory duty by the Supplier and in particular, but without prejudice to the generality of the foregoing, any of which result from any defect in the Goods or the construction, workmanship or design thereof, including without limitation where the same results in a product recall by the Purchaser.

9.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance company with respect to the following insurance policies:

- 9.2.1 Employers' Liability insurance for no less than £5,000,000 (five million) pounds in respect of any one incident (for unlimited numbers of claims in any period of insurance);
- 9.2.2 Public & Products Liability insurance for no less than £5,000,000 (five million) pounds in respect of any one incident (unlimited numbers of claims in any period of insurance, other than for Products Liability which can be any one claim and in the annual aggregate); and
- 9.2.3 Professional Indemnity insurance to cover in full its liabilities in relation to any products or services the Supplier supplies to the Purchaser; and
- 9.2.4 all other insurances as are required by law to be maintained by the Supplier pursuant to or in connection with the supply of the Goods,

and the Supplier shall on request provide to the Purchaser evidence of such insurance as the Purchaser may reasonably require.

10. **Confidentiality**

- 10.1 The Supplier will keep confidential any and all Confidential Information that it may acquire from the Purchaser (subject only to any requirement to disclose such Confidential Information by any court or regulatory body of competent jurisdiction) and will not use the Confidential Information for any purpose other than to perform its obligations under the Contract. The Supplier will ensure that its officers and employees comply with the provisions of this **Condition 10.1**.
- 10.2 The Supplier shall not make use of any of the Purchaser's Intellectual Property or the Purchaser's name or the name of any of the Purchaser's customers for publicity purposes without the prior written consent of the Purchaser.

11. **Termination**

- 11.1 The Purchaser shall have the right at any time by giving notice in writing to the Supplier to terminate any Contract forthwith in any of the following events:
 - 11.1.1 if the Supplier commits a material breach of any of the terms or conditions of that Contract or any other Contract between the Purchaser and the Supplier;
 - 11.1.2 if the Supplier enters into liquidation whether compulsory or voluntary (otherwise than for the purposes of a solvent amalgamation or reconstruction) or is subject to an application for the appointment of an administrator at court or notice of intention to appoint an administrator is filed at any court or compounds with its creditors or applies to a court of competent jurisdiction for protection from its creditors generally or has a receiver or administrative receiver appointed over all or any part of its assets or takes or suffers any similar action in consequence of debt or anything analogous to any of the foregoing under the laws of any jurisdiction occurs in relation to the Supplier.
- 11.2 Following expiry or termination of any Contract, any Conditions which expressly or impliedly continue to have effect after expiry or termination of the Contract.

12. **General**

- 12.1 No extension of time or other concessions granted by the Purchaser shall in any way affect the Purchaser's rights or the Supplier's obligations under this Contract.
- 12.2 Each right or remedy of the Purchaser under this Contract is without prejudice to any other right or remedy of the Purchaser whether under this Contract or not.
- 12.3 Any provision of this Contract which is held by any competent authority to be invalid, void, voidable or unenforceable (in whole or in part) shall to the extent of such invalidity, voidness, voidability or unenforceability be deemed severable and the other provisions of this Contract and the remainder of such provision shall not be affected.
- 12.4 Failure by the Purchaser to enforce any provision of this Contract will not be construed as a waiver of any of its rights under this Contract.
- 12.5 A waiver by the Purchaser of any breach of this Contract by the Supplier will not be construed as a waiver of any subsequent breach of the same or any other provision.
- 12.6 The Purchaser may assign, licence or sub-contract all or any part of its rights or obligations under this Contract without the Supplier's consent.
- 12.7 This Contract is personal to the Supplier who may not assign, license or subcontract all or any of its rights or obligations under this Contract without the Purchaser's consent.
- 12.8 The parties do not intend that any term of the Contract shall be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person other than the parties.

13. **Notices**

- 13.1 All notices between the parties about this Contract must be in writing and delivered by hand or sent by first class post or sent by facsimile transmission:
- 13.1.1 (in case of notices to the Purchaser) to its registered office or such changed address as shall be notified to the Supplier by the Purchaser;
or
- 13.1.2 (in the case of notices to the Supplier) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Supplier set out in any document which forms part of this Contract or such other address as shall be notified to the Purchaser by the Supplier.
- 13.2 Notices shall be deemed to have been received:
- 13.2.1 if sent by first class post, 2 days (excluding Saturdays, Sundays and bank holidays) after posting (exclusive of the day of posting);
- 13.2.2 if delivered by hand, on the day of delivery;
- 13.2.3 if sent by facsimile transmission, at the time of transmission.

13.3 In providing service:

13.3.1 by delivery by hand, it shall be necessary only to produce a receipt for notices signed by or on behalf of the addressee;

13.3.2 by post, it shall be necessary to prove that the notice was contained in any envelope which was addressed and posted in accordance with **Condition 13.1**.

13.3.3 by facsimile transmission, it shall be necessary to prove that a confirmatory copy of the facsimile was sent by post in accordance with **Conditions 13.1** (in case of notice from the Supplier) and otherwise a fax transmission sheet with the correct number was generated by the sender.

14. **Jurisdiction**

14.1 The formation, construction, performance, validity and all aspects of this Contract, including any non-contractual obligations arising out of or in connection with it, are governed by English law and the parties submit to the exclusive jurisdiction of the English Courts.