

Chemicals Colombia SAS

Terms and Conditions of Sale

1. DEFINITION

In these terms and conditions of sale :

* **"Buyer"** means the party to whom any quotation is made, any person offering to contract with Seller on these Terms and Conditions of Sale and any person who purchases Goods from Seller;

"Contract" means Seller's pricing letter or letter of offer accepted by the Buyer and to which the supply of the Goods relates, as updated in writing by the mutual agreement of Seller and the Buyer, the attachments (if any) to that letter and these Terms and Conditions of Sale;

"Goods" means all equipment, products and services agreed to be supplied by Seller to the Buyer under any contract, arrangement, understanding between Seller and the Buyer (including pursuant to a quotation or letter of offer accepted by the Buyer); and

"Seller" means Chemicals Colombia SAS, a company incorporated in Colombia.

2. ENTIRE AGREEMENT

(a) Unless Seller otherwise agrees in writing, the Contract contains the only terms and conditions of sale to which Seller will be bound in connection with the supply of Goods to the Buyer.

(b) The Buyer agrees that the Conditions of Sale contained in this Contract will in all circumstances prevail over the Buyer's terms and conditions of purchase or supply (if any).

(c) These Conditions of Sale supersede and exclude all prior and other discussions, representations (contractual or otherwise) and arrangements relating to the supply of the Goods including, but not limited to, those relating to the performance of the Goods or the results that ought to be expected from using the Goods.

(d) Without limiting any other mode of acceptance of this Contract exercised by the Buyer, the Buyer acknowledges that by accepting delivery of the Goods and/or the credit terms offered by Seller, the Buyer by such conduct agrees to be bound by the Conditions of Sale of this Contract.

(e) No amendment or variation of the Contract is valid or binding on a party unless made in writing and executed and sealed on behalf of both parties.

3. WARRANTIES, GUARANTEES & LIABILITY

(a) Seller warrants that the Goods as at the time of delivery accord with the relevant specification contained or referenced in the Contract.

(b) Apart from the warranties contained in clause 3(a), to the maximum extent permitted by law, all warranties and guarantees expressed or implied by statute, law, authorities, custom or usage or otherwise, in relation to the supply of the Goods, are expressly excluded. Where such exclusion is not permitted by law, Seller's liability is limited in the manner set out below in clause 3(c).

(c) Seller's liability for breach of any non-excludable warranties or guarantees implied into this Contract by law or other means is limited to any one of the following as determined by Seller:

- the prompt retrieval of the non-compliant Goods at Seller's cost and the replacement of the Goods or the supply of equivalent Goods; or
- the payment by Seller of the cost of replacing the Goods or of acquiring equivalent Goods.

(d) Subject to clause 3(c) and without limiting any other provision in these Conditions of Sale, the Seller's total liability to the Buyer for any claim howsoever arising in connection with the Contract or the supply of Goods, whether based on contract, tort, statute, regulation, ordinance or any other cause, is limited to 10% of the Contract's price of the Goods to which the claim relates.

(e) The Buyer will examine the Goods for any non-conformances with clause 3(a) and shall notify Seller of any non-conformances in writing within 30 consecutive days of delivery and the Buyer may reject the non-conforming Goods in that period. If the Buyer does not notify Seller within 30 consecutive days of delivery the Buyer shall be deemed to have accepted the Goods and it shall no longer be entitled to exercise its rights in clause 3 in respect of those particular Goods. For the avoidance of doubt Seller will not be liable under this clause 3 where the Buyer has failed to store or handle the Goods properly or in accordance with the directions of Seller or the manufacturer of the Goods.

(f) To the extent permitted by law and notwithstanding anything else in the Contract, under no circumstances shall Seller be liable in any way to the Buyer, in relation to or in any way connected with the Contract for indirect or consequential damages, nor for loss of business revenue, loss of current or future profits and/or business opportunities, loss of reputation, damages or liquidated sums payable pursuant to other agreements, cost increases and overhead costs, or any other of similar nature. Furthermore, any provision of this Contract stating a limitation of liability, warranty and/or guarantee exclusion or exemption, and exclusion of damages, is divisible and independent from any other provision and shall be implemented as such.

4. ACCEPTANCE OF RISK

The Buyer hereby acknowledges that:

(i) it has not relied on any service involving skill or judgement, or on any advice, recommendation, information or assistance provided by Seller in relation to the Goods or their use or application;

(ii) it is responsible for ensuring that Goods that comply with the warranties in clause 3(a) are fit and suitable for its purposes, requirements, processes, plant and equipment; and

(iii) it is responsible for ensuring that Goods are appropriate for its intended use, and for hiring proper insurance to cover potential liabilities arising from their use. Buyer shall verify that the Goods are used, storage and handled in a safe way and in accordance with applicable regulations. Buyer assumes all risks and liabilities in relation to (and will indemnify Seller of them): (a) any use of Goods in combination with goods from third parties or with other goods which have not been designed to be used in combination with the Goods; and (b) any damage in relation to the use, storage, and handling of the Goods which is not a direct consequence of Seller's breach of the warranties expressed in clause 3(a).

5. DELIVERY & RESPONSIBILITY TO PURCHASE

(a) Seller will make all reasonable efforts to have the Goods delivered to the Buyer on or about the date or within the timeframe forming part of the Contract.

(b) Seller shall not be liable for any failure to deliver or delay in delivery for any reason.

(c) The Buyer will be contractually obligated to take delivery of and pay for all Goods ordered by it from Seller, and which Seller supplies or makes available to the Buyer in accordance with the Contract.

6. RISK AND TITLE

(a) Title and all risk in and to the Goods purchased shall pass to the Buyer upon delivery of the Goods to the delivery point specified in the Contract. Seller reserves the right to demand collateral or other guarantees in the pricing letter or letter of offer, or at any time during the term of this agreement in relation to any portion of the price which has not been paid by the Buyer.

(b) Without in any way limiting the operation of the foregoing, upon delivery of the Goods to the Buyer or his agent or to a carrier commissioned by the Buyer, the Buyer covenants and warrants to Seller that, in the storage and handling of the Goods, the Buyer and his agents and carriers shall comply with all relevant environmental laws and regulations, and comply with all necessary and/or relevant permits or licences pertaining to the storing and handling of the Goods, and the Buyer shall ensure that the Buyer and his agents and carriers are familiar with and adhere to all the necessary and appropriate precautions and safety measures relating to the storing and handling of the Goods.

(c) If Seller does not receive forwarding instructions sufficient to enable it to despatch the Goods within 14 days of notification to the Buyer that they are ready, the Buyer shall be deemed to have taken delivery of the Goods from such date. The Buyer shall thereafter be liable for reasonable storage charges payable monthly on demand.

7. PRICE

Unless otherwise agreed in writing, the price charged for the Goods shall be determined and adjusted in accordance with Seller's final pricing letter or offer forming part of the Contract. Without limiting its rights in clause 9, overdue invoiced amounts will accrue the Maximum Legal Interest Rate for non-adjustable obligations since the date they should have been paid.

8. FORCE MAJEURE

Deliveries of Goods may be totally or partially suspended by Seller during any period in which Seller may be prevented or hindered from manufacture, delivery or supply through any circumstances outside Seller's reasonable control or where such manufacture, delivery or supply is rendered materially more expensive by such circumstances. Circumstances beyond Seller's reasonable control shall include, without limitation, natural events, weather events, strikes, lockouts or other labour difficulty, changes in laws or sanctions, imposition of new laws or sanctions, inability to obtain any Goods or any necessary materials, packaging, inputs, equipment, facilities or services on usual terms, power or water shortage, accidents or breakdowns of plant, machinery, software, hardware or communication network. Seller shall not incur any liability to the Buyer in respect of such suspension.

9. PAYMENT AND DEFAULT

(a) Subject to sub-clause 9(b) hereof, and unless otherwise agreed in writing all accounts shall be payable within 30 days of delivery of Goods, or as otherwise identified on any statement of account issued by Seller.

(b) If any of the events set out below in this clause 9(b) occur, Seller may to the extent legally permissible and at its option and absolute discretion withhold further deliveries of Goods or cancel the Contract, without prejudice to recovering damages from Buyer, or to any other action or remedy which Seller is afforded by Law in the respective case.

(i) The Buyer makes default in any payments or is unable or states that it is unable to pay its debts as and when they fall due.

(ii) The Buyer becomes insolvent, commences being wound up, or commits an act of bankruptcy or has a controller or administrator appointed or if sequestrators, retention or prohibitions to enter into agreements are obtained, relating to any part of the Buyer's estate, property or assets.

In such circumstances, as well as in those stated in article 1.553 of the Civil Code, all moneys owing and outstanding to Seller and irrespective of whether the due date on any statement of account has occurred or passed shall become immediately due and payable.

10. WAIVER

No failure to exercise nor any delay or omission in exercising any right, power or remedy by Seller operates as or constitutes a waiver. A single or partial exercise by Seller of any right, power or remedy does not preclude any other or further exercise by it of that or any other right, power or remedy. A waiver is not valid or binding on Seller unless made in writing.

11. GOVERNING LAW

The validity, interpretation and implementation of this Contract, and any conflict that might arise in relation to it, is governed and interpreted by the law of the Republic of Colombia. Any difficulty or controversy arising among the parties to the contract with respect to the application, interpretation, duration, validity or execution of the contract, or for any other reason, shall be solved by the parties through conciliation or any other alternative mechanism to solve the conflict and if in the next ten (10) days to the notification in which one party notified the other about the respective matter to be solved, there is no consensual agreement, their differences shall be submitted to an arbitration panel subject to the rules of the center for arbitration and conciliation of the Chamber of Commerce of Bogotá, which shall be seated in that same city, according to the next rules: a) The panel must be integrated by one (1) member designated by the parties by mutual agreement and in case the parties don't agree on an arbitrator to be chosen, the center for arbitration and conciliation of the Chamber of Commerce of Bogotá will choose the Arbitrator, b) The panel will decide according to the Colombian Law, c) The costs will be in charge of the defeated party, s. There shall be no remedy against the arbitrator's resolutions. The arbitrator is especially empowered to resolve any matter relating to his/her competence and/or jurisdiction.

12. SALES TAX

Prices for Goods do not include Value Added Tax, sales taxes, taxes of use or of specific consumption, nor any other tax or excise that may be charged for the sale or use of the Goods.

13. CHANGE OF LAWS AT TIME OF CONTRACTING AND PRICE ADJUSTMENT

Without limiting clause 15, if any of Seller's costs of:

(a) manufacturing, importing, supplying or transporting the Goods; or
(b) procuring raw materials, services or inputs directly related to the activities in (a), increase at any time during the term of this Agreement as a result of compliance by Seller, Seller's affiliates and related bodies corporate, or third parties, with the introduction of, taking or coming into effect of, or any change (including a change in interpretation) in any federal, state, local or other law or regulation or order, including any introduction of or a change in a tax or excise, then Seller may, by notice to the Buyer, increase the Price for the Goods to the extent required to pass through such increased costs. Such cost increase shall take effect immediately from the date such notice is provided.

14. MISCELLANEOUS

(a) Additional terms relating to price, delivery date/time frame, place(s) of delivery, delivery quantities, purchasing deadlines Incoterms, documents and Goods specifications and other commercial matters are as indicated in the pricing letter or letter of offer to which the supply of the Goods relates, as updated in writing by the mutual agreement of the parties.

(b) Without limiting clause 8, Seller may terminate the Contract where it reasonably believes that the supply or ongoing supply of any of the Goods to the Buyer may result in a breach of an existing or proposed law or trade sanction that has application in Australia, the United States of America, Chile or Colombia.

15. HARDSHIP

For the purposes of this clause, "Hardship Event" means:

(A) any changes in raw material inputs or associated costs outside of the manufacturer's control which lead to increased costs to Seller in sourcing the Goods from a manufacturer or supplier, including but not restricted to increases in fuel prices, energy costs, material prices or freight and transport costs; and/or
(B) any changes to or introduction of new central or regional laws, regulations or policies in the country from which Seller sources the Goods or in which the Goods are manufactured which lead to increased costs to Seller in sourcing the Goods, including but not restricted to increases in government charges, taxes, excises, or any other duties or charges, or any change in the long term exchange rate between the currency of the country of origin of the Goods and the USD.

If, at any time during the term of this Agreement, a Hardship Event occurs, Seller may notify the Buyer of such occurrence, and request a meeting to discuss appropriate changes to the terms of supply of the Goods or adjustments to the price in light of such Hardship Event (such notice, a "Hardship Notice").

The Buyer is not obliged to agree to any change to the terms of supply of the Goods or the supply price of the Goods as a result of a Hardship Event, however, if the parties are unable to reach agreement on appropriate changes to the price of supply of the Goods or other terms of supply within 14 days of the date of the Hardship Notice from Seller, and Seller is not prepared to continue supplying the Goods, then Seller may suspend supply of the Goods for an indefinite period.

