

## TERMS & CONDITIONS OF SALE

*NOTICE: It is an express condition to the Sale of any Goods or Services that the Buyer assents to these Terms and Conditions. Any acceptance of Seller's offer is expressly limited to the acceptance of these Terms and Conditions. Any order for the Seller's performance of work shall constitute the Buyer's assent to these Terms and Conditions.*

### 1. DEFINITIONS

In these Terms and Conditions, the following words shall have the following meanings:-

'**the Seller**' means any of MegaChem group of companies being the company selling Goods or performing Services under the Contract.

'**the Buyer**' means the entity to which Seller is selling Goods or providing Services under the Contract.

'**Contract**' means either the contract agreement signed by both parties, or the purchase order signed by the Buyer and accepted by the Seller in writing, whether that acceptance is communicated in electronic format or otherwise, for the sale of Goods or Services, together with these Terms and Conditions, the Seller's final quotation, the Seller's order acknowledgement and invoice. In the event of any conflict, the Terms and Conditions shall take precedence over other documents included in the Contract.

'**Terms and Conditions**' means these Terms and Conditions of Sale for Goods and Services, together with any modifications or additional provisions specifically stated in Seller's final quotation or specifically agreed upon by Seller in writing.

'**Goods**' means the goods the Seller has agreed to supply to the Buyer under the Contract.

'**Delivery Date**' means the agreed dated stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract;

'**Services**' means the services the Seller has agreed to perform for the Buyer under the Contract.

'**Service Provider**' means a representative of the Seller or any agent as may be instructed by the Seller who shall provide the Services to the Buyer in accordance with the Contract.

'**Payment Date**' means the agreed Payment Date stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

'**Price**' means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

'**Contract Price**' means the agreed price stated in the Contract for the sale of Goods and Services, including adjustments (if any) in accordance with the Contract.

'**INCOTERMS**' means the International Chamber of Commerce INCOTERMS 2010 which are incorporated into the Contract.

'**REACH**' means Regulation of the European Parliament and of the Council of Europe concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

'**Shelf Life**' means the length of time the Goods may be stored without becoming unsuitable for use or consumption as specified by the original maker of the Goods or by the Seller and acknowledged by the Buyer under the Contract.

## **2. ORDER**

- The Buyer orders, and the Seller agrees to sell to the Buyer, the Goods at the Price for delivery on or before the Delivery Date or to provide the Services at the Price stated in the Contract but the Seller shall be under no obligation to do so.
- The quantity and description of the Goods or the type and extent of the Services to be provided are set out in the Contract or estimate or quotation or other document previously communicated in writing by the Seller to the Buyer specifying quantity and description of the Goods or services to be supplied.

## **3. CONDITIONS APPLICABLE**

- The sale of the Goods by the Seller to the Buyer that is constituted by and recorded in the Contract shall be governed solely, throughout the performance of the Contract and for as long as obligations subsist under or in connection with the Contract, by the express provisions of the Contract.
- Subject to clause 3.10:
  - no provision other than a provision that is expressly set out in the Contract shall become a term of the Contract; and
  - no provision that is not expressly set out in the Contract shall in any manner govern or affect the Contract or any obligation arising under or in connection with the Contract.
- Clause 3.2 shall apply regardless of:
  - the manner in which or the time at which the Buyer purports to proffer or incorporate such other provision(s) into the Contract; and
  - whether the Buyer invokes, proffers or seeks to bring into effect such other provision(s) by way of contract term or notice.
- For the avoidance of doubt, and in accordance with this clause 3 generally:
  - the reference to a provision that is not set out in the Contract includes (without limitation or other prejudice to the general meaning of such

reference) any provision emanating from standard terms or conditions routinely proffered or employed by the Buyer in the course of the Buyer's business or profession that the Buyer invokes, proffers, or purports to bring into effect as governing the Contract; and

- the Buyer acknowledges and agrees that the Seller shall not be bound by any of the Buyer's Provisions.
- The order for the Goods or Services shall be deemed to be an offer by the Buyer to purchase Goods or Services pursuant to the provisions of the Contract.
- The Seller shall have accepted that offer only when it has indicated in writing to the Buyer that it has accepted that offer.
- Such acceptance shall be a condition precedent to the Contract and shall be and take effect only on the terms of the Contract.
- The Seller's signature to the Contract or purchase order signed by the Buyer and accepted by the Seller in writing, whether that signature is electronic or otherwise shall constitute the acceptance of the order by the Buyer for the purposes of this clause 3.
- Acceptance of the delivery of the Goods shall occur and be deemed to occur immediately on the entry or inscription of the Buyer's signature on the Seller's standard delivery note, which entry or inscription shall immediately constitute, and be deemed to constitute, conclusive evidence of the Buyer's satisfaction with and acceptance of the Goods.
- No purported variation of any of the provisions of the Contract, whether such purported variation purports to have been made or to be made before or after the conclusion of the Contract, shall apply to or affect the Contract or any obligation arising under or in connection with the Contract nor become binding on the Seller, unless and until the Seller has agreed to it in writing and in terms that conform to clause 16.2.
- The rule of exclusion expressed in clause 3.10 applies (without limitation to its general scope) to any special terms and conditions that are agreed between the parties but not yet reduced to writing.

#### **4. DESCRIPTION OF GOODS**

- The Buyer acknowledges and agrees that any description which is given or applied to the Goods:
  - is solely for purposes of reference and does not constitute or afford the basis for any express or implied undertaking that the Goods correspond with or conform to such reference; and

- shall not make the Contract a sale by description; and
- is not and has not been relied on by the Buyer when entering into this Contract.
- Where required by law, the Seller and the Buyer will supply safety data sheets and other information regarding the health and safety attributes of the Goods including (without limitation) those required under REACH

## **5. SAMPLE OF GOODS**

- The Buyer acknowledges and agrees that when a sample of the Goods has been shown to or inspected by the Buyer:
  - the sole purpose of so doing was to enable the Buyer to judge the quality of the bulk; and
  - the sale does not, in consequence of the Buyer's inspection of the sample or otherwise, constitute a sale by sample.
- MegaChem does not give any warranty about compliance of the Goods with any sample other than in respect of the product specification.

## **6. PERFORMANCE OF THE SERVICES**

- If the Contract provides for the provision of Services the Service Provider shall provide the Services according to the specifications of the Contract to the Buyer.
- The Service Provider and the Buyer shall agree the time and place for the performance of the Services and the availability and delivery of the Goods, if applicable, subject to the availability of the Seller's staff and agents.
- The Service Provider shall start providing the Services on the date specified and under the provisions specified in the Contract and may, if the Contract stipulates, include the provision of Services by instalments in which the Service Provider may render a separate invoice in respect of each such instalment.
- The Services shall be provided by the dates agreed by the Parties as specified in the Contract or by the completion date as specified in the Contract.
- The Services shall be performed by the Service Provider being such representative or agents that the Sellers may choose as most appropriate to carry out the Services as set out in the Contract or as agreed, from time to time by the Sellers.

## **7. ACCEPTANCE OF SERVICES**

- Unless otherwise provided for in the Contract, where the Service Provider has completed performing the Services, the Buyer will be deemed to have accepted or approved them within 7 days of completion of the performance of the Services.

## 8. PRICE

- The Buyer shall pay the Price for the Goods or Services as stated on the Seller's invoice and not (where different) as expressed in any quotation, estimate or documentation, or given orally.

## 9. PAYMENT

- Payment for the Goods or Services shall be made within the time agreed by the parties.
- All amounts stated are exclusive of VAT and any other applicable taxes or levies, which shall be charged in addition at the rate in force at the date any payment is required from the Buyer.
- If payment is not received by the due date, the Seller at its exclusive discretion shall be entitled:
  - to charge interest on the outstanding amount at the rate of 5% per annum above the Seller's cost of fund, accruing daily; and/or
  - to require that the Buyer make a payment in advance of any delivery not yet made; and/or
  - not to make any delivery.
- If the Seller exercises its right to provide Services in accordance with clause 6.3 or to make deliveries in accordance with clause 10.7, then any delay in the provision of such deliveries and or the provision of services, or failure to deliver any further instalment or instalments shall not entitle the Buyer to reject any further instalment or instalments and shall not entitle the Buyer to reject the Contract or the delivery/service of any other instalment or to withhold payment in respect of any instalment previously delivered/serviced.

## 10. DELIVERY OF GOODS

- For domestic deliveries, the Seller shall deliver the Goods to the address of the Buyer in accordance with the delivery terms specified in the Contract and the Goods shall be delivered on the Delivery Date unless it is agreed that the Seller shall deliver the Goods for collection by the Buyer on the Delivery Date.
- The cost of delivery shall generally be included in the Price unless the Contract specifies otherwise in which case the cost of delivery will be in addition to the Price.
- The Delivery Date and any other date given under or pursuant to the Contract is no more than an estimate, and the Seller's conformity with such date is not, and shall not in any event or circumstance be or become, of the essence of this Contract and the Seller shall not be liable for any damages resulting from its failure to meet the

Delivery Date even if the Seller has been advised of the possibility of such damages by the Buyer.

- For international deliveries and shipments the Goods shall be delivered in accordance with the INCOTERMS.
- In the event that the Seller is responsible for customs clearance, the Buyer shall provide necessary documentation and assistance in a timely manner, including but not limited to the documents listed in the Contract.
- In the absence of specific routing instructions, the Seller reserves the right to make selections of common carrier and method of shipment.
- In relation to all deliveries the Seller reserves the right to make deliveries by instalments and to render a separate invoice in respect of each instalment.

#### **11. RISK**

The risk in the Goods shall pass to the Buyer in accordance with the INCOTERMS, or in the alternative, on the Delivery Date.

#### **12. PROPERTY**

- Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the title in the Goods shall not pass to the Buyer until Seller has received in cash or cleared funds payment in full.
- Upon Delivery of the Goods the Buyer shall store the Goods separately from goods belonging to third parties and mark the Goods delivered by the Seller to the Buyer as the Seller's property until such a time that the Seller has received cleared payment of the Price of the Goods and any other Goods or Services previously or subsequently supplied by the Seller to the Buyer.
- The Buyer shall not sell to a third party or use the Goods for any purpose until such a time that the legal or beneficial title to the Goods has passed to the Buyer pursuant to clause 12.1.
- The Buyer shall allow the Seller or his agent access without restriction to all of the Buyer's premises, if more than one, to inspect the Goods to ensure that the storage requirements specified in clause 12.2 have been complied with and that the Goods have not been sold to a third party or used for any purpose as specified in clause 12.3.
- If the Seller has not received the full amount of the Price by the Payment Date or any other sums that are owed to the Seller by the Buyer then the Seller or his agent:

- may insist that the Buyer return the Goods to the Seller at the Buyer's expense, such delivery to be arranged by the Seller exclusively at the discretion of the Seller, or
- may enter the Buyer's premises to repossess the Goods and any other Goods previously or subsequently supplied by the Seller to the Buyer and that the Buyer grants access to the Seller or his agent to all of the Buyer's premises, if more than one, for the purpose of repossessing the Goods without restriction.
- The Seller may demand immediate payment of the Price of the Goods or Services and also any Goods or Services previously or subsequently supplied by the Seller to the Buyer if the Seller has suspicion that the Buyer is insolvent or is about to be insolvent, or in the case of a sole trader, if that sole trader is bankrupt or is about to be bankrupt or if the Seller has any suspicion that the Buyer may default on the payment of the Price of the Goods or Services and if payment is not received immediately then the Seller may repossess the Goods pursuant to clause 12.5.b.

### **13. ACKNOWLEDGMENTS IN RELATION TO THE SALE OF GOODS**

The Buyer acknowledges and agrees in relation to Contracts for the sale of Goods:

- that the Buyer has had a reasonable opportunity to inspect the Goods before signing the Seller's delivery note;
- that the Buyer has inspected the Goods before signing the Seller's delivery note;
- that the Buyer has satisfied itself as to the condition of the Goods before signing the Seller's delivery note;
- that the sole and exclusive undertaking of the Seller is to ensure the Goods are in accordance with the product specified in the Contract and that it is not the Seller's responsibility to ensure that the Goods are fit for use by the Buyer in any purpose;
- that except and in so far as is provided:
  - the Seller gives no representation or undertaking, and shall be bound by no condition, warranty, innominate term or other obligation (whether express or implied, and whether imposed or implied by statute, at common law or otherwise) concerning the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with description or sample, of the Goods;
  - all liability on the part of the Seller in respect of the matters referred to in clause 13.5.a is excluded; and

- the Buyer undertakes not to bring any claim or resort to any proceeding in respect of the matters referred to in clause 13.5.a;
- that the entry or inscription of the Buyer's signature on the Seller's delivery note on delivery of the Goods to the Buyer shall be conclusive evidence that the Buyer has examined the Goods and that the Goods correspond in every respect with the Goods that the Buyer is entitled to receive under the Contract.
- If the Buyer wishes to make a complaint to the Seller after the signing of the Seller's delivery note as to the condition, quality, fitness for purpose or any damage caused or sustained to the Goods then the Buyer must do so within seven days of the signing of the delivery note.

#### **14. DEFECTS IN RELATION TO SALE GOODS**

- The Seller may, at the Seller's exclusive and unqualified discretion, make good either by repair or by the provision of a replacement, any defect which, following proper use of the Goods, appears in the Goods within the period of the Shelf Life specified for the Goods after the Goods have been delivered, provided that:
  - the Buyer notifies the Seller in writing of the claimed defect(s) immediately on their appearance; and
  - the Seller is satisfied that the defect can be repaired or Goods can be replaced
  - all Goods claimed to be defective are returned to the Seller at the expense of the Buyer within the period stipulated by the Seller, following the Seller's receipt of notice in accordance with clause 14.1.a.
  - any defect, damage to the Goods is apparent on visual inspection.
- Repaired or replacement Goods shall:
  - be delivered to the Buyer at the original place of delivery; and
  - be subject in all other respects (*mutatis mutandis*) to the provisions of the Contract, and
  - in particular, without limitation and in accordance with clause 13.4 and clause 13.5, the Seller undertakes no responsibility for the condition, quality, physical state or attributes, location, origin, fitness or suitability for any purpose, or conformity with description or sample, of such repaired or replacement Goods or any portion, part or component of them.
- As an alternative to the discretion expressed in clause 14.1, and in the event that the Buyer has already paid the Price when the Buyer notifies the claimed defect to the Seller, the Seller may, at its exclusive and unqualified discretion:



- refund the Price of the Goods to the Buyer; and thereafter
- recover possession of the Goods from the Buyer.
- The redress afforded by this clause 14 is without prejudice to the other provisions of the Contract.

## **15. TERMINATION**

- Without prejudice to any other right or remedy to which either the Seller or the Buyer might be entitled, either of those parties may in the events specified in clause 15.2 terminate the Contract at any time by notice in writing to the other party or party ('the Other Party'), such notice to take effect as specified in the notice.
- The events specified in clause 15.1 occur when:
  - the Other Party is in substantial breach of the Contract and, in the case of a breach capable of remedy within 14 days, the breach is not remedied within 14 days of the Other Party receiving notice specifying the breach and requiring it to be remedied; or
  - the Other Party becomes insolvent, or an order is made or a resolution is passed for the winding up of the Other Party (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or an administrator or administrative receiver is appointed in respect of the whole or any part of the Other Party's assets or business, or the Other Party makes any composition with its creditors, or the Other Party takes or suffers any similar or analogous action in consequence of debt.

## **16. DEFENCES AND VARIATIONS**

- **Force majeure**
  - Neither party shall owe or incur any liability under or in connection with, or be deemed to be in breach of, the Contract by reason of any delays in, revisions to, or failures in performance of the Contract that result from circumstances beyond the reasonable control of that party.
  - The party affected by the circumstances referred to in clause 16.1.a shall promptly notify the other party in writing:
  - when the occurrence of any circumstance referred to in clause 16.1.a, or can reasonably be expected to cause or to threaten to cause, a delay, revision or failure in performance; and
  - when any such circumstance ceases to do so.

- If such circumstances continue for a continuous period of more than fourteen days, either party may terminate the Contract by written notice to the other party.

- **Amendments**

The Contract may be amended only by formal amendment in writing signed by duly authorised representatives of the parties.

- **Waiver**

- No inaction, omission, failure or delay by the Seller in exercising or securing the enforcement or validity of any right, power, privilege or demand arising under or in connection with the Contract, and no single or partial exercise of any such right, power, privilege or demand shall impair the existence, operation, content, effect and enforcement of the said right, power, privilege or demand, or operate as a waiver of it.
- The rights and remedies provided in the Contract are cumulative and (subject to clause 16.3.a) not exclusive of any rights and remedies provided by law.

- **Co-operation**

Each party to the Contract shall, at the reasonable request of the other party and at that other party's expense, perform or abstain from any act the performance of or abstention from which can reasonably be regarded as necessary to effect or facilitate the observance, implementation, clarification or enforcement of the provisions of the Contract.

- **Limitation to Liability**

The Seller's total liability to the Buyer for any claim relating to the Contract shall not exceed the purchase price of the Goods or Services in respect of which such claim is made. In no event shall the Seller be liable for any loss of profits, business, or any indirect, consequential, special, incidental or contingent damages, or losses suffered or incurred by the Buyer.

## 17. OTHER TERMS

- **Entire agreement**

- The Contract contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them relating to such subject matter. The parties confirm that they have not entered into the Contract on the basis of any representation that is not expressly incorporated into the Contract.
- Nothing in the Contract excludes or restricts the liability of any party for fraud or bad faith.

- **Severance**

If any provision of the Contract is prohibited by law, or is determined by any court of law or other binding adjudicatory authority or conceded by the parties to be unlawful, void or unenforceable, the provision:

- shall, to the extent required and as far as possible, be severed from the Contract and rendered ineffective without modifying the remaining provisions of the Contract; and
- shall not in any way affect any other particular provisions of the Contract or the validity or enforcement of the Contract generally.

- **Assignment**

- Subject to clause 17.3.2, neither party may assign, delegate, sub-contract, mortgage, charge or otherwise transfer any or all of its rights and obligations under the Contract without the prior written agreement of the other party.
- A party may, however, assign and transfer all its rights and obligations under the Contract to any person to which it transfers all of its business, provided that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under the Contract.

- **Confidentiality**

- Neither party shall issue or make any public announcement or disclose any information regarding the Contract, unless before such public announcement or disclosure it furnishes the other party with a copy of such announcement or information and obtains the approval of the other party to its terms.
- Notwithstanding clause 17.4.1, neither party shall be prohibited from issuing or making any public announcement or disclosing any information if it is necessary to do so to comply with any applicable law or with the regulations of a recognised stock exchange or any other competent financial authority.

- **Interpretation**

In the Contract unless the context otherwise requires:

- words importing any gender include every gender;
- words importing the singular number include the plural number and vice versa;
- words importing persons include firms, companies and corporations and vice versa;

- references to numbered clauses and schedules are references to the relevant clause in the Terms and Conditions;
  - any obligation on any party not to do or omit to do anything is to include an obligation not to allow that thing to be done or omitted to be done;
  - the headings to the clauses, schedules and paragraphs of the Contract are not to affect the interpretation;
  - any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment;
  - where the word 'including' is used in the Contract, it shall be understood as meaning 'including without limitation'
  - the words 'working day' shall mean any day other than Saturday and Sunday; and any day on which there occurs any public, national, or statutory holiday that is recognised as such within the country the legal system of which governs the Contract.
- **Notices**
    - Any notice to be given under the Contract shall be in writing and shall be sent by first-class mail or air mail, or by facsimile or email (confirmed by first-class mail or air mail), to the address of the relevant party, or to the relevant fax number or email address, or to such other address or fax number as that party may from time to time notify to the other party.
    - Notices sent as in clause 17.6.1 shall be deemed to have been received, in the case of inland first-class mail, three working days after the day of posting, in the case of air mail, fourteen working days after the date of posting, in the case of fax messages, on the next working day after transmission but only if a transmission report is generated by the sender's fax machine recording a message from the recipient's fax machine confirming that the facsimile was sent to the number indicated above and that all pages were successfully transmitted, or in the case of email, when the email first appears in the inbox of any email system that can reasonably be assumed to be used by the recipient.
    - In proving the giving of a notice, it shall be sufficient to prove that the notice was left, that the envelope containing the notice was properly addressed and posted, or that the applicable means of telecommunication was addressed and despatched and despatch of the transmission was confirmed or acknowledged.

- **Third parties**

Notwithstanding any other provision of the Contract, the Contract is not intended to, and does not, confer on any person who is not a party to the Contract:

- any right to enforce any of its provisions; or
- any right to avail itself of any defence expressed in the Contract.

#### **18. COMPLIANCE**

The Buyer will comply with all laws, legislation and obligations including but not limited to import, handling, processing, transport, storage, licensing, use of goods as well as environment, health and safety.

#### **19. LAW AND JURISDICTION**

The validity, construction and performance of the Contract and of all other rights and liabilities arising in connection with the Contract shall be governed by law applicable at the country of Seller's office and shall be subject to the exclusive jurisdiction of the courts applicable at the country of Seller's office.