

# Standard Terms & Conditions of Sale

## 1. DEFINITIONS

In these conditions 'the Seller' means ADD APT Chemicals BV, 'the Buyer' means any person, firm or company purchasing 'the Goods' and 'the Goods' means the goods or materials which shall be the subject of the contract between the Seller and Buyer.

## 2. QUOTATIONS

Any quotation given by the Seller is only an invitation to the Buyer to make an offer and no order of the Buyer placed with the Seller in pursuance of a quotation or otherwise shall be binding on the Seller unless and until it is accepted by the Seller on the Seller's Acceptance of Order form.

## 3. INCORPORATION OF CONDITIONS OF SALE

All Goods are sold or agreed to be sold by the Seller subject to these Conditions of Sale and all conditions and exceptions stipulated or referred to by the Buyer, whether in the order or in any document issued by the Buyer or otherwise brought to the Seller's notice are hereby excluded.

## 4. ASSIGNMENT

- (i) The contract is personal to the Buyer who shall not assign the benefit thereof without the Seller's written consent.
- (ii) The Goods to be supplied under this contract are for use by the Buyers only in their manufacturing processes and are not for resale without written consent of the Seller.

## 5. PRICES

- (i) The prices quoted are based upon prices and all costs ruling on the date of the quotation and the Seller reserves the right to vary the quoted prices if there should be any alteration in such prices or costs. Any such variations will be notified to the Buyer in writing and specifying the general reason therefor. The Buyer thereafter shall have the right to cancel the balance of the contract on written notice to that effect being given to the Seller within 10 days of the date of the written notice from the Seller giving the variation in price.
- (ii) Where the prices quoted are in currency other than Euro € these prices are based on the relevant exchange rate of the currency concerned ruling on the date of the quotation and the Seller reserves the right to vary the quoted prices if there should be any alteration in such rates.

## **6. QUANTITIES**

- (i) The weight of the Goods sold is the weight as ascertained at the Seller's Factory which weight shall be accepted by both parties as correct.
- (ii) The Seller may ship or deliver by instalments and each instalment shall be deemed to be sold under a separate contract.
- (iii) The Seller may deliver against any order an excess or deficiency up to ten percent of weight or volume ordered without any liability whatsoever to the Seller save the price shall be adjusted accordingly.

## **7. IMPORT LICENCES**

All import licences are the Buyer's responsibility and the Buyer shall not be discharged from its obligation under this contract by any partial or total prohibition of imports or by the refusal or non-availability of any import licence or by the imposition of any terms or conditions upon the grant of such licence.

## **8. DELIVERY**

- (i) All delivery dates are estimates and not legally binding, the Seller shall have no liability whatsoever for failure to deliver by such dates or at all or for any losses (financial or otherwise) arising directly or indirectly out of the delay in or non-delivery, nor shall the Buyer be entitled to refuse to accept the Goods because of late delivery.
- (ii) Delivery of the Goods shall take place:
  - (a) where the Seller undertakes delivery of the Goods, when they are loaded off the Seller's vehicle, ship or other transport or the station, port or address specified by the Buyer.
  - (b) where the Buyer undertakes to collect the Goods, when they are loaded onto the Buyer's vehicle or other transport at the address of the Seller.

## **9. PROPERTY AND RISK**

- (i) The risk in the Goods shall pass to the Buyer at the point of delivery.
- (ii) (a) Notwithstanding delivery, the property in the goods shall remain vested in the Seller until the Buyer has paid for them in full as well as other sums due to the Seller. In the period from the delivery of the goods down to such payments the Buyer holds the goods as a bailee for the Seller and undertakes to store the goods in such a way as they may be clearly identified as the property of the Seller.
  - (b) Should payment of any invoice become overdue or should the Buyer become insolvent, go into liquidation, have a winding up order made against it or have an administrator or an administrative receiver appointed over its assets, income or any part thereof or enter into an arrangement with its creditors, all sums owed to the Seller shall become immediately due and payable and the Seller shall be entitled to recover the goods the property of which remains vested in it and may enter upon the Buyer's premises for the purpose.

## **10. LIABILITY**

- (i) The Seller warrants that the goods shall comply with the Seller's specification for the goods in question as current from time to time unless otherwise agreed. All other warranties or conditions as to quality or description (statutory or otherwise) are excluded except in so far as such exclusion is prevented by law.
- (ii) Unless otherwise specified, the Seller does not warrant the fitness of the goods for any particular purpose, even though that purpose is known, and no such warranty is to be implied from the name or description under which the goods are sold, nor from any advice or recommendation given by the Seller, its servants and agents.
- (iii) The Seller's liability in contract or in tort for any loss or damage (other than death or personal injury) arising (whether or not from the Seller's own negligence) directly or indirectly out of the supply or use of the goods, or of the packages, pallets, or containers by which the goods are delivered shall be limited to the invoice value of the delivery from which the loss or damage arises.

In no circumstances will the Seller be liable for any consequential loss or damage no matter how arising.

## **11. NOTIFICATION OF DAMAGE OR LOSS**

All Goods should be examined on delivery.

- (i) Whether or not any such examination is made, any claim by the Buyer in respect of the Goods must be made in writing within 14 days of delivery and, if not so made, the Goods shall be deemed to have been delivered in accordance with the Contract.
- (ii) In the event of non-arrival of Goods or if the Buyer learns that Goods are lost or destroyed in transit, the Seller and the Carrier must be notified within 10 days of date of invoice or advice note, failing which the Seller shall have no liability whatsoever to the Buyer for such non-delivery and the Buyer shall be liable for the price of the Goods. The sub-clause (ii) shall only apply when the Goods have been despatched (by whatever means) from the Seller's premises.
- (iii) Any claim by the Buyer on account of quality shall be decided by reference to and on the basis of the control samples and the results of the examination of such control samples shall be conclusive in all respects in regard to such claim. For this purpose the Seller shall draw representative samples and these samples shall be retained in the Seller's Laboratories.

## **12. FORCE MAJEURE**

The Seller shall not be responsible for or liable in respect of any delay in the execution of this contract caused by fire, accidents, strikes or lockouts, storm, bad weather, war, Government regulations or interference, shortage of labour, materials, fuel, power or transport, breakdown of machinery, defective materials, delay by the Buyer in giving instructions or any other cause whatsoever beyond the Seller's control and in the event of any such delay occurring the Seller shall be entitled to cancel or suspend the whole or any part of any delivery.

## **13. PACKAGING**

If the Seller's Delivery Note shall state the packages in which the Goods delivered are returnable to the Seller, such packages shall be returned empty by the Buyer to the Seller's address stated on the Delivery Note in good condition, carriage paid, within three months of delivery otherwise such packages will be chargeable at replacement value and no credit will be due on packages for which a charge shall have been made by the Seller. "Packages" shall include crates, boxes and other containers and pallets.

## **14. ACCOUNTS**

- (i) All accounts shall be paid by the end of the month following the month of the Seller's invoice, except as otherwise agreed in writing.
- (ii) Where any sum owed by the Buyer to the Seller under the contract is overdue, or if at any time the credit standing of the Buyer has in the opinion of the Seller been impaired by any reason, the Seller may in its own absolute discretion demand payment of all outstanding balances whether due or not and cancel or suspend all outstanding orders and decline to make further deliveries except upon receipt of cash or satisfactory security. The setting off or withholding of payment by the Buyer in respect of any claim shall not be allowed unless expressly agreed by the Seller in writing.
- (iii) The Seller reserves the right to charge interest on any invoice not paid at the rate of 5% per annum over LIBOR from the date on which payment is due until actual payment.

## **15. PATENTS AND TRADE MARKS**

No warranty or representation is given by the Seller that the Goods do not infringe any letters, patent, trade marks, registered design or other industrial rights.

**16. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any terms of this contract provided that this does not affect any right or remedy of the third party which exists or is available apart from that Act.

**17. PROPER LAW**

This Agreement shall be governed by and interpreted in accordance with the laws of The Netherlands without regard to conflict of laws or choice of law principles and the Seller and Buyer hereby submit any possible claim or action hereof to the exclusive jurisdiction of the Dutch courts.