

BIACHEM EUROPE (DISTRIBUTION) LIMITED

CONDITIONS OF SALE

Application of Conditions

1. Acceptance by Seller of Buyer's order is conditional upon acceptance by Buyer of the following conditions which override all other terms and conditions inconsistent therewith, express, implied, statutory or otherwise wherever contained except insofar as any conditions or warranties implied by statute shall not be capable of being excluded.

Delivery by Instalments

2. Where Buyer requests or Seller elects for delivery of any order by way of instalments any defect deficiency or failing whether as to quantity quality or time of delivery in respect of one or more instalments shall not vitiate the contract.

Price and Payment

3. (a) The price for each delivery of goods hereunder will be Seller's price ruling for the goods at the date of despatch or, in the event of Seller requiring payment before delivery hereunder, at the date on which payment is made.

(b) All prices (which are exclusive of value added tax unless otherwise specifically stated) are nett and are not subject to any discount and, unless an earlier date is specified by Seller, payment is due and shall be made in cash at Seller's offices by the 20th day of the month following the month of issue of the invoice or delivery of the goods whichever is the earlier.

(c) Interest at the rate of 4% above Allied Irish Bank base rate from time to time in force shall be chargeable as well after as before judgement on any sums not paid by the due date.

Jurisdiction

4. In the case of goods despatched from Seller's works in Ireland, this Contract shall be construed and take effect in accordance with Irish Law and Seller and Buyer submit to the jurisdiction of the Irish Courts.

Assignment

5. This contract is between Seller and Buyer as principals and is not assignable without the consent of the Seller. In the event that Buyer is an incorporated company and the control of Buyer passes during the period of this Contract from the party or parties who had such control of the date of this Contract to another party or parties then Seller shall have the right from the time when the change of control is first brought to his notice, forthwith to terminate this Contract by written notice to Buyer. For the purposes of this Condition "control" shall mean direct or indirect ownership of at least 50% of the issued voting share capital of Buyer and/or the ability to appoint and remove a majority of the Board of Directors of Buyer.

Effect of Breach etc

6. If Buyer shall fail to make payment on the due date of any sum payable under this Contract or take any delivery or being an incorporated Company shall have a Receiver or Liquidator appointed or shall pass a resolution for winding up or a Court shall make an Order to that effect or not being an Incorporated Company shall have a Receiving Order made against him or shall have become Notour bankrupt or shall enter into any Trust Deed for any composition or arrangement with Buyer's creditors or if there shall be any breach by Buyer of the conditions of this Contract, Seller may, without prejudice to its other rights and remedies, either terminate forthwith the whole or any part of this Contract or delay suspend or cancel any further deliveries hereunder or require payment in advance for all or any such deliveries. The legal rights of Seller under this contract shall not be deemed to be waived or abrogated by reason of any forbearance or failure by Seller to enforce any condition or conditions.

Force Majeure

7. (a) Seller shall have the right to cancel or delay deliveries to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing or delivering by normal route or means of delivery the goods covered by this Contract or any part thereof through any circumstances beyond its reasonable control, including but not limited to war, riot, government requisitions of any kind, suspension or loss of means of transport, strikes, lock outs, labour disputes, fire, explosion, flood, accident, failure of any third party to supply Seller, breakdown of plant or machinery, or anything directly or indirectly interfering with the raw materials or the manufacture, supply, shipment, arrival or delivery of the goods. During any such period of cancellation, delay or reduction, Buyer shall upon prior written notice to Seller, have the right to purchase elsewhere at his own risk and cost such quantities of the goods as may be necessary to cover his current requirements and irrespective of whether or not Buyer makes any such arrangements as aforesaid, Seller shall be under no liability arising out of its failure to deliver and the period of this contract shall not be extended nor shall subsequent deliveries during the unexpired portion of this Contract be increased in size or frequency except with the prior consent in writing of the Seller.

(b) Buyer shall be under no liability to Seller if, due to circumstances beyond the reasonable control of Buyer, Buyer is prevented from or delayed in taking delivery of the goods or any part thereof at the due delivery date. The period of this Contract shall not be extended nor shall subsequent deliveries during the unexpired portion of the Contract be increased in size or frequency.

Long/Continuing Contracts

8. If the period of this Contract exceeds twelve calendar months, Buyer shall give reasonable notice to Seller before the second and each subsequent period of twelve calendar months of his estimated consumption for such twelve month period and where such estimates are greater than the original estimate given to Seller at the commencement of this Contract, Seller will use reasonable endeavours to supply such increased quantity but shall be under no liability to Buyer for failure to do so but if Seller is unable to supply the whole or any part of such increased quantity Buyer may purchase the excess elsewhere.

Warranty & Limitation of Liability

9. (a) (i) The goods supplied hereunder are warranted to accord with the specification provided by Seller or, if there is no such specification, to be within normal limits of industrial tolerance.
(ii) The total liability of Seller for breach of this warranty (or for any other claim based on any defect in the goods) shall not exceed replacement of the goods shown to be defective or, at Seller's option, reimbursement of the price received by him for the goods.
(iii) Buyer shall give written notice in the goods to Seller within seven days of delivery to enable the complaint to be investigated before the remainder of the consignment is used or returned and no liability shall attach to Seller hereunder unless and until this procedure has been carried out.
(iv) Notwithstanding anything in this subclause contained Seller shall be under no liability to Buyer after the placing of the goods in Buyer's container, or after any admixture of the goods with any other goods, whether a previous delivery or otherwise, or after any processing of the goods.

(b) Seller gives no warranty as to the fitness of the goods for any particular purpose even though that purpose may have been made known to Seller and no such warranty is to be implied from the name or description under which the goods are sold.

(c) Subject only to the provisions of subclause (a) of this clause all warranties conditions and statements express or implied statutory or otherwise and whether contained in literature (whether provided by Seller or Seller's manufacturers or suppliers) or otherwise are excluded and Seller will in no way be liable for any loss or damage whatsoever whether direct or consequential arising from the supply, application or use of the goods, whether caused by Seller's negligence or otherwise and is not liable for any infringement of patent rights arising out of the use of the goods by Buyer or Buyer's instructions or specifications express or implied.

Admixture/Transfer

10. Where the contract between Seller and Buyer is for the admixture by Seller of products at Buyer's direction and/or for the transfer of products by Seller at Buyer's direction from one container to another it shall be Buyer's sole and entire responsibility to ensure that the products concerned and the containers to be used are entirely suitable for such admixture and/or transfer. In the event of any loss or damage occurring due to Seller's breach of contract or negligence Seller's responsibility shall be limited to refund of the cost of the materials and Buyer shall not be entitled to claim any further sum and further shall hold Seller indemnified against any third party claim for damage injury or consequential loss.

Trade Marks etc

11. Buyer acquires no proprietary interest in or any claim right or title whatsoever to any trade marks trade names colour schemes or manner of presentation whether belonging to Seller or Seller's manufacturers or suppliers and Seller reserves the right at any time to require Buyer forthwith to discontinue the use in any manner whatsoever of such trade marks, trade names, or colour schemes or manner of presentation.

Risk

12. The risk in the goods shall remain in Seller until the point of delivery named in this Contract or the point of departure from Seller's works where no point of delivery is so named, when it shall be transferred to Buyer. The goods shall be deemed to have been delivered complete and in a satisfactory condition unless in the case of; -

(a) Damage, non delivery or partial loss of any separate part of the consignment notification is received by the carrier and Seller in writing other than on the delivery note within three days of the date of delivery and the goods have been signed for as "not examined".

(b) Non-delivery of the entire consignment notification is received in writing by Seller within 7 days of the date of the Seller's invoice.

Unless this condition is strictly observed Seller shall be under no liability whatsoever in respect of loss or damage in transit or non-delivery of the whole or any part of the goods.

Reservation of Title

13. (a) (i) Ownership of goods delivered under this contract shall remain with Seller which reserves the right to dispose of such goods until payment in full has been made to Seller for all monies owing in respect of all goods delivered to Buyer by Seller whether under this or any other contract or account.

(ii) If in relation to the Law of Ireland clause 13(a)(i) shall be held to be invalid to reserve Seller's title to goods delivered under this contract by reason of the reservation of title until all goods delivered to Buyer by Seller have been paid for then nevertheless ownership of the goods delivered under this contract shall remain with Seller until those goods themselves have been paid for in full.

(b) If buyer shall, before the property in the goods has passed to him, use the goods in the manufacture or production of items or materials therefrom, whether or not in association with any other goods, or if the goods are mixed with other goods, the items or materials or mixtures so produced shall become the property of Seller or security for the payment of all monies owing Seller by Buyer, whether under this or any other contract or account as aforesaid. The property in such items or mixtures shall pass to Seller at the moment of manufacture or mixing. Until the payment of monies owing shall have been made to Seller Buyer shall keep the items or materials or mixtures so produced for Seller as trustee for Seller and shall keep or store such items or materials in such manner that they are clearly identifiable as Seller's property. Buyer may nevertheless sell those items or materials or mixtures in the normal course of his business and deliver them to purchasers thereof provided always that, so long as Seller remains unpaid, Buyer shall, if required by Seller so to do, assign to Seller the rights which Buyer has, as against his purchases, arising out of such sales.

(c) If any payment is overdue, whether under this or any other contract between Seller and Buyer, Seller may, without prejudice to any other rights of Seller, recover or recall any or all of the goods the title to which remains in Seller by virtue of subclause (a) hereof or any or all of the items or materials which become the property of Seller by virtue of subclause (b) hereof and may whether by itself or by agents duly appointed enter upon Buyer's premises for that purpose.

Containers

14. Seller gives no warranty that the crates, drums, boxes, cases, carboys or other types of packaging, whether or not belonging to or supplied by Seller, in which the goods are supplied are suitable for further transportation of the goods beyond the point of delivery or Seller's works where no point of delivery is named in the Contract and Seller accepts no responsibility for any injury, loss or damage whatsoever, whether direct or consequential arising from the continued use of such crates, drums, boxes, cases, carboys or other types of packaging after delivery.

Payment for Containers

15. (a) Any crates, drums, boxes, cases, carboys or other types of packaging charged for by Seller must be paid for. Non-returnable packages are not returnable in any circumstances but returnable packages (which remain the property of Seller) shall be returned to Seller in good condition within a reasonable period of time, carriage paid, and if charged and paid for will be credited in Seller's next account. All returnable packages which are not returned to Seller as aforesaid and have not previously been charged for will be invoiced at the standard rate, payment of such invoice being due in accordance with Clause 3(b).

(b) Buyer shall be responsible for loss in transit of Seller's returnable empties in the event of Seller not having received advance of their return within two days of their despatch.

Measurements

16. Measurements of volume or weight and the like stated in Seller's quotation, or any lists supplied by Seller or Seller's manufacturers or suppliers, are nominal in accordance with normal trade usage and Buyer must be prepared to accept variations due to normal manufacturing or packing process or inherent in the nature of the goods.

Ex stock Goods

17. Goods ex stock are offered subject to the same not having been sold elsewhere prior to receipt of unqualified acceptance of Seller's quotation.

Credit

18. Seller reserves the right at any time and without explanation to withhold credit facilities from and to limit the amount or period of credit it will grant to Buyer.

Buyer's Responsibilities re containers

19. It shall be the duty of Buyer and Buyer undertakes with Seller in this Contract that, whether in relation to the crates, drums, boxes, cases, carboys or other types of packaging in which the goods are supplied, Buyer will at all times comply with the advice or instructions as to their use contained in the literature of Seller or Seller's suppliers or manufacturers or marked on the goods or their crates, drums, boxes, cases, carboys or other types of packaging or any labels thereon or attached thereto or supplied therewith.

Exclusion of Variations

20. Any contract or transaction between Buyer and Seller shall be deemed to be upon the foregoing conditions and also upon any special conditions or terms (if any) set out in Seller's acknowledgement of order or invoice and no conditions in or incorporated or implied by Buyer's acceptance or order forms shall apply to this contract. Without prejudice to the foregoing, no agent or representative of Seller other than a Director or the Company Secretary has any authority to vary or omit these conditions or any of them and no such variation shall have effect unless in writing signed by the Officer concerned.

Definitions

21. In these conditions "Seller" refers to Biachem Europe (Distribution) Limited and "Buyer" refers to the individual firm or company named in the Invoice. Those expressions shall be construed accordingly notwithstanding that the transaction referred to consists of a contract either in whole or in part for services or operations to be effected by Seller at Buyer's request.

March 1999