

# Libra Speciality Chemicals Ltd, Brinell Drive, Irlam, Manchester, M44 5LF, UK

## STANDARD TERMS & CONDITIONS OF SALE

### 1. STANDARD TERMS & CONDITIONS APPLICABLE

- 1.1 These Standard Terms & Conditions Of Sale shall apply to all contracts for the sale of materials, chargeable services and/or chargeable processes (together the "Goods") by **Libra Speciality Chemicals Ltd** ("Seller") to the counter party to this Agreement ("Buyer") (Seller and Buyer may also be referred to as "Party" and together as "Parties") to the exclusion of all other terms and conditions including any terms or conditions which the Buyer may purport to apply under any purchase order, confirmation of order or other document.
- 1.2 All orders for Goods shall be deemed to be an offer by the Buyer to purchase Goods pursuant to these Standard Terms & Conditions. Seller is only committed to an order after providing written confirmation to the Buyer. Working days means Monday to Friday.
- 1.3 Acceptance of delivery of the Goods shall be deemed conclusive evidence of the Buyer's acceptance of these Standard Terms & Conditions.
- 1.4 Any variation to these Standard Terms & Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed in writing by Seller.
- 1.5 Where appropriate, orders will also be governed by INCOTERMS. In case of conflict between INCOTERMS and any Confirmation provided by the Seller, the Confirmation shall prevail.
- 1.6 If the Buyer shall default in or commit any breach of its obligations to the Seller or if in the sole discretion of the Seller it believes that serious doubts have arisen as to the Buyer's solvency then in any such case the Seller reserves the right (without prejudice to its other rights under these Standard Terms & Conditions) to either terminate the contract between the Parties or to suspend further deliveries under it, or require payment in advance in the event that the Buyer fails to pay for any one delivery when the same becomes due.
- 1.7 No forbearance, delay or indulgence by the Seller in enforcing its rights shall prejudice or restrict such rights and no waiver of any such rights or any breach of any contractual term shall be deemed to be a waiver of any other right or of any later breach.
- 1.8 In case of any inconsistency between the English version of these Standard Terms & Conditions and a version in any other language, the English version shall prevail.

### 2. ASSIGNMENT

The assignment by a Party of its contractual rights and obligations to supply Goods shall require the prior written approval of the other Party, which approval shall not be unreasonably withheld. The assigning Party shall remain liable for the performance by the assignee of its obligations under the contract.

### 3. THE GOODS

#### 3.1 Quality

- 3.1.1 The Goods supplied hereunder are warranted at the time of despatch to accord with the Seller's current specification as amended from time to time or as otherwise agreed in writing by the Seller and the Buyer. All other warranties or conditions as to quality or description (statutory or otherwise) are expressly excluded except in so far as such exclusion is prevented by law.
- 3.1.2 Buyer shall forthwith within 2 working days after delivery of the Goods notify the Seller in writing of any possible defects in the Goods which are reasonably apparent on delivery to enable the complaint to be investigated before the remainder of the consignment is used or returned.
- 3.1.3 Where the possible defect in question was not apparent on reasonable inspection at the time of delivery of the Goods, Buyer shall forthwith within 2 working days after the date of discovery of the possible defect, or the date upon which the possible defect ought to have been discovered, notify the Seller in writing to enable the complaint to be investigated before the remainder of the consignment is used or returned.
- 3.1.4 The Goods in respect of which any claim of defect is made must have been stored and used in keeping with ordinary industry practices and conditions and must be preserved intact (including packaging) for a period of 10 working days from notification of the claim within which time representatives of the Seller and/or the carrier shall have the right to attend at the Buyer's premises to inspect the Goods and investigate the claim. The Buyer shall if requested by the Seller return any damaged Goods to the Seller's premises within 7 days of it receiving a request to do so, carriage pre-paid (subject to refund in the event that the claim is found to be justified) for inspection to take place there.
- 3.1.5 If Buyer does not notify the Seller of any defect in accordance with the provisions of this clause 3.1 then Buyer shall not be entitled to reject the Goods. The Seller shall have no liability to the Buyer and the Buyer shall be bound to pay the price in accordance with the payment terms.

#### 3.2 Purpose

Any recommendation or suggestion relating to the use of the Goods made by the Seller either in technical literature or in response to a specific inquiry or otherwise is given in good faith but it is for the Buyer to satisfy itself as to the suitability of the Goods for its own particular purpose. Accordingly, the Seller gives no warranty as to the fitness of the Goods for any particular purpose, even if that purpose is known to the Seller, and no such warranty may be implied from the name or description of the Goods. Any implied warranty or condition (statutory or otherwise) is excluded except unless such exclusion is prevented by law.

#### 3.3 Limitation of Liability

- 3.3.1 Seller's liability in contract or in tort in respect of any damage caused by the non-performance of its obligations or the quality or fitness for any particular purpose of the Goods supplied hereunder shall be limited to the invoice value in respect of the relevant Goods and shall in no circumstances extend to the Buyer's loss of profits, injury, damage, increased cost of working or any other direct or consequential financial losses or damages or liquidated liabilities.
- 3.3.2 Buyer shall indemnify the Seller for any claims made against the Seller by third parties who do business with the Buyer, directly or indirectly, in relation to the purchase by the Buyer of any Goods supplied hereunder, arising as a result of any breach by the Seller of any of its obligations. Furthermore, the Buyer is exclusively responsible for any claims arising from infringement of patents.
- 3.3.3 Without prejudice to applicable provisions for demurrage claims, all claims should be made by the Buyer in writing as soon as reasonably practicable but no later than 15 working days from the date of delivery. Seller shall not be obliged to accept any claims made after such date, except liability for death or personal injury resulting from the Seller's negligence.

### 4. SUSPENSION OR CANCELLATION OF INSTALLMENTS

If either Party being an Incorporated Company shall have a Receiver appointed, or shall pass a resolution for winding up (other than a winding up Order for the purposes of, or in connection with, any amalgamation or reconstruction, the terms of which shall have been approved by the other Party which approval shall not be unreasonably withheld) 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 enter into any composition or arrangement with his creditors then the other Party may, without prejudice to any rights of either Party, repudiate the contract under common law.

### 5. DELIVERY AND ACCEPTANCE OF THE GOODS

- 5.1 The Delivery Date or any other date for delivery of the Goods agreed by the Seller in writing is approximate only and time shall not be of the essence of such delivery and the Seller shall have no liability in respect of late delivery. If the Seller is prevented from delivering any Goods at the time provided for delivery by reason of Force Majeure then the period for delivery shall be extended by the time lost by reason of such cause.
- 5.2 Delivery, as defined in INCOTERMS, of the Goods shall be made to Buyer's nominated delivery location, including collection, on dates to be agreed. Buyer shall be responsible for off-loading. Buyer shall make all arrangements necessary to take delivery of the Goods. In the event of Buyer being unable to accept delivery of the Goods then:
  - 5.2.1 The Seller shall be entitled to invoice such Goods forthwith and to take the invoice into account;
  - 5.2.2 The Seller shall be entitled to charge at rates giving an economic return for the handling and storage of such Goods and for their insurance from the date of invoice to the date when the Buyer takes delivery or the Seller, at its discretion, disposes of the same.
  - 5.2.3 The Buyer shall be responsible for and shall reimburse the Seller forthwith in respect of any increased costs of delivery, including any demurrage.
- 5.3 Where delivery or collection is required in bulk, the Buyer shall be responsible for providing suitable clean tank wagons for collection and when accepting deliveries shall also be responsible for coupling the tank wagon to the correct vessel and the supervision of the loading and unloading as the case may be. Any loss of Goods occurring during the loading and unloading processes shall be for the account of the Buyer, unless directly caused by the negligence of the Seller or its servants or agents. The Buyer shall be deemed to have accepted the Goods upon delivery to the Buyer. The Buyer shall not be entitled to raise any claim with regard to the Goods nor shall be entitled to reject Goods more than 8 days after acceptance.
- 5.4 Seller reserves the right to deliver the goods by instalments and where it does so each delivery shall constitute a separate contract. Any failure by the Seller to deliver any one or more of the instalments or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the order as a whole repudiated.
- 5.5 Seller reserves the right, in case of non-payment or late payment of invoices, to suspend or cancel the delivery of Goods that are still due for delivery to the Buyer. Any costs or liabilities resulting from such action shall be the Buyer's exclusive responsibility.

### 6. INTELLECTUAL PROPERTY

- 6.1 For this purpose, "Intellectual Property" means all intellectual and industrial property rights including all documents, formulae, designs, labels, packaging, registered or unregistered trademarks, designs, patents, copyrights and applications in the world recorded or embodied in any goods supplied by the Seller to the Buyer under these Conditions.
- 6.2 The Seller shall retain ownership of all Intellectual Property which the Seller has supplied to the Buyer, unless said Intellectual Property was supplied by the Buyer to the Seller in which case the Buyer shall indemnify the Seller in full and harmless against any third party's Intellectual Property claims including all costs, expenses, actions, proceedings, claims, demands, losses, judgements or liabilities of any kind howsoever arising, directly or indirectly, as a result of or in connection with any infringement.

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### 7. HEALTH, SAFETY & ENVIRONMENTAL CONTROL AT WORK

Seller has available health and safety information and product literature concerning the Goods supplied hereunder and their use and shall provide copies thereof to the Buyer upon request. Buyer acknowledges its responsibility to ensure that all applicable health, safety and environmental regulations are observed and that it has in place appropriate storage methods and safety procedures with regard to Goods sold hereunder. The Buyer hereby indemnifies the Seller in respect of all costs, expenses, loss and damages that may be awarded against or incurred by the Seller and arising from claims made by employees, agents, sub-contractors, customers or visitors of the Buyer and arising from the use of, or exposure to, the Goods. The Buyer shall ensure that all markings and instructions required under any health and safety, environmental or other similar regulations are maintained on the Goods and packaging and are followed and transferred in the event that the Buyer repacks the Goods.

### 8. PASSING OF RISK TO BUYER & SELLER'S RETENTION OF TITLE

8.1 Risk in the Goods shall pass to the Buyer upon delivery or collection. Buyer shall insure Goods at full replacement value until title to the Goods passes to Buyer.

8.2 Retention of title and property in the Goods, including full legal and beneficial ownership, shall remain with Seller post-delivery until:

8.2.1 Buyer has paid the full price of the Goods, including any taxes or charges, in cleared funds; and

8.2.2 No other monies whatever, including payment for all other contracts, future claims or interest, shall be due from Buyer to Seller.

8.3 Pursuant to 8.2 and in all cases whereby Buyer is in violation of its contract or Seller deems Buyer unable to pay for Goods in a timely manner, Seller having retained full, unrestricted retention of title and property in the Goods shall have the right to repossess the Goods. Buyer shall keep the Goods separate and easily identifiable at Buyer's premises. Seller or its agents may enter the premises of the Buyer unimpeded and repossess and remove any Goods in which the title and property remains in the Seller, without prejudice to Seller's other remedies.

8.4 Pursuant to 8.2, if the Goods have been processed or mixed with other items, which are not owned by the Seller, the Seller shall obtain the joint-ownership of any new item to the extent of the value of the Goods (invoiced amount including VAT) in relation to the value of the other processed or mixed items at the time of processing or mixing. If the Goods were processed or mixed with any other items by the Buyer in a way that the Seller's Goods will be deemed to be the main item, the Buyer and the Seller herewith agree that the Buyer transfers the respective share in the joint-ownership to the Seller. The Seller herewith accepts such transfer. The Buyer at its own costs shall keep the items in Seller's sole or joint ownership in custody on behalf of the Seller or transfer the items at Buyer's cost to Seller at its request.

8.5 Pursuant to 8.2, should Buyer sell Goods to a third party, Buyer shall pay the proceeds of sale to Seller to the extent of Seller's interest therein.

8.6 The claim for repossession of such Goods by Seller shall be deemed as a withdrawal from the specific contract by Seller. Seller shall apply the proceeds of disposal (after deduction of all related expenses, including transport) in discharge towards any amount unpaid by Buyer.

### 9. MARGINAL WEIGHT DIFFERENCE & INVOICING

9.1 Seller may deliver +/-5% of weight or volume ordered against the Buyer's Order and the Buyer will pay for the actual quantity loaded.

9.2 Buyer must notify any quantity query to the Seller within 8 days from the delivery date. If possible, the Buyer should send the Seller a copy of the CMR (Convention on the Contract for the International Carriage of Goods by Road). Unless proved incorrect, the Seller's measurement of quantity shall be deemed to be the correct measurement of the quantity delivered.

9.3 Only agreed differences in quantity in excess of 0.5% against invoiced quantity may be subject to quantity claims. Weight discrepancies inside these tolerances are not cost effective for either the Buyer or the Seller to dispute with one another.

9.4 Invoicing for any quantity in excess of the +/-5% will be settled by mutual agreement of Seller and Buyer.

### 10. REMEDIES OF BUYER

10.1 Where the Buyer rejects any Goods as being 'off specification' then the Buyer shall, subject to the provisions of Clause 3, have no further rights whatever in respect of the supply to the Buyer of such Goods or the failure by the Seller to supply Goods which conform to the contract of sale, however, in such circumstances the Seller shall, upon notice, use all reasonable endeavours to replace such Goods with 'on specification' Goods.

10.2 Where the Buyer accepts or has been deemed to have accepted any Goods then the Seller shall, subject to the provisions of clause 3, have no liability whatever to the Buyer in respect of those Goods.

10.3 Seller shall not be liable to the Buyer for late delivery or short delivery of Goods.

### 11. PRICE, PAYMENT TERMS & PAYMENT

11.1 The price of the Goods shall be the price in the Seller's order acknowledgement, or as otherwise communicated to the Buyer and agreed in writing.

11.2 The price for the Goods shall be exclusive of any value added tax or any other taxes, duties, levies, tariffs or surcharges, which the Buyer will pay in addition to the price when it is due to pay for the Goods (taxes will be applied in accordance with the relevant legislation in force at the tax point date).

11.3 The Seller may at any time prior to acknowledgement of acceptance of an order vary the price. Following formation of the contract the Seller may at any time propose in writing to the Buyer an increase in the price to take into account increases in costs, such as raw materials, components, production, foreign exchange fluctuations, transport or any other causes beyond the Seller's control. Where the Buyer rejects the proposed increase in writing within 2 days the Seller may, at its sole discretion, terminate the Contract.

11.4 The Seller's standard payment terms are net 30 days from date of invoice. Variation to this will only apply if stated on the order acknowledgement or otherwise agreed in writing.

11.5 The Buyer shall pay for the Goods in accordance with terms set out on the invoice. However, the Seller reserves the right to vary the due date for payment. Non-compliance with the Seller's terms of payment shall constitute default without reminder.

11.6 In the case of default the Seller may charge interest on a daily basis as authorised by the Late Payment of Commercial Debts (Interest) Act 1998 and as subsequently amended. Interest on overdue invoices shall accrue from the date when payment becomes due until the actual date of payment at a rate of 2% per annum above the Bank of England base rate as applicable from time to time. The minimum charge will be £45 due to the cost of administration.

11.7 If the Buyer fails to fulfil the terms of payment in respect of any invoice the Seller may at its sole discretion demand payment of all outstanding balances from the Buyer whether due or not and/or cancel all outstanding orders and/or decline to make further deliveries or carry out further works except upon receipt of cash or satisfactory securities. Except where the laws relating to bankruptcy, receivership or liquidation provide otherwise, the Buyer shall not be entitled to withhold or set off payment for Goods delivered by virtue of any debt, claim or allegation.

### 12. TAXATION

Where any excise duty, energy tax, VAT or other tax ("Tax") becomes payable by the Seller to a third party in relation to the supply, release from a tax warehouse or transport of the Goods, the Buyer shall pay such Tax to the Seller in addition to the sales price. Buyer shall indemnify the Seller against all liabilities for such Tax which Seller reasonably needs to pay to a third party, including any interest, penalties and costs. The Parties undertake to inform each other of any relevant facts so that remedial action can be taken, and to take into account the interest of the other in any dealings with national fiscal/customs authorities to resolve disputes.

### 13. FORCE MAJEURE

Other than the obligation to pay any sums due, neither Party shall be liable for any default due to an Act of God, strike, lockout, industrial action, fire, flood, drought, failure to obtain supplies, plant or mechanical breakdown or any other event beyond its reasonable control (a "Force Majeure"). When a Force Majeure, occurring at one or more of the Seller's agreed or planned manufacturing or supply sources, results in a shortfall of Goods available to meet the Seller's supply obligations under its agreements, such reduced quantity of Goods shall be apportioned at the Seller's reasonable discretion amongst the Seller's customers (including the Seller's affiliates). Seller shall not be required to manufacture or purchase supplies to make good any shortfall in Goods arising as a result of a Force Majeure. Any additional quantities of Goods manufactured or purchased by the Seller to make good such shortfall may be used and/or distributed at the Seller's absolute discretion. Buyer may, after prior notification to the Seller, purchase any shortfall quantity of Goods from other sources at the Buyer's own risk and cost.

### 14. SEPARABILITY

14.1 Each delivery or part delivery under this contract is to be considered a separate contract and a failure on the part of the Seller to make any delivery or part delivery shall not affect or vitiate this contract as to other deliveries.

14.2 In the event of the Buyer's order being in respect of Goods that will be the subject of several deliveries over a fixed, and agreed, period of time, the Buyer shall use its best endeavours to ensure that the call-off of such Goods shall be in a regular and even manner unless otherwise agreed with the Seller. In the event of the Buyer failing to call off all of the Goods ordered by the Buyer over the agreed period of time, the Seller shall have at its option the right to (i) extend the period of time to enable the Buyer to complete the call-off of the Goods, or (ii) cancel, without penalty to either side, the contract with regard to the outstanding Goods.

### 15. PROPER LAW & JURISDICTION

The construction, validity and performance of the contracts subject to these Standard Terms & Conditions shall be governed by the laws of England and the Buyer agrees to submit to the non-exclusive jurisdiction of the English Courts.