

MEL CHEMICALS

TERMS AND CONDITIONS OF SALE

“Seller” means Magnesium Elektron Limited trading as MEL Chemicals (registered in England under number 3141950).

“Contract” means the contract between the Seller and the Buyer for the sale and purchase of the goods in accordance with these Conditions.

“REACH” means the regulations for registration, evaluation, authorisation and registration of chemicals.

“Specification” means the Specification supplied by the Seller with the quotation, including, if applicable, any amendments proposed by the Buyer which are agreed in writing by the Seller.

A reference in these Conditions to a provision of any statute or law shall be to such statute or law as amended or re-enacted at the relevant time.

1. BASIS OF SALE:

1.1 Each order for goods by the Buyer (whether placed by electronic communication, hard copy or otherwise) shall be deemed to be an offer by the Buyer to purchase goods subject to these Conditions to the exclusion of any terms the Buyer seeks to impose or which are implied by trade, custom or course of dealing.

1.2 Unless previously withdrawn Seller’s quotation expires twenty-one days after its date.

1.3 No binding contract shall be created by the acceptance on the part of the Buyer of a quotation made by the Seller until written acceptance of the Buyer’s order is issued by the Seller when the Contract shall come into existence.

1.4 No Contract may be cancelled by the Buyer except with the agreement in writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including loss of profit), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

1.5 The Buyer must ensure that the terms of its order are accurate.

1.6 The Contract constitutes the entire agreement between the parties and the Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.

1.7 Any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Seller.

2. DELIVERY:

2.1 Any date named by the Seller for despatch or delivery is as an estimate only and time of delivery is not of the essence. The Buyer shall nevertheless be bound to accept the goods ordered when available.

2.2 The Seller shall not be liable in any way in respect of late despatch or delivery caused by the Buyer or by force majeure nor shall such lateness in despatch or delivery be deemed to be a breach of the Contract. Where drawings, specifications, instructions and materials are to be supplied the Buyer shall supply the same in reasonable time to enable the Seller to despatch within the period named.

2.3 If the Buyer fails to provide information to enable delivery to occur or otherwise causes or requests a delay in delivery of the goods, the Buyer shall pay, in addition to the price referred to in Condition 3, all storage, insurance, transportation and other relevant costs incurred as a result thereof including the costs of suspending or cancelling any further deliveries.

2.4 The Seller reserves the right to make deliveries by instalments. The Seller is entitled to tender an invoice for each instalment.

2.5 Where the goods are to be delivered in instalments, each delivery shall constitute a separate Contract and failure by the Seller to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

2.6 If the Seller delivers to the Buyer a quantity of goods up to 5% more or less than the quantity ordered, the Buyer shall not be entitled to object to or reject the goods or any of them by reason of the surplus or shortfall and shall pay for such goods at the pro rata contract rate.

2.7 Unless stated otherwise in the order all prices given are on an ex works basis and delivery shall be made by the Buyer collecting the goods at the Seller's premises at any time after the Seller has notified the Buyer that the goods are ready for collection. If the order specifies delivery of the goods otherwise than at the Seller's premises, the Buyer shall be liable to pay the Seller's charges for transport, packaging, loading, unloading and insurance.

3. PRICES:

3.1 Goods will be invoiced at the price set out in the order or, if no price is stated, at the price set out in the Seller's standard price list at the date of delivery.

3.2 The Seller reserves the right to alter prices without notice to cover variations in its costs including (without limitation) variations in cost of raw materials, labour, other costs of manufacture, foreign exchange fluctuations, currency regulations etc., or through the Buyer's change of design or for any other reason. If variation occurs in the price during the currency of an order the price of the undespached portion of the order outstanding at the date of such variation in price shall be adjusted accordingly.

3.3 The Seller will not accept the return of any packaging cases, drums or containers, the price of which is included in the price for the goods.

3.4 The price is exclusive of any applicable value added tax which the Buyer shall be additionally liable to pay to the Seller.

4. PAYMENT:

4.1 Invoices shall be paid in cleared funds not later than the twentieth (20th) day of the month following month of invoice notwithstanding that delivery may not have taken place or the property in the goods passed to the Buyer. The time of payment of the price shall be of the essence.

4.2 All payments shall be made by the Buyer without any deduction or set-off whatsoever.

4.3 The Seller reserves the right to charge interest (both before and after judgement) at the Royal Bank of Scotland base lending rate from time to time plus 3% per month on the amount unpaid on all overdue accounts until payment in full is made.

5. WARRANTIES AND LIMITATION OF LIABILITY:

5.1 The Seller warrants that the goods at the time of despatch shall be of satisfactory quality within the meaning of the Sales of Goods Act and will correspond in all material respects with the Specification.

5.2 Except as set out in these Conditions, all warranties, conditions and other terms implied by statute or common law or otherwise are excluded, to the fullest extent permitted by law.

5.3 How the Buyer uses the goods shall be its entire responsibility and:

- a) the Buyer assumes all risk and liability whatsoever resulting from its use of goods whether such goods are used singly or in combination with other materials or substances including (without limitation) for ensuring the goods are stored and used by the Buyer or downstream users in accordance with all risk, storage and other information supplied by the Seller (whether pursuant to REACH or otherwise and whether such information is provided via any classification or labelling or in any safety data sheets or otherwise).
- b) whilst as a gesture of goodwill the Seller may give the Buyer data or technical advice in relation to the goods and their use the Seller will not in any circumstances be liable for injuries, losses, expenses or damage sustained by the Buyer which may in any degree be attributable to the adoption either by the Buyer or by any third party of such data or advice.

5.4 The Seller shall not be liable to the Buyer by reason or any representation (unless fraudulent) or any implied warranty, condition or other term, or any duty at common law, or under any express terms of the contract, for:

- a) loss of profit; or
- b) special or indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise) costs,

expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise),

which arise out of or in connection with the supply of goods (including any delay in supplying or any failure to supply goods in accordance with the order or at all) or their use or resale by the Buyer, and the entire liability of the Seller under or in connection with the Contract shall not exceed the price of the goods, except as expressly provided in these Conditions.

5.5 Nothing in these Conditions excludes or limits the liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation or for any liability which by law cannot be excluded or restricted.

6. FORCE MAJEURE:

6.1 The Seller shall not be liable for any failure or delay in performing its obligations under the contract to the extent the failure or delay is caused by any circumstances whatever beyond the Seller's reasonable control (force majeure).

6.2 Without prejudice to the generality of clause 6.1 the following shall be regarded as force majeure events: war or threat of war measures of any governmental, parliamentary or local authority, act of God, riots, labour disputes, difficulties obtaining raw materials or fuel, accidents, fire, flood, power failure or import or export embargoes.

7. NOTIFICATION OF CLAIM:

7.1 The Buyer shall give the Seller notice in writing of any claim of any defect in the quality or condition of the goods or shortages of delivery or any other claim within twenty-one days of delivery followed by a complete claim in writing within a further nine days. The goods shall be preserved intact as received for the period from delivery until expiry of 21 days from notification of the complete claim within which time the Seller's agent shall have the right to attend the Buyer's premises to investigate the complaint and, if the Seller considers necessary, the Buyer shall at the Seller's request send to the Seller a sample of the goods in question at the Buyer's own risk and expense. If the Buyer does not comply with all of the requirements of this condition the Seller shall have no liability in respect of any defect, failure or other breach.

7.2 The Seller retains a sample of each of the goods it supplies (a retention sample) which shall be final evidence as to the quality and condition of the goods supplied to the Buyer. If the Buyer alleges that any goods are defective, the Seller shall test and inspect the retention sample and/or any other sample it may request pursuant to clause 7.1.

7.3 If the Seller determines that the goods are defective the Buyer shall at the Seller's request and expense return the defective goods to the Seller and the Seller shall supply replacement goods which comply with the warranty in clause 5.1 or, at its discretion, refund the relevant part of the price or issue a credit note, and the Seller shall be deemed not to be in breach of the Contract or have any further liability to the Buyer for the rejected goods.

7.4 The Seller's reasonable decision as to whether the goods are defective shall be final.

8. RISK AND TITLE:

8.1 The risk in the goods shall pass to Buyer upon delivery.

8.2 Ownership of the goods shall remain with the Seller until payment in full has been made in cash or cleared funds for:

- a) the Contract goods; and
- b) all other goods agreed to be sold by the Seller to the Buyer.

8.3 Before title has passed, the Buyer shall hold the goods as the Seller's fiduciary agent and bailee, and shall keep them separate from those of the Buyer and third parties and properly stored, protected and insured and identified as the Seller's property, but the Buyer may resell or use the goods in the ordinary course of its business.

8.4 Until title in the goods passes to the Buyer (provided they have not been used or resold) the Seller may at any time require the Buyer to deliver up the goods to the Seller and if the Buyer fails to do so forthwith, enter on any premises of the Buyer or any third party where the goods are stored and repossess the same.

9. INTELLECTUAL PROPERTY RIGHTS:

9.1 The Seller is the owner of various trade marks, patents and other intellectual property rights in its products. If the Buyer manufactures other materials from any goods it may only refer (whether on the materials or not) to the Seller's trade mark therefore with the written permission of the Seller (at the Seller's absolute discretion).

9.2 The Buyer will indemnify the Seller against all damages, penalties, costs and expenses to which the Seller may become liable or incur as a result of work done in accordance with the Buyer's amendments to the Specification which involves the infringement of any letters patent, registered designs or any other industrial or intellectual property rights. The Seller shall not be liable for the Buyer's infringement of any letters patent, registered designs or any other industrial or intellectual property rights as a result of the Buyer's use of the Seller's goods.

10. BUYER'S DEFAULT OR INSOLVENCY:

10.1 If the Buyer shall make default in or commit any breach of any of its obligations to the Seller or if any distress or execution shall be levied upon the Buyer or if the Buyer shall offer to make any arrangement with creditors or commit any act of bankruptcy or if any petition in bankruptcy shall be presented against him (or any similar process in any other jurisdiction in which the buyer carries on business) or if the Buyer is a limited company any resolution or petition to wind up such company's business (other than for the purposes of amalgamation or reconstruction) shall be passed or presented (or any similar process in any other jurisdiction in which the Buyer carries on

business), or if the Seller reasonably apprehends that any of the aforesaid events is about to occur to the Buyer, the Seller shall have the right (without prejudice to its other rights) forthwith by written notice to the Buyer to cancel any Contract then subsisting and/or without liability suspend any further deliveries to the Buyer and if the goods have been delivered but not paid for the price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

11. EXPORT TERMS & BUYER'S COMPLIANCE WITH LAW:

11.1 In these Conditions of Sale "Incoterms" means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract between the Buyer and the Seller is made. Unless the context otherwise requires any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions but if there is any conflict between the provisions of Incoterms and these Conditions the latter shall prevail.

11.2 Where the goods are supplied for export from the United Kingdom, the provisions of this Clause 11 shall (subject to any special terms agreed in writing between the Seller and the Buyer) apply notwithstanding any other provision of these Conditions. The Buyer shall be responsible for complying with any legislation or regulation governing the importation of the goods into the country of destination (including, without limitation, obtaining at its own cost any necessary licences or consents) and the payment of duties thereon. Where goods are sold F.O.B. the Seller shall be under no obligation to give to the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

11.3 By entering into the Contract the Buyer warrants and agrees that it (and/or any of its directors, officers, agents, affiliates and employees):

- (a) has not and will not do or omit to do any act or thing in relation to the purchase of the goods from the Seller which would be illegal under the UK Bribery Act 2010, the US Corrupt Practices Act or any other applicable laws and regulations, and in particular (but without limitation) it has not requested, accepted or agreed to receive any bribe or other unlawful payment, gift or advantage in respect of such purchase and will notify the Seller if is offered the same;
- (b) shall not re-sell or offer the goods (whether on their own or in combination with other materials or substances) for sale in any country to which it would at the relevant time be illegal to export any such goods, or to any person if the Buyer knows or reasonably should have reason to believe that such person intends to resell the same in any such country.

11.4 For the avoidance of doubt, the United Nations Convention on the International Sale of Goods shall not apply to this agreement.

12. GENERAL:

12.1 The construction validity and performance of this contract shall be governed by the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts.

- 12.2** The Seller is a member of a group of companies and accordingly the Seller may perform any of its obligations or exercise any of its rights hereunder by itself or through any other group member of its group provided that any act or omission of any such other member shall be deemed to be the act or omission of the Seller.
- 12.3** The Buyer may not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Seller.
- 12.4** If any provision of the Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions and the remainder of the provision in question shall not be affected.
- 12.5** The Seller may at any time, without limiting any other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by the Seller to the Buyer.
- 12.6** A notice required or permitted to be given by either party to the other under the Contract shall be in writing (including facsimile or email but excluding any other type of electronic communication) addressed to that other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this provision to the party giving notice.
- 12.7** No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 12.8** A person who is not a party to the Contract shall not have any rights under or in connection with it.

[June 1 2014]