

CONDITIONS OF SALE

DEFINITIONS

Within these terms and conditions of sale the meanings ascribed to the following words and phrases are,

- (a) "Seller" shall mean the supplying Company.
 - (b) "Buyer" shall mean the person firm or company who places an order with the Seller for the supply of any goods or services of whatever nature in which the Seller may deal.
 - (c) "The Sellers terms and conditions of sale" shall mean the terms and conditions of sale contained herein together with any variation cancellation or waiver of the same provided that any such variation cancellation or waiver be in writing signed by one of the Seller's Directors.
 - (d) "The contract date" means the date upon which the Seller accepts the Buyer's order.
1. **INSTALMENTS** each instalment shall be deemed to be a separate contract between Sellers and Buyers.
 2. **NON-ASSIGNABILITY** This Contract is not assignable by Buyers without Seller's prior consent in writing.
 3. **RESALE** Buyers shall not without Seller's prior consent in writing, re-sell any goods sold hereunder to any purchaser within the United Kingdom.
 4. **PACKAGES, PALLETS AND CONTAINERS** Where packages, pallets or other containers are stated to be returnable they should be returned in good order at Buyer's expense to the works or depot name on Seller's invoice and Buyers shall notify Sellers of the date of despatch thereto. If Buyers fail within a reasonable period and in any case within three months, to return any such package or pallet or container in good order and condition, Buyers shall pay the cost of replacement thereof. Where deliveries are made in bulk bins or boxes Buyers shall be responsible for any loss or damage to such bulk bins or boxes between delivery to Buyers and collection by Sellers and if any such bulk bin or box is not available for collection from Buyers within a period of 30 days from the date of delivery, then demurrage shall be payable by Buyers within at the rate stipulated by Sellers in respect of each succeeding day immediately following such period of 30 days until the date on which Sellers receive notification from Buyers that such bulk bin or box is available for collection. If Buyers do not promptly discharge road tankers Sellers shall have the right to charge Buyers demurrage in respect of consequent delays.
 5. **WARRANTIES AND LIABILITIES**
 - (a) Sellers warrant that the goods shall comply with Seller's specification for the goods in question as current from time to time. Sellers do not warrant the fitness of the goods for any particular purpose even though that purpose be known to them and no such warranty is to be implied from the name or description under which the goods are sold.
 - (b) Subject as aforesaid, all warranties conditions and statements express or implied statutory or otherwise are excluded save those implied by the Sale of Goods Act 1979.
 - (c) Seller's liability in contract or tort for any damage (other than for death or personal injury) arising (whether or not from Seller's own negligence) directly or indirectly out of the supply or use of the goods, or of the packages or pallets or containers by which the goods are delivered, shall be limited to the value of the goods supplied.
 - (d) In no circumstances will Sellers be liable for any consequential loss or damage no matter how arising.
 - (e) Each and every claim in respect of defective goods must be made in writing to the Seller by the Buyer within 5 working days of the date of receipt by the Buyer.
 - (f) Sellers shall have the right to inspect allegedly defective goods and to seek the full co-operation of the Buyer in so doing.
 6. **PRICE INCREASES** Sellers reserve the right by written notice given at any time before delivery, to increase the price of the goods. If Buyers are of the opinion that any such increase in price is unreasonable they may, by written notice given within seven days of the date of receipt of Seller's notice, cancel the balance of this Contract undelivered at such date.
 7. **FORCE MAJEURE** Neither party shall be liable to the other if by reason of any cause which is either beyond the reasonable control of, or could not have been reasonably prevented by either party the Buyers are prevented from or delayed in taking delivery, or Sellers are prevented from, delayed or hindered in making delivery of the goods or any part thereof at the times stated for delivery. During any period when delivery of goods or any part thereof cannot be made by Sellers for any such reason Buyers shall, after giving Sellers written notice of their intention to do so, be at liberty to purchase elsewhere at their own cost and risk, such quantities of the goods as Sellers may be unable to deliver. The period of this contract shall not be extended by reason of any such circumstances.
 8. **DELIVERY AND PASSING OF PROPERTY AND RISK** Buyers shall be solely responsible for the proper unloading or discharging of goods delivered pursuant this contract and delivery shall be deemed to be effected and property and risks shall pass to Buyers as follows
 - (a) Unless and until the Seller has received payment in full or such lesser sum as the Seller shall in writing agree to accept the goods supplied to the Buyer shall remain the property of the Seller but the risk as to the loss of or damage to the same shall pass to the Buyer upon delivery thereof. If, notwithstanding the foregoing, the Buyer is in default of payment of any part of the purchase price or shall before the whole of the purchase price has been paid have a 'Receiving Order made against him or being a Company go into Liquidation or have a Receiver appointed then the Seller may without prejudice to any other right or remedies available to it be entitled to recover possession of the goods at the Buyer's expense and to sell the same retaining all monies received on account of the purchase price and any interest, costs or other expenses of the Seller as herein provided and accounting to the Buyer for the balance if

any and if the goods have been sold by the Buyer the beneficial entitlement of the Seller shall attach to the proceeds of sale.

- (b) Until the title in the goods passes to the Buyer the Buyer shall upon the request of the Seller promptly inform the Seller of the whereabouts of the goods and the Buyer shall accept all responsibility for the safe custody, protection and preservation of the goods coming into the Buyer's possession or that of its agents and shall be liable to indemnify the Seller in respect of any loss or damage of whatever nature affecting the goods.
- (c) Any note of acceptance or endorsement of acceptance by the Buyer or any servant or agent of the Buyer upon any delivery note of the Sellers or any haulier or carrier engaged by the Seller shall in the absence of fraud be deemed to be conclusive proof for all purposes of the contract of the delivery in full of each consignment of goods to which such note of acceptance or endorsement shall relate save in so far as full details of any shortage have been thereon endorsed.
- (d) Nothing in this paragraph 8 shall prevent or restrict Buyers from selling in the ordinary course of business goods which have been processed, or compositions into which goods have been incorporated, but if the goods which have not been processed or incorporated onto a composition as aforesaid are resold before payment has been received in full therefore, the Buyers shall be under a fiduciary duty of account to the Sellers for the proceeds of such sale.
- (e) Quoted period of delivery is estimated only, the Seller will use its best endeavours to effect delivery on the agreed date but will not be liable for any delay whatsoever including any action, neglect or default of its agents or employees.

9. SUITABILITY OF STORAGE FACILITIES AND COLLECTING VEHICLES

- (a) In the case of goods conveyed by ship or rail tanker, Sellers reserve the right at any time without notice to refuse to make delivery of any quantity of the goods, if, in the opinion of Sellers, Buyer's storage tank or other installation (or any valve, filling line, pump or other equipment of Buyers required to be used in connection therewith) into which such quantity of the goods would be transferred from the ship or road or rail tanker on delivery, is in Seller's opinion, unsuitable on the grounds of inaccessibility to ships, road or rail tankers, or of danger to persons or property, or of any existing or apprehended contravention of any statute, regulating, bye-law or other rule having the force of law. Where, however, delivery is made by Sellers of any quantity of the goods conveyed by ship or road or rail tanker, such delivery shall not in any way be deemed an admission on the part of Sellers as to the suitability of Buyer's storage tank or other installation as aforesaid.
- (b) Although Sellers may inspect any collection vehicle used by Buyers or anyone acting on their behalf to check its safe condition Sellers shall neither be responsible for the condition of such vehicle nor liable for any damage or loss resulting from such condition nor shall such inspection be treated as giving any representation or warranty as to the condition or fitness of the collection vehicle or in any way offering any indemnity to the Buyer in respect of same.

10. FAILURE TO MAKE OR TAKE A DELIVERY

(a) Should Sellers fail to make delivery of the goods or any part thereof at the times stated for delivery by reason of any cause other than those mentioned in Conditions 7 and 9 above, then Seller's liability in respect of such failure shall, notwithstanding Condition 5(c), be limited to the proved excess (if any) over the price under this Contract of the cost to the Buyers (in the cheapest available market) of similar goods to replace those not delivered.

(b) Notwithstanding Condition 1 above, should Buyers fail to take delivery of the goods, or any part thereof, at the times stated for delivery by reason of any cause other than those mentioned in Condition 7 above, then the Sellers shall be entitled to cancel such delivery and all other outstanding deliveries or instalments and to charge Buyers with any loss suffered.

11. **WEIGHT AND VOLUME OF GOODS** The weight and volume of goods delivered by road or rail vehicle and goods packed in bulk bins or boxes which Buyers have agreed for the purposes of weighing to treat as delivery by tanker, shall be determined at the works or store of Sellers or Seller's Agent. The weight and volume so determined and declared by Sellers or Seller's Agent shall be deemed to be the weight and volume of the goods delivered, unless Buyers or Buyer's Agent notify any discrepancy in accordance with Condition 14 (c) below.

12. **QUANTITY TOLERANCES** Sellers reserve the right to deliver against any order excess or deficiency up to 10% of weight or volume ordered.

13. **CANCELLATION** If Buyers shall fail to make any payment when it becomes due or shall enter into any composition or arrangement with their creditors, or if being an incorporated company they shall have a Receiver appointed or shall pass a resolution for winding up or a Court shall make an Order to that effect, or if not being an incorporated company they shall have a Receiving Order made against them, or if there shall be any breach by Buyers of any of the terms or conditions hereof, Sellers may, without prejudice to their other rights and remedies, defer or cancel any further deliveries or instalments.

14. PAYMENT TERMS

(a) For opened and approved accounts, payment net cash by the last day of the month following the date of the invoice. Unless prior arrangement has been made and confirmed in writing and signed by one of the Seller's Directors.

(b) The right is reserved to the Seller to charge interest at the rate of 2½% per month or part thereof on all amounts not paid by the due date and the Seller shall be entitled to compound the same. Any payments received shall be applied first in settlement of any charge to interest.

(c) The Buyer shall be deemed to be in breach of these terms of payment if the Buyer defaults in making payment within 10 working days after the due date notwithstanding that the Seller may not have issued any written demand for payment other than the invoice related thereto. The Seller reserves the right to waive such breach of these terms of payment as hereinbefore provided.

(d) It shall be a condition of the Contract that any Buyer contracting for or on behalf of a Limited Company shall if so requested by the Seller enter into a personal guarantee in the form prescribed by the Seller to secure due payment by the Buyer.

15. CLAIMS

(a) All claims for damage to or partial loss of goods in transit must be submitted in writing to carrier and Sellers or Seller's Agent within three days of delivery and the delivery note must be endorsed accordingly.

(b) All claims for non-delivery of the whole of any consignment, or of any separate package forming part of a consignment, must be submitted in writing to the carrier and Seller's or Seller's Agent within seven days of receipt by Buyers or Buyer's Agent of Seller's invoice or advice note, whichever is the earlier.

(c) Buyers shall, within seven days of receipt of the goods, examine the same for the purpose of ascertaining whether they conform to the contract and if such goods do not so conform, promptly give written notice thereof to Sellers with sufficient particulars. Buyers shall permit Sellers to investigate such notification before the remainder of the goods comprised in the same consignment are used or returned to Sellers. Goods are not returnable from Buyer to Seller without prior written agreement between Buyer and one of the Seller's Directors.

(d) In the absence of notification as a claim or otherwise in accordance with (a), (b) or (c) above, the goods shall be deemed to have been delivered and accepted in conformity with the Contract.

16. TRADE MARKS AND PATENTS

(a) Nothing contained in this Contract whether express or implied shall be deemed to confer any rights upon Buyers to apply any trademark owned by Sellers or any of Seller's associated companies to any goods supplied under the Contract.

(b) When goods are made or adapted by Seller in accordance with Buyer's specifications, Buyers shall indemnify Sellers against all costs, claims and expenses incurred by Sellers in respect of the infringement or alleged infringement by such goods of any patents, registered designs, trade marks or other rights belonging to third parties.

17. VARIATION OF CONDITIONS The above conditions, or any of them, cannot be carried, suspended or added to, except with the agreement of Sellers given in writing and signed by one of the Seller's Directors.

Any notice required to be given hereunder shall be duly given if the same is delivered personally to the person to whom the same is intended to be given or left for him or it or them or sent by pre-paid first class post to his or its or their usual or last known place of address in the United Kingdom or in the case of a notice to a Limited Company as its registered office or in the case of a partnership to a partner for him at a partnership office.

18. PROPER LAW The construction validity and performance of this Contract shall be governed by the laws of England.

If at any time any question, dispute or difference shall arise between the Seller and the Buyer as to the meaning, interpretation, operation or effect of any of the liabilities or duties arising out of these terms and conditions either party may on giving written notice to the other party of the existence of such question, dispute or difference refer the same to the arbitration of the party mutually agreed upon and if the parties fail to so agree within 21 days of the service of the notice referred to herein then an arbitrator shall be appointed by the President for the time being of the (Law Society) in accordance with and subject to the provisions of the Arbitration Act, 1950 or any statutory, modification or re-enactment thereof for the time being in force.

19. SAMPLES are provided to the Buyer for evaluation purposes, it is the responsibility of the buyer to ensure the materials are suitable for the application intended and to ensure that the material is safe to process through the buyers processing machinery. Information relating to processing the sample is available on request. The Seller accept no responsibility should the sample not be suitable for use on the customers machinery neither will the Seller accept any claims for loss or damage caused by processing samples.

October 1985
CJP Sales Ltd