

MEL CHEMICALS

TERMS AND CONDITIONS OF SALE

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

1. ACCEPTANCE OF ORDER AND EXPIRY DATE:

- 1.1 Each order for goods by the Buyer shall be deemed to be an offer by the Buyer to purchase goods subject to the Conditions of Sale as printed therein.
- 1.2 Unless expressly accepted in writing by an authorised representative of the Seller any qualification of these conditions by the Buyer in any written or printed document or otherwise shall be inapplicable.
- 1.3 Unless previously withdrawn “Sellers” quotation expires twenty-one days after the date thereof.
- 1.4 No binding contract shall be created by the acceptance on the part of the Buyer of a quotation or offer made by the Seller until written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the goods to the Buyer.
- 1.5 No order which has been accepted by the Seller 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.
- 1.6 The Buyer must ensure that the terms of its order and any applicable specification are accurate.

2. DELIVERY:

- 2.1 Any date named by the Seller for despatch or delivery is given and intended as an estimate only and is not to be of the essence of the contract. 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 however caused 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 shall otherwise cause or request a delay in delivery of the goods, the Buyer shall pay, in addition to the price referred to in Condition3, all storage, insurance, transportation and other relevant costs incurred as a result thereof including the costs of suspending or cancelling any further contracted deliveries.
- 2.4 The seller reserves the right to make deliveries by instalments and these Conditions of Sale shall apply with appropriate amendments to each

instalment delivery. The Seller is entitled to tender an invoice for each instalment which shall be paid by the Buyer in accordance with Condition 4.

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 of Sale 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 repudiated.

2.6 Where delivery of the goods is to be made by the Seller in bulk, if the Seller delivers to the Buyer a quantity of goods up to **5%** more or less than the quantity accepted by the Seller, 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 With the exception of export sales, unless otherwise stated, goods shall be sent carriage paid by road or rail transport at goods rate.

3. PRICES:

3.1 Orders are accepted only on condition that goods will be invoiced at the price ruling at the date of despatch.

3.2 The Seller reserves the right to alter prices without notice to cover variations in the 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 Where the Seller agrees to deliver 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.

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

4. TERMS OF BUSINESS:

4.1 Unless otherwise stated prices are net and accounts are due for payment with cleared funds, not later than the twentieth (20th) day of the month following month of invoice notwithstanding that delivery may not have taken place and the property in the goods has not passed to the Buyer. The time of payment of the price shall be of the essence of the contract.

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

4.3 The Seller reserves the right to charge interest (both before and after judgement) at the Bank of America base lending rate from time to time in force plus 3% per month on the amount unpaid on all overdue accounts until payment in full is made. Unless otherwise stated all packaging cases, drums and containers are non-returnable and included in the price of the material.

4.4 The Seller will not accept the return of any packaging cases, drums or containers unless otherwise agreed prior to the Sellers acceptance of the Buyers order.

5. WARRANTIES:

5.1 The Seller warrants that the goods at the time of despatch shall materially correspond the Sellers specification of the goods.

5.2 Subject as expressly provided in these Conditions of Sale, whilst Seller will endeavour to execute orders in accordance therewith, all conditions, guarantees or warranties including guarantees or warranties as to quality or description of the goods or their life or wear or their use under any conditions whether known or made known to the Seller or not, and whether expressed or implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, hereby excluded.

5.3 The Buyer assumes all risk and liability whatsoever resulting from the use of goods supplied whether such goods are used singly or in combination with other materials or substances.

5.4 Whilst the utmost care is taken to ensure the accuracy of the information and data furnished to customers, the sale of the goods produced by the Seller is subject to the condition that 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 technical information, data or advice given by or on behalf of the Seller in relation to the use of its goods.

5.5 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.

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 at all) or their use or resale by the Buyer.

5.6 In any event, Seller liability to the Buyer in respect of any breach or non-performance of Sellers obligations howsoever caused or arising shall be limited to the price of the goods.

5.7 Nothing in these Conditions of Sale excludes or limits the limit of liability of the Seller for death or personal injury caused by the Seller's negligence or fraudulent misrepresentation.

6. FORCE MAJEURE:

6.1 Should delivery of any of the goods sold be prevented or delayed by happenings or occurrences due to force majeure or any causes or any

circumstances whatever beyond the Seller's control the Seller reserves the right to cancel or suspend deliveries or reduce the volume of goods delivered to the Buyer. In any event the Seller shall not be liable in any way for loss or damage arising directly or indirectly through or in consequence of such events or happenings.

6.2 Without prejudice to the generality of the foregoing the following shall be regarded as causes or circumstances beyond the Seller's control; mobilisation, hostilities, acts of Queen's enemies or war (whether declared or not), acts, restrictions, regulations, by-laws, prohibitions or measures of any kind on the part of any governmental, parliamentary or local authority, departmental instructions or act of God, riots, combination of workmen, lock-outs, strikes or disturbances or other labour disputes or unofficial industrial action wherever taking place (whether involving employees of the Seller, the Buyer or of a third party), want of raw materials or fuel in consequence of non-delivery or any other causes, want of railway trucks, road vehicles or aircraft, accidents, fire, flood, blocking of or accidents to shipping or railway lines, roads, or airports, failure of steamers to sail at advertised time, failure of aircraft to takeoff at scheduled time, consolidation by road carrier, reduction or stoppage of output at works where the goods are being manufactured or supplied through fire, flood, heat, frost, holidays, difficulty in obtaining labour or parts, breakdowns of or accidents to machinery, power failure or import or export embargoes.

7. SHORTAGES, DAMAGE OR LOSS IN TRANSIT:

7.1 No claim for non-delivery of part of a consignment or for damage in transit, corrosion, shortage of delivery, deviation, delay or detention will be entertained unless a separate notice in writing is given to the carrier concerned and the Seller within three days and a complete claim in writing is made to the Seller within five days of receipt of the goods. In the case of non-delivery of a whole consignment notice in writing must be given to the carrier concerned and to the Seller within seven days of the date of despatch and a complete claim in writing made within ten days of the date of despatch. Where goods are accepted without being checked the delivery book of the carrier concerned must be signed "not examined". The goods in respect of which any such claim is made shall be preserved intact as delivered for a period of ten days from notification of the claim within which time the Seller and the carrier shall have the right to attend at the Buyer's works to investigate the complaint. Any breach of this condition shall disentitle the Buyer to any allowance in respect of the claim;

8. TESTS & INSPECTION:

8.1 Unless otherwise agreed all testing and inspection specified by the Buyer or implied by the order or customary to the Seller's practice shall be at the Seller's works and shall be final;

9. DEFECTIVE GOODS:

9.1 Goods proved by the Buyer to be defective or not to conform to contract and returned to and accepted by the Seller as such will at the Seller's option be replaced or the price refunded at the pro rata contract rate. If the seller replaces or refunds the price of the goods it shall have no further liability in

respect of the defective goods and they shall not form the subject of any claim for work done by the Buyer, transport costs, consequential damages or expenses loss of profit on or any claim arising through resale, loss of business or depletion of goodwill or any other loss damage or expense whatsoever or howsoever incurred.

9.2 The Buyer shall immediately notify the Seller in writing of any goods found to be defective. No claim in respect of goods will be accepted by the Seller unless notified as aforesaid and the alleged defective goods returned (at the Buyers expense) within fourteen days of the date of delivery of the goods nor will such claim be accepted as a reason for the cancellation of the remainder of the order. Any goods replaced will belong to the Seller.

10. RESERVATION OF TITLE:

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

10.2 Ownership thereof shall remain in the Seller until payment in full has been made in cash or cleared funds (each order being considered as a whole) for:

- a) the goods: and
- b) all other goods agreed to be sold by the Seller to the Buyer for which payment is then due: or
- c) the Buyer resells the goods as provided herein.

10.3 Before payment in full is made, the Buyer shall have power to resell the goods (as principal towards sub-purchaser but as agent as between Buyer and Seller) and the Seller shall be beneficially entitled to and the Buyer shall be under fiduciary duty to account to the Seller for the proceeds of resale and any claim thereto.

10.4 Until payment in full, the Buyer shall clearly identify the goods as being the property of the Seller. The Seller shall be entitled forthwith to recover and resell any or all of such goods to which the Seller has title hereunder and to enter upon the premises of the Buyer or any third party where the goods are stored with such transport as may be necessary for that purpose if the Buyer commits any default hereunder which expression shall without prejudice to the generality thereof include failure to pay the Seller on the due date the appointment of a Receiver of the Buyer's business or the presentation of a petition to wind up the Buyer.

10.5 Nothing herein shall entitle the Buyer to return the goods or to refuse or delay payment for them;

11. TRADE MARKS AND PATENTS:

11.1 The Seller is the owner of various trade marks for its products. Buyers manufacturing other materials from any such product and wishing to refer (whether on the materials or not) to the Sellers trade mark therefore may do so only with the written permission of the Seller.

11.2 The Buyer will indemnify the Sellers against all damages, penalties, cost and expense to which the Sellers may become liable as a result of work done in accordance with the Buyers specification which involves the infringement of

any letters patent, registered designs or any other industrial or intellectual property rights. Seller shall not be liable for Buyer's infringement of any letters patent, registered designs or any other industrial or intellectual property rights as a result of Buyer's use of Seller's goods.

- 11.3** Statements concerning the use of Seller's goods are not recommendations to use the goods in any infringement of any letters patent or registered designs or any other industrial or intellectual property rights by the Buyer.

12. BUYERS DEULT OR BANKRUPTCY:

- 12.1** If the Buyer shall make default in or commit any breach of any of his 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), the Seller shall have the right forthwith to determine by written notice posted to the Buyer any contract then subsisting without prejudice to any claim or right the Seller might otherwise make or exercise. 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.

13. DEFAULT IN PAYMENT:

- 13.1** Should default be made by the Buyer in paying any such sums due under any contract as and when it becomes due or should the Buyer be in breach in any respect of the contract entered into the Seller shall have the right with or without notice in the discretion of the Seller either to suspend all further deliveries until the default be made good or to determine any contract then subsisting so far as any further goods remain to be delivered without prejudice to any claim or right the Seller, might otherwise make or exercise;

14. EXPORT TERMS:

- 14.1** 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 meaning of these conditions of sale but if there is any conflict between the provisions of Incoterms and these conditions of sale the latter shall prevail.
- 14.2** Where the goods are supplied for export from the United Kingdom, the provisions of this Clause 14 shall (subject to any special terms agreed in writing between the Seller and the Buyer) apply notwithstanding any other provision of these conditions of sale. The Buyer shall be responsible for complying with any legislation or regulation governing the importation of the goods into the country of destination and the payment of duties thereon. Where goods are sold F.O.B. the responsibility of the Seller ceases

immediately the goods are over the ship's rail, the Seller being under no obligation to give to the Buyer the notice specified in Section 32(3) of the Sale of Goods Act 1979.

15. ARBITRATION AND LEX LOCI:

15.1 The construction validity and performance of this contract shall be governed by the law of England and any question, dispute or difference which may arise under out of or in connection with or in relation to this order or contract or touching the meaning and construction of the same (except arising under or out of the provisions of Condition 7 hereof) shall be referred to the arbitration of a person to be appointed failing agreement of the parties by the President of the Law Society of England for the time being and the decision of such arbitrator shall be binding on both parties and shall be a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification thereof for the time being in force.

16. GENERAL:

16.1 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 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. If any of these conditions of sale is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions of sale and the remainder of the provisions in question shall not be affected thereby;

17. TERMS & CONDITIONS:

17.1 The proper law of all dealings under these terms is English Law and any disputes or claims arising will be settled by the Court of England.