

ESTERCHEM LIMITED

CONDITIONS OF BUSINESS

1. DEFINITIONS

In these conditions the following words have the following meanings unless the context requires otherwise.

Company means Esterchem Limited of Brooklands Way, Basford Lane Industrial Estate, Leek, Staffordshire ST13 7QF;

Contract means any contract between the Company and the Customer incorporating these conditions for the sale of Products and/or the provision of the Services;

Customer means the person whose order for Products/Services is accepted by the Company;

Field of Use means the field of use and/or application for which the Customer has engaged the Company to perform the Services as is described in the Company's quotation;

Liability means liability for any and all damages, claims, proceedings, actions, awards, expenses, costs and any other losses and/or liabilities;

Products means any products and/or goods ordered from the Company by the Customer or to be supplied by the Company to the Customer;

Recalled Products means Products that are subject to recall by the Company;

Services means the services and/or work to be performed by the Company for the Customer.

2. BASIS OF CONTRACT

- 2.1 These conditions shall govern the agreement between the Company and the Customer to the exclusion of any other terms or conditions.
- 2.2 Orders placed by the Customer leading to a contract which is not expressed to be subject to these conditions shall still be subject to them.
- 2.3 These conditions supersede all previous terms and conditions and shall replace any terms and conditions previously notified to the Customer.
- 2.4 No variation to these conditions shall be binding on the Company unless contained in the Company's quotation or agreed in writing by a Director of the Company.

2.5 The Company's employees, sub-contractors and/or agents are not authorised to make any representations or warranties concerning the Products and/or Services unless confirmed by the Company in writing.

2.6 The Customer acknowledges that it does not rely on any representation and/or warranty which has not been made in accordance with these conditions.

3. ORDERS AND CONTRACT

3.1 "Quotations" are not binding or capable of acceptance and are estimates only and shall state the duration of their availability for acceptance. They may be withdrawn by the Company at any time.

3.2 The Company shall have the right to refuse to accept any orders placed for Products and/or Services.

3.3 The Customer shall be responsible for the accuracy of an order and for giving the Company any information necessary for the Company to perform the Contract.

3.4 The Contract between the Company and the Customer shall come into effect on the Company's acceptance of the Customer's order.

3.5 No order shall be deemed accepted by the Company until confirmed in writing by email by the Company.

4. SAMPLES

4.1 The production of any samples for the Customer shall, unless otherwise agreed in writing, be carried out at the cost of the Customer.

4.2 If the Customer approves any sample produced by the Company then the Customer shall have no claim in respect of, nor any right to reject, any Products provided the Products in question are of the same description, quality and fitness for purpose as the sample .

5. DELIVERY

5.1 Dates for delivery and/or performance are estimates only and are not guaranteed. Time is not of the essence in relation to such dates. They are also subject to any matter beyond the Company's reasonable control.

5.2 The Company will use its reasonable endeavours to ensure delivery and/or performance on the dates specified.

5.3 Where Products are to be delivered in instalments or Services are to be performed in stages, each delivery or separate stage shall constitute a separate and distinct contract and failure by

the Company to deliver, or any claim by the Customer in respect of, any stage shall not entitle the Customer to repudiate and/or terminate this Contract as a whole.

- 5.4 The Customer shall have no right to reject Products and/or Services and shall have no right to rescind for late delivery and/or performance unless the due date for delivery and/or performance has passed and the Customer has served on the Company a written notice requiring the Contract to be performed and giving the Company not less than 14 days in which to do so and the notice has not been complied with.
- 5.5 The Customer shall be responsible at its own cost for all arrangements to unload the Products when delivered to the Customer.
- 5.6 If the Customer refuses to take delivery of any Products and/or to allow performance of the Services then the Company shall be entitled to withhold delivery and/or performance of any other Products and/or Services and to treat this Contract as repudiated by the Customer.
- 5.7 If the parties agree that the Products are to be collected from the Company's premises then the Customer shall collect the Products within the timeframe specified by the Company. If the Products are not collected by the Customer within the specified period the Company may despatch the Products to the Customer at the Customer's expense and risk and/or store the Products at the Customer's expense and risk until despatch and/or collection.

6. POSTPONEMENT

- 6.1 The Company may comply with reasonable requests by the Customer for postponement but shall be under no obligation to do so.
- 6.2 Where delivery of the Products/performance of the Services is postponed at the Customer's request then the Customer shall pay all costs and expenses of the Company incurred as a result including reasonable charges for storage, transportation and insurance. In addition the Customer shall be obliged to pay for the Products/Services as if delivery and/or performance had not been postponed.

7. PRICE AND PAYMENT

- 7.1 The price of the Products and/or the Services shall be as quoted to the Customer in accordance with clause 2 or otherwise at the date of the acceptance of the order due to fluctuations in the costs of raw materials.
- 7.2 Except as otherwise stated, prices are DAP (Delivered at Place).
- 7.3 The Company may increase its prices in relation to the Products where the increase is to take account of increases in costs of raw materials suffered by the Company.

- 7.4 Subject to clause 9.1 the Customer may cancel without Liability any Contract in relation to which the price is to be increased provided that the notice of cancellation is received by the Company before the price increase becomes effective.
- 7.5 If the Customer does not cancel the Contract within the specified time period then the price increase shall take effect for the Products and/or Services ordered by the Customer.
- 7.6 The Company's prices are exclusive of any applicable VAT for which the Customer shall additionally be liable.
- 7.7 Payment shall be due from the Customer by no later than the 20th calendar day of the calendar month following the calendar month in which the invoice is dated unless otherwise agreed in writing. Time for payment shall be of the essence.
- 7.8 If the Customer fails to make any payment in full on the due date the Company may charge the Customer any reasonable additional administration costs and/or interest (both before and after judgment) on the amount unpaid at the rate of 8% above the base rate from time to time of the Company's bank. Such interest shall be compounded with monthly rests.
- 7.9 Any monies received by the Company from the Customer may be applied by the Company at its option against any additional administrative costs and/or interest charged prior to application against any principal sums due from the Customer against which it may be applied in any order.
- 7.10 The Company shall be entitled to invoice each delivery of Products and/or stage of the Services separately.
- 7.11 The Customer shall pay all sums due to the Company under this Contract without any set-off, deduction, counterclaim and/or any other withholding of monies.
- 7.12 Payment shall not be deemed to be made until the Company has received either cash or cleared funds in respect of the full amount outstanding.
- 7.13 Payment shall be made by the Customer in the currency specified by the Company on the Company's quotation and/or invoice.
- 7.14 The Company shall be entitled to render an invoice to the Customer any time after the Products have been ordered or during performance of the Services.
- 7.15 If payment in full is not made to the Company when due then the Company may withhold or suspend future or current deliveries of the Products and/or performance of the Services.
- 7.16 If any Services are cancelled or this Contract terminated or delivery and/or performance is suspended before completion of the Services the Company shall be entitled to be paid on a

quantum meruit basis for that part of the Services performed. The Company may invoice the Customer accordingly and such monies shall be immediately due for payment.

8. CREDIT LIMIT

- 8.1 The Company may set a reasonable credit limit for the Customer. Changes in the Customer's credit limit will be notified to the Customer from time to time.
- 8.2 The Company reserves the right to refuse to accept orders and/or to suspend or withhold delivery of Products and/or the performance of the Services if the acceptance of such orders would result in the Customer exceeding its credit limit or the credit limit is already exceeded.

9. CANCELLATION

- 9.1 The Customer may cancel delivery of the Products and/or performance of the Services at any time before the due date for despatch and/or performance as appropriate, on condition that:
- 9.1.1 the Company shall have no Liability to the Customer in relation to any Contract cancelled in accordance with this clause;
- 9.1.2 this right of cancellation does not apply in relation to any bespoke Products; and
- 9.1.3 any cancellation under this clause must firstly be agreed by the Company in writing.
- 9.2 If the Customer purports to cancel this Contract otherwise than in accordance with clause 9.1 above and/or refuses to accept delivery of ordered Products and/or performance of ordered Services the Customer will indemnify and keep indemnified the Company against any and all lost profits, costs (including increased administration costs and legal costs on a full indemnity basis), expenses, damages and any other loss and/or Liability suffered by the Company as a result.

10. SPECIFICATION

- 10.1 The quantity, quality, description, formulae and/or specification for the Products and/or the Services shall be that set out in the Company's quotation (if agreed by the Customer) or the Customer's order (if agreed by the Company) unless otherwise agreed in writing by the parties.
- 10.2 The Customer is responsible for checking the quotation and satisfying itself that any specification given is accurate and adequate for the Products and/or Services.
- 10.3 If there is an error in the specification made by the Company for the Customer then, where that error is material and it has been relied upon by the Customer, the Customer may cancel that part of this Contract which is affected by the error without Liability due to the cancellation.

- 10.4 The Company shall have no Liability for errors in any specification or details supplied by the Customer and the Customer is solely responsible for their accuracy.
- 10.5 The Customer agrees to indemnify and keep indemnified the Company against any and all claims, losses, expenses, proceedings, actions, awards, liabilities, costs (including legal costs on a full indemnity basis and increased administration costs) and any other losses and/or liabilities arising out of the Company's use of specifications and/or formulae supplied by the Customer.
- 10.6 The Company reserves the right to make changes to the specification and/or formulae of the Products as required from time to time by law, applicable safety requirements or manufacturing requirements provided that they do not have a material adverse effect on the quality and/or performance of the Products.
- 10.7 Subject to clause 9.1 if the Company does make changes to the specification or formulae of the Products which have a material adverse effect then the Customer shall have the right to cancel the Contract without Liability.

11. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

- 11.1 All intellectual property rights (including without limitation all patents, copyright, design rights (whether registered or unregistered), trade marks (whether registered or unregistered) skill and/or know-how and other similar rights, whether existing now and/or in the future, wherever existing in the world together with the right to apply for protection of the same) in the Products, their packaging and/or arising from the Services shall be owned by the Company absolutely.
- 11.2 The Customer agrees that, at the Company's cost, it will do all acts and/or things and execute all documents and/or deeds which are necessary or desirable to give effect to clause 11.1 above and/or to assist the Company in the application, registration, renewal and/or protection of such intellectual property rights.
- 11.3 The Company grants to the Customer an non-exclusive royalty-free perpetual licence to use within the Field of Use all intellectual property rights owned by the Company which arise solely from the Services and the Company shall be entitled to use such intellectual property rights in the Field of Use for conducting other research and/or design projects for other customers of the Company.
- 11.4 The Company shall be free to utilise for the benefit of its other customers any skill and/or know-how that it may develop or acquire in the performance of the Services.
- 11.5 Each party agrees with the other that it will keep all confidential business information regarding the other party confidential and not disclose or use such information which may be

disclosed to it or which it may learn except where such information is public knowledge or it is required to be disclosed by law.

12. PROPERTY AND RISK

12.1 Risk in the Products shall pass to the Customer at the time of delivery. Delivery shall be deemed to occur:

12.1.1 at the time when the Products arrive at the place of delivery if the Company delivers the Products by its own transport or it arranges transport; or

12.1.2 after the expiration of 3 working days after the Customer has been notified of it, if the Products are available for collection from the Company in accordance with clause 5.7.

12.2 The Company shall retain title and ownership of the Products until it has received payment in full in cash or cleared funds of all sums due and/or owing for all Products and/or Services supplied to the Customer by the Company under this Contract and any other agreement between the Company and the Customer.

12.3 Until payment in full of the price for all Products supplied to the Customer the Products shall be stored separately from any products or goods belonging to the Customer or any third party and must be clearly marked and identified as being the Company's property. The Customer agrees that the Company's employees and/or agents shall be entitled to enter the Customer's premises to check compliance with this clause.

12.4 Until title in the Products has passed to the Customer the Customer shall keep the Products insured for the price at which the Products were sold to the Customer against all normal risks. The Customer shall account to the Company for any proceeds of such policy of insurance in relation to the Products upon receipt of the same. Any monies received from the Customer by the Company in accordance with this clause shall not discharge the Customer's liability to pay the price for the Product and/or Services plus interest accrued in accordance with clause 7.10 but shall be set off against any such liability.

13. DEFAULT

13.1 If the Customer:

13.1.1 fails to make any payment to the Company when due;

13.1.2 breaches the terms of this Contract and, if the breach is capable of remedy, has not remedied the breach within 14 days of receiving notice requiring the breach to be remedied;

13.1.3 persistently breaches any one or more terms of this Contract;

- 13.1.4 pledges or charges any Products which remain the property of the Company, or ceases or threatens to cease to carry on business, or proposes to compound with its creditors, applies for an interim order under Section 252 Insolvency Act 1986 or has a Bankruptcy Petition presented against it, enters into voluntary or compulsory liquidation, has a receiver, administrator or administrative receiver appointed over all or any of its assets, or takes or suffers any similar action in any jurisdiction;
- 13.1.5 exceed the credit limit set by the Company;
- 13.1.6 appears to the Company due to the Customer's credit rating to be financially inadequate to meet its obligations under the Contract; and/or
- 13.1.7 appears reasonably to the Company to be about to suffer any of the above events;

then the Company shall have the right, without prejudice to any other remedies, to exercise any or all of the rights set out in clause 13.2 below.

13.2 If any of the events set out in clause 13.1 above occurs in relation to the Customer then:

- 13.2.1 the Company may enter, without prior notice, any premises of the Customer (or premises of third parties with their consent) where Products owned by the Company may be and repossess and dispose of or sell any Products found which are owned by the Company so as to discharge any sums due to the Company under this Contract or any other agreement with the Customer;
- 13.2.2 the Company may require the Customer not to re-sell or part with the possession of any Products owned by the Company until the Customer has paid in full all sums due to the Company under this Contract or any other agreement with the Customer;
- 13.2.3 the Company may withhold delivery of any undelivered Products and stop any Products in transit;
- 13.2.4 the Company may withhold the performance of any Services and cease any Services in progress;
- 13.2.5 the Company may cancel, terminate and/or suspend without Liability to the Customer any contract with the Customer; and/or
- 13.2.6 all monies owed by the Customer to the Company shall forthwith become due and payable.

13.3 The Company shall have a lien over all property or goods belonging to the Customer which may be in the Company's possession in respect of all sums due from the Customer to the Company.

13.4 Upon the termination of the Contract for any reason if any monies due to the Company from the Customer have not been paid within 14 days of such termination the Company may sell any property or goods over which it has a lien in accordance with clause 13.3 above (and the Customer agrees that the Company may give good title for such property and/or goods) and shall apply the proceeds of sale firstly in discharging any costs or expenses of sale, secondly in repaying any interest owed by the Customer to the Company, thirdly in payment of any principal sums owed to the Company and fourthly the Company shall account to the Customer for the remainder (if any).

14. LIABILITY (PLEASE READ THIS SECTION CAREFULLY)

14.1 The Company shall have no Liability to the Customer:

14.1.1 for any defect in the Products and/or Services arising from any formula or specification supplied by the Customer;

14.1.2 in respect of any faults arising which are caused by any subsequent chemical damage not due to a defect in the Products and/or Services by the Company; and/or

14.1.3 due to wilful damage, abnormal storage conditions, failure to follow the Company's instructions, misuse or alteration of the Products or any improper maintenance or negligence on the part of the Customer or a third party;

14.1.4 unless any defect is notified to the Company within 24 hours of delivery in accordance with clause 15;

14.1.5 as a result of the Products being handled by customers of the Customer;

14.1.6 where the defect has been caused or contributed to by the Customer to the extent so contributed;

14.1.7 if the price for the Products and/or the Services has not been paid in full by the due date for payment;

14.1.8 for defective Products and/or Services, Products not despatched or Products damaged or lost in transit unless the event is notified to the Company within the appropriate time limit set out in this Contract;

14.1.9 for damage, loss, liability, claims, costs or expenses caused or contributed to by the Customer's continued use of defective Products and/or Services after a defect has become apparent or suspected or should reasonably have become apparent to the Customer;

- 14.1.10 to the extent that the Customer is covered by any policy of insurance and the Customer shall ensure that the Customer's insurers waive any and all rights of subrogation they may have against the Company;
- 14.1.11 for any:
- a) consequential losses;
 - b) loss of profits and/or damage to goodwill;
 - c) economic and/or other similar losses;
 - d) special damages and indirect losses; and/or
 - e) business interruption, loss of business, contracts, opportunity and/or production.
- 14.2 Subject to clause 15 the Customer shall give the Company a reasonable opportunity to remedy any matter for which the Company is liable before the Customer incurs any costs and/or expenses in remedying the matter itself. If the Customer does not do so the Company shall have no Liability to the Customer.
- 14.3 The Customer shall produce to the Company evidence of all acceptance tests carried out in accordance with clause 15.2 together with written details of how the loss was caused by the Company and the steps the Customer has taken to mitigate the loss before the Company shall have any Liability for the claim by the Customer.
- 14.4 The Company shall have no Liability for any matters which are outside its reasonable control.
- 14.5 The Customer shall be under a duty to mitigate any loss, damage, costs or expenses that it may suffer.
- 14.6 The Company's Liability to the Customer in relation to any one claim shall not exceed £2 million. To the extent that any Liability of the Company to the Customer would be met by any insurance of the Company then the Liability of the Company shall be extended to the extent that such Liability is met by such insurance.
- 14.7 Each of the limitations and/or exclusions in this Contract shall be deemed to be repeated and apply as a separate provision for each of:
- 14.7.1 Liability for breach of contract;
 - 14.7.2 Liability in tort (including negligence);
 - 14.7.3 Liability for breach of statutory duty; and

14.7.4 Liability for breach of Common Law.

except clause 14.6 above which shall apply once only in respect of all the said types of Liability.

- 14.8 Nothing in this Contract shall exclude or limit the Liability of the Company for death or personal injury due to its negligence or any Liability which is due to the Company's fraud or any other liability which it is not permitted to exclude or limit as a matter of law.
- 14.9 All warranties, terms, conditions and duties implied by law relating to fitness, quality or adequacy are excluded to the fullest extent permitted by law.
- 14.10 Nothing in this Contract shall exclude or limit any statutory rights of the Customer which may not be excluded or limited due to the Customer acting as a consumer. Any provision which would be void under any consumer protection legislation or other legislation shall to that extent, have no force or effect.
- 14.11 The limitations in this Contract are necessary in order to allow the Company to provide the Products and/or the Services at its current prices.
- 14.12 If the Customer requires greater protection then the Company will agree to modify the limitations and extend its guarantees in return for the payment of a higher price for the Products and/or Services.

15. TESTING

- 15.1 The Company shall retain a sample (**Sample**) of any Product supplied to the Customer under this Contract for testing purposes.
- 15.2 Upon receipt of the Products, the Customer shall have 24 hours to undertake and complete tests in relation to the Products and notify the Company immediately upon discovery of any defective Product.
- 15.3 The Company will undertake tests on its retained Sample of any alleged defective Products provided that the alleged defect is notified to the Company within the timeframe set out in clause 15.2 above.
- 15.4 Any defective Products must be returned to the Company for further testing if requested by the Company before the Company will have any Liability for defective Products. If the Products shall prove to be defective then the Company shall reimburse the Customer for the cost of returning the defective Products.
- 15.5 The Company, if it requests and where reasonable, shall have the right to inspect the subject-matter of any allegedly defective Services at a mutually convenient time, and the Company will not have any Liability for defective Services until it has been allowed to make such inspection.

15.6 If the Products and/or Services prove to be defective following the Company's testing under clause 15.3 and 15.4 above, the Company may at its sole discretion replace, re-perform or refund the price of defective Products and/or Services.

15.7 The Company will at its option either refund the price of or replace free of charge any Products missing from a delivery of Products provided that the missing items are notified to the Company within 24 hours of delivery or, in the event of total non-delivery, this fact is notified to the Company within 5 working days of receipt of the invoice by the Customer.

16. PRODUCT RECALL

16.1 If the Company becomes aware of any defects in the Products that it has supplied to the Customer, a member of the Company's technical staff shall notify the Customer immediately by email and/or telephone to provide all relevant details of the Recalled Products and instructions for remedial action.

16.2 All Recalled Products of the Company shall:

16.2.1 where already delivered to the Customer, be collected and removed from the Customer's premises or place of delivery (as appropriate) at the Company's cost within 2 working days and shall be stored at the Company's or an agreed third party's premises until all parties have conducted tests as necessary; or

16.2.2 where still in possession of the Company and awaiting delivery to the Customer, remain with the Company at the Company's cost at the Company's or an agreed third party's premises until all parties have conducted tests as necessary; and

16.2.3 the Company shall replace Recalled Products at no cost to the Customer within a timescale agreed between the Company and the Customer at the Company's cost on the same terms and at the same price as that agreed in the original Contract; or

16.2.4 the Customer may cancel the Contract without Liability and the Products shall be collected and/or retained in accordance with clauses 16.2.1 and 16.2.2 and the Company shall refund the cost of the Products to the Customer for the Recalled Products at the contracted price in accordance with these conditions.

16.3 The parties shall co-operate fully (including but not limited to providing the Company with full access to any Recalled Products) and provide each other with assistance in relation to the Recalled Products and any subsequent investigations.

16.4 If the Customer implements a product recall in relation to any of its goods which incorporate the Company's Products, the Customer shall inform the Company immediately by telephone and/or email.

16.5 The Customer shall provide the Company's technical staff with full access to all its goods and to the Company's Products upon request.

16.6 The Customer's Recalled Products shall not be destroyed and must remain in suitable storage until investigations are concluded by all affected parties.

17. GENERAL

17.1 The Customer agrees to indemnify and keep indemnified the Company against any and all losses, proceedings, lost profits, damages, awards, expenses, claims, costs (including increased administration costs and legal costs on a full indemnity basis), actions and any other losses and/or liabilities suffered by the Company and arising from or due to any breach of contract, any tortious act and/or omission and/or any breach of statutory duty by the Customer.

17.2 No waiver by the Company of any breach of this Contract shall be considered as a waiver of any subsequent breach of the same provision or any other provision.

17.3 If any provision of this Contract is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of this Contract and the remainder of the affected provision shall be unaffected and shall remain in full force and effect.

17.4 Either party shall have no Liability to the other for any delay in performance of this Contract (other than in relation to payment) to the extent that such delay is due to any events outside the affected party's reasonable control including but not limited to acts of God, war, flood, fire, labour disputes, subcontractor delays, strikes, lock-outs, riots, civil commotion, malicious damage, explosion, governmental actions and any other similar events. If a party is affected by any such event then time for performance shall be extended for a period equal to the period that such event or events delayed such performance.

17.5 The Customer shall not assign its interest in the Contract (or any part) without the written consent of the Company.

17.6 All third party rights are excluded and no third party shall have any right to enforce this Contract.

17.7 Any variation to this Contract must be agreed by the parties in writing.

17.8 This Contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.