

TERMS & CONDITIONS

1. Quotations

a) All quotations are exclusive of freight insurance, port charges, and other costs unless otherwise stated. The quotation shall be deemed to interpret the customer's instructions, both written and verbal. The customer is advised to exercise due care and attention when checking quotations before further work proceeds. The quotation shall lapse unless accepted within 30 days from the date given. b) Quotations are based on current costs and shall be subject to amendment with regards to any cost variations after quotation date. c) Alterations to original specifications of quotation may result in additional charges.

2. Payment

a) All accounts are due for payment on the due date; unless otherwise agreed between Seller and Buyer. b) Failure to pay by due date shall be in breach of trading terms and the Seller in respect to such account, without prejudice to any other rights or remedies it may have, charge penalty (plus GST) interest at a rate as determined by the Seller until the account is paid in full. c) The Buyer agrees to pay all debt recovery costs/expenses incurred by the Seller in relation to any unpaid account including solicitor and/or debt collector. d) Discounts may be removed from overdue accounts. e) For accounts in dispute, the undisputed portion of the account must be paid in full in accordance with the Seller's normal Terms & Conditions. f) If the Seller at any time deems the credit of the Buyer unsatisfactory, it may at any time demand security for payment and may suspend or terminate the contract and payment for all goods delivered up to the date of such suspension or termination shall immediately become payable. g) The Buyer shall not be entitled to withhold payment or to make any deductions from the contract price without prior written consent from the Seller.

3. Risk

a) The risk of any loss or damage to the goods shall be borne by the Buyer from the time when the goods are delivered as defined in Clause 6 hereof. Should the goods remain on the Seller's premises or with a carrier due to failure of the Buyer to accept the goods or at the request of the Buyer, all such risk shall be borne by the Buyer from the date of the Buyer's failure or request as the case may be. b) From date of delivery until ownership of the goods passes to the Buyer, the Buyer shall keep the goods insured against any loss or damage by any means including fire and theft for the full insurable value of the goods and take necessary action to keep such insurance in effect. c) If any of the goods are damaged or destroyed prior to ownership by the Buyer, the Buyer agrees to make a claim against the insurance policy so described in Clause 3(b) above with respect to such damaged or destroyed goods, and the Seller shall be entitled without prejudice to any of its other rights or remedies under the contract to receive all insurance proceeds which are payable in respect thereof.

4. Return of Goods

a) Non standard and custom made goods will not be accepted for return. b) Goods returned for credit due to Seller's error would be accepted freight forward using the original carrier. c) Any goods for any other reason must be unmarked and returned freight paid by the Buyer. The Seller will apply a 10% restocking charge, deducted from the credit.

5. Damaged Goods, Lost in Transit

a) When acknowledging receipt of the goods, the Buyer must qualify the acknowledgment in event of any shortage or damage. b) All claims must be submitted within 7 days of receipt of goods or within 14 days of despatch date in case of non delivery.

6. Delivery

a) Delivery shall be made at the place in the contract, or in the case of sales ex-factory, delivery shall be made at the Seller's premises. b) Delivery will be deemed to have been made in the event of the Buyer's refusal or failure to take or accept delivery. Off-loading of the goods shall be the responsibility of the Buyer. The Seller reserves the right to deliver the goods by installments and each installment shall be deemed to be a separate contract subject to the same conditions as the main contract. Should the Seller make defective delivery of or fail to deliver one or more installments, this shall not entitle the Buyer to repudiate the main contract. c) The Seller will not be liable for any non delivery or late delivery caused by any factors beyond its control and the Buyer will be liable to accept and pay for the goods so delivered within a reasonable time.

7. Contract

The conditions of the contract include the items indicated by the quotation (where the contract arises from a quotation) or the items indicated by the Seller's confirmation of order (where the contract arises from an order by the Buyer) and these Terms & Conditions shall be the conditions of the contract. All other warranties, descriptions, merchantability, representations and conditions as to fitness or suitability or otherwise (whether of a like nature or not), tolerances to any conditions and whether express implied by law, trade custom or otherwise are expressly excluded. No agent or representative of the Seller is authorized to make any representations, warranties, conditions or agreements not expressly set forth in the quotation and the Seller is not in any way bound by any such unauthorised statements nor can any such statement be taken to form part of a contract with the Seller's collateral to the main contract.

8. Property In the Goods

The property in and title of the goods shall remain vested in the Seller until such time as we have been paid all monies due to us by the purchaser. Pending payment, the goods will be held by the Buyer on the Seller's behalf and will be properly stored and secured in an identifiable form. So long as monies remain owing, the Seller may take possession of the goods at any time without notice.

9. Claims

a) All claims and requests for credit must be made within 7 days of invoicing. b) Goods are supplied subject to all conditions, warranties and limitations implied by law, provided that the extent of the Seller's liability is limited to replacement of faulty materials only.

10. Liability

a) The liability of the Seller, whether in contract or in tort for any loss, damage or injury arising directly or indirectly from any defect or non compliance of the goods supplied, is limited to the replacement or repair of such goods or damages not exceeding the invoice value of such defective or non-complying goods at the option of the Seller. b) It is expressly agreed that the Seller shall not be liable for any loss of profits, indirect or special loss, damage or injury of any kind whatsoever suffered by the Buyer either directly or indirectly from any contravention of the Seller's obligations arising under or in connection with the contract or from any cancellation of the contract or from any negligence on the part of the Seller, its servants or agents nor shall the Seller be liable for any loss, damage or injury caused to the Buyer's servants, agents, customers, visitors, tenants, trespassers or other persons whomsoever. The Buyer shall indemnify the Seller against any claim by any of the foregoing persons in respect of loss, damage, or injury arising aforesaid. c) No claim for damages or otherwise in respect of defect or nonconformity of the goods or otherwise shall be effective or enforceable unless written notice thereof is given to the Seller within 7 days of delivery of the goods as defined in Clause 6.

11. Description

Specifications, dimensions and descriptions contained or referred to in the contract or in any brochure or other publications maintained or issued by the Seller are estimates only and it is not a condition of the contract that the goods shall correspond precisely with such specifications, dimensions and descriptions given and customary tolerances or in the absence of customary tolerances, reasonable tolerances shall be allowed.

12. Consumers Guarantees Act

The buyer acknowledges that when the goods are being purchased for resale or for business purposes, the terms and guarantees under the Consumers Guarantees Act 1993 will not apply.

13. Default

If the Buyer:

a) is in breach of any terms and conditions of this contract, and in the case of any default which may be remedied, fails to remedy the same within seven (7) working days of receiving written notice specifying the default or b) Shall have an execution levied against it or become insolvent or bankrupt, or enter or attempt to enter into any composition or arrangement with its creditors or (as in the case of a company) do anything which would render it liable to be wound up or have a receiver appointed over its property or it shall have a winding up order made against it or pass or attempt to pass a resolution for winding up or be party to the appointment of or have a manager or receiver appointed to the whole or any part of its property or undertaking. Then the Seller by written notice may forthwith either suspend or terminate the contract without prejudice to any other right or remedy it has at law or equity; and a) Payment for all goods supplied by the Seller, whether delivered or not, and any other monies payable by the Buyer shall immediately become due; and b) The Seller may enter the premises where any delivered goods are situated and take possession of and remove the same without being responsible for any damages thereby caused and may resell the same and apply the proceeds in or towards payment of outstanding monies. All costs and expenses incurred by the Seller as result of any such action shall be payable by the Buyer upon demand; and c) Any suspension of the contract by the Seller shall not prevent it terminating the contract during the period suspension.

14. Copyright

Any technical information, knowledge or processing methods at any time transmitted in any way by the Seller to the Buyer shall remain the property of the Seller and shall be considered absolutely confidential by the Buyer which shall not use them for any purpose nor sell, transfer or divulge them in any manner to anyone without prior written consent of the Seller and the Buyer shall indemnify and keep the Seller indemnified against all costs, damages and claims arising from the Buyer's failure to comply with the requirements of this clause.

15. Waiver

All the original rights, powers and exemptions and remedies of the Seller shall remain in full force notwithstanding any neglect forbearance or delay in the enforcement thereof. The Seller shall not be deemed to have waived any condition unless such waiver shall be in writing under the signature of the manager or secretary of the Seller and any such waiver unless the contrary shall be expressly stated, shall apply to and operate only in the particular transaction, dealing or matter.

16. Interpretation

This contract is entered into on behalf of and intended to bind and ensure to the benefit of the Seller and the Seller's successors and assigns. The provisions of these conditions of contract, including this one shall be given a large and liberal interpretation in favour of the Seller and so that the Contra Preferentem Rule shall not in any case apply against or to the disadvantage of the Seller. In these Terms & Conditions, the term "the Seller" refers to Permathene Limited and its successors and assigns and the term "the Buyer" refers to the person, firm, company or corporate entity to whom the quotation is submitted or with whom the Seller enters into a contract. In these Terms & Conditions of Sale, the term "the goods" means all goods supplied or agreed to be supplied by the Seller or at the Buyer's request.