**1. GENERAL**

1.1 In these terms and Conditions of sale ("Conditions"): ‘Buyer’ means the person, firm, body or company purchasing the Products; ‘the Contract’ means any contract between Seller and Buyer for the sale and purchase of the Products, incorporating these Conditions; ‘the Products’ means any products to be supplied to Buyer by Seller; ‘Seller’ means Almatis B.V., Theemsweg 30, 3197 KM Rotterdam, the Netherlands.

1.2 Unless otherwise specified, terms defined in the 2010 Edition of INCOTERMS shall have the same meaning when used in the Contract except where variants selected by Seller apply and is deemed to form part of the Contract, provided however that there should be conflict between the applicable INCOTERMS and the provisions of the Contract, the provision of the Contract shall prevail.

1.3 Unless expressly agreed otherwise, these Conditions apply to all sales of the Products by Seller and, with the Contract, contain the entire agreement in connection with the Products. The Contract may not be amended without the written agreement of each party.

1.4 The Contract is on these Conditions to the exclusion of all other terms and conditions express or implied (including any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order, specification or other document).

1.5 Each order for the Products by Buyer shall be an offer by Buyer to purchase the Products and acceptance shall be subject to these Conditions. No order placed by Buyer shall be accepted by Seller until an order confirmation/acceptance is issued by Seller or (if earlier) Seller delivers the Products to Buyer.

1.6 A quotation by Seller does not constitute an offer and Seller reserves the right to discontinue or reprice any quotation at any time prior to Seller’s acceptance of Buyer’s order. Buyer shall promptly supply all information and assistance required for Seller to execute Buyer’s order.

**2. DELIVERY**

2.1 Delivery shall be made to the place(s) and by the method(s) specified on Seller’s order acceptance or, unless otherwise agreed, Ex works (Seller’s plant).

2.2 Delivery or dispatch dates quoted are estimates only and are given or accepted by Seller in good faith, but not guaranteed unless stated to be ‘guaranteed’ in writing.

2.3 If for any reason Buyer does not accept delivery of the Products when they are ready for delivery or Seller is unable to deliver the Products on time because Buyer has not provided appropriate instructions, documents, licences or authorisations, then (a) risk in the Products will pass to Buyer (including for loss or damage caused by Seller’s negligence); (b) the Products shall be deemed to have been delivered; and (c) Seller shall store the Products until delivery and Buyer will be responsible for all related costs and expenses (including storage, insurance and damaged or lost Products).

2.4 If Seller delivers to Buyer a quantity of the Products which is less than the quantity accepted by Buyer, Seller shall not be entitled to object to or reject the Products (or any of them) by reason of the shortage, but shall receive a credit at the price stated in the relevant contract in respect of such shortage.

2.5 Packaging is included in the price and is not returnable unless otherwise stated on Seller’s order acceptance or agreed between the parties.

2.6 The quantity stated on Seller’s description note shall be conclusive evidence of the amount delivered except in cases of manifest error.

**3. PRICE & PAYMENT**

3.1 Unless otherwise agreed by Seller in writing, the prices payable shall be those stated on Seller’s order acceptance invoice and all prices quoted are exclusive of VAT and any other duties, fees and taxes. All sums due to Seller shall be paid in the currency and at the address stated on the relevant invoice.

3.2 If Seller arranges or undertakes the carriage, freight, insurance or any other transportation costs before the Products are ready for delivery, these shall be paid by Buyer in addition to the Contract price and shall not affect the provisions of the Contract as to the passing of risk.

3.3 Payment terms for the Products are as stated on Seller’s order acceptance or invoice.

3.4 Save for any discounts agreed by Seller, Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, or otherwise.

3.5 Buyer shall pay to Seller any sum due pursuant to the Contract hereof, without limiting any other right or remedy available to Seller, and Seller may cancel the Contract or suspend any further deliveries to Buyer; and Buyer will be liable to pay interest to Seller on such sum from the due date or part thereof until payment is made, whether before or after any judgement; and (c) Buyer shall pay to Seller the reasonable costs and expenses incurred by Seller in connection with all actions taken to enforce collection or preserve and protect Seller’s rights hereunder, including without limitation reasonable attorneys’ fees and court costs and other expenses.

**4. RISK AND TITLE**

4.1 Risk in the Products shall pass to Buyer as defined by the applicable INCOTERMS. Seller shall retain ownership of the Products until (a) Seller has received payment in full for the Products; or (b) the Products are mixed with other goods; or (c) Buyer sells the Products at arm’s length to an unrelated third party.

4.2 Unless otherwise stipulated in the applicable INCOTERMS, Buyer shall insure the Products against all usual risks to full replacement value until ownership passes to Buyer. Buyer shall sell, use or part with possession of the Products only in the ordinary course of trading and shall store the Products separately from all other goods and clearly identified as Seller’s property. Any insurance monies received by Buyer in respect of the Products owned by Seller, shall be paid immediately to Seller. In the circumstances described in Condition 6, Buyer may not sell, use or part with possession of the Products and Seller shall be entitled at any time to enter Buyer’s premises and recover and/or sell any of the Products, without prejudice to Seller’s other remedies.

**5. SELLER’S WARRANTY**

5.1 Other than for samples (which are provided “as is” without warranty), Seller warrants that at the time of delivery the Products are sold with good title, are made with sound materials and workmanship and in all material respects with Seller’s current published specification or data sheet for the Products at the time of delivery (the “Seller’s Warranty”).

5.2 Seller does not warrant that the Products are fit for any particular purpose or intended use by Buyer and it is for Buyer to satisfy that the Products are so fit.

5.3 Seller shall not be liable for a breach of any of Seller’s Warranty unless (a) Buyer gives written notice of any incomplete or failed delivery, shortage of weight or quantity or defect to Seller within 14 days of the time when Buyer discovers or ought to have discovered the problem or defect; and (b) Seller is given a reasonable opportunity after receiving the notice to examine such Products and/or to carry out such tests on the Products as Seller may deem necessary. If (to the extent allowed by Seller) Seller returns the Products to Buyer’s place of business at Buyer’s cost for the examination to take place there.

5.4 Seller shall not be liable for a breach of Seller’s Warranty if the defect arises because Buyer failed to follow Seller’s written instructions as to the storage and use of the Products.

5.5 If any of the Products do not comply with Seller’s Warranty, Seller shall, at its option, replace such Products or refund the purchase price of such Products at the pro rata Contract price provided that, if Seller so requests, Buyer shall, at Seller’s expense, return the Products (or the part of such Products) which are defective to Seller.

To the extent permitted by law, if Seller complies with Condition 5.5 it shall have no further liability for a breach of Seller’s Warranty in respect of such Products. Seller does not assume any responsibility for any claims arising as a result of Buyer and Seller as a matter of law.

5.7 Buyer shall promptly notify Seller of any relevant claim, shall comply with Seller’s reasonable requirements to minimise liability and/or avoid further liability, shall (where directed by Seller) take all reasonable steps to mitigate its loss.

5.8 Without prejudice to any other limitation of Seller’s liability (whether effective or not): (a) in no circumstances whatsoever (whether by reason of breach of contract or otherwise) shall Seller be liable for any loss of profits, loss of business, loss of anticipated savings or any indirect or consequential damage or loss of any kind regardless of the negligence of Seller or whether or not Seller has been informed of the possibility of such loss except in case of wilful misconduct by Seller; (b) to the extent permitted by law, Seller’s total aggregate liability in connection with the Products or the Contract is limited to the cost of the Products sold under the Contract (excluding VAT and delivery).

5.9 Seller’s Warranty and Buyer’s remedies hereunder are in substitution for any other warranties, rights, obligations, representations, liabilities, terms or conditions in connection with the Products (including, without limitation, any relating to satisfactory quality, fitness for purpose, conformity with description or sample, care and skill or compliance with representations) which are hereby expressly excluded.

**6. TERMINATION AND SUSPENSION**

6.1 Seller may (without prejudice to its other rights or remedies) terminate with immediate effect or suspend Seller’s performance of the whole or any outstanding part of any Contract or suspend any deliveries if:

(a) Buyer becomes bankrupt or insolvent or if a receiver, administrator or encumbrancer takes possession of any material part of Buyer’s assets or Buyer suffers any foreign equivalent of the foregoing; or

(b) Seller has reasonable grounds for suspecting that an event in Condition 6.1(b) has occurred or will occur or that Buyer has credit issues or that Buyer will not pay for the Products on the due date and so notifies Buyer; or

(c) Buyer has reasonable grounds for believing that Buyer is not in compliance with any national or international trade or customs laws and regulations.

**7. THIRD PARTY CLAIMS AND CONDUCT OF CLAIMS**

7.1 Seller will defend Buyer against any third party claim against Buyer in the country where the Products were supplied alleging that the Products (other than any Products delivered in accordance with a published specification) as such, in the original state sold by Seller, infringe any patent effective in the said country. Subject to conditions in Condition 7.2, Buyer shall notify Seller of any such claim or intended claim in writing.

7.2 Buyer shall not use any trademarks or trade names applied to or used by Seller in relation to the Products in any manner not approved in advance by Seller in writing.

8.1 Seller shall indemnify Seller against any liability (including reasonable attorney’s fees) incurred by Seller from complying with any specification or other instruction of Buyer that is inconsistent with the Products.

8.2 Each party shall promptly notify the other of any relevant claim under the Contract, shall comply with the other’s reasonable requirements to minimise and/or avoid further liability and shall allow the other control of the defence and/or settlement negotiations, on reasonable terms.

**8. FORCE MAJEURE**

8.1 Seller shall not be liable for any failure to comply with the Contract (and in such event Seller’s obligations shall be suspended) related to any circumstances beyond Seller’s reasonable control including, but not limited to, strikes or other labour conflicts, shortage of raw materials, fires, floods, water, unusually adverse weather conditions, plant break-down, fire and expressions, acts of God, war and which prevent Seller from complying with its obligations (including taking all reasonable steps to mitigate its loss) and Seller’s performance of the Contract continues in full force and effect.

9.1 The Contract may not be assigned by Buyer without Seller’s prior written consent. The Contract may be assigned by and performed by any subsidiary or affiliate of Seller or any successor in title by purchase, merger or otherwise, on terms and conditions agreed in writing with Seller. Any such assignment must be notified toSeller in writing. If Seller does not accept such assignment, Seller may immediately terminate the Contract and remain entitled to all rights and remedies under the Contract.

9.2 Seller will defend Buyer against any third party claim against Buyer in the country where the Products were supplied alleging that the Products (other than any Products delivered in accordance with a published specification) as such, in the original state sold by Seller, infringe any patent effective in the said country. Subject to conditions in Condition 7.2, Buyer shall notify Seller of any such claim or intended claim in writing.

**9. MISCELLANEOUS**

9.1 The United Nations Convention on Contracts for the International