

# ALMATIS GENERAL TERMS AND CONDITIONS OF SALE

## 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 Almatiss Limited.
- 1.2 Unless specified otherwise, terms defined in the 2010 Edition of INCOTERMS shall have the same meaning when used in these Conditions. INCOTERMS selected by Seller shall apply and is deemed to form part of the Contract, provided however that should there be conflict between the applicable INCOTERMS and the provisions of the Contract, the provision of the Contract shall prevail.
- 1.3 Unless expressly agreed in writing, 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 withdraw or revise 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 despatch 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 will be deemed to have been delivered; and (c) Seller may store the Products until delivery and Buyer will be responsible for all related costs and expenses (including without limitation storage, demurrage and insurance).
- 2.4 If Seller delivers to Buyer a quantity of the Products which is less than the quantity accepted by Seller, Buyer shall not be entitled to object to or reject the Products (or any of them) by reason of the shortfall, but shall receive a credit note at the pro rata Contract price.
- 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 despatch 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 or 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 to the address stated on Seller's invoice.
- 3.2 If Seller arranges or undertakes the carriage, freight, insurance or any other transportation costs beyond the point of delivery, such costs 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 If Buyer fails to pay Seller any sum due pursuant to the Contract then, without limiting any other right or remedy available to Seller, (a) Seller may cancel the Contract or suspend any further deliveries to Buyer; and (b) Buyer will be liable to pay interest to Seller on such sum from the due date for payment at the annual rate of 8% above the last available BBA (British Bankers' Association) 1-Month Libor rate of the previous month ([www.bba.org.uk](http://www.bba.org.uk)) (or, if such rate is not permitted by law, at the maximum rate allowed by law), accruing on a daily basis 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 appropriate 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 in good faith to an unrelated third party. For the avoidance of any doubt, it is expressly agreed that delivery of the Products to Buyer shall not constitute any ground for passing of ownership of the Products to Buyer.
- 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 held on trust for 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 comply 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 itself 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 Buyer (if asked to do so by Seller) returns such Products to Seller'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 instructions as to the storage or 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 price of such Products at the pro rata Contract price provided that, if Seller so requests, Buyer shall, at Buyer's expense, return the Products (or the part of such Products) which are defective to Seller.
- 5.6 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 exclude or restrict any liability which cannot be excluded or restricted as between 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 loss of profits, loss of use, loss of goodwill, loss of business, loss of anticipated savings or any indirect or consequential losses of any kind regardless of the negligence of Seller or whether or not Seller has been informed of the possibility of such loss;  
(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 has credit issues or fails to take delivery or to pay for the Products by the due date or breaches any other term of the Contract; or  
(b) 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  
(c) 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  
(d) Seller 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 manufactured by a third party or manufactured to Buyer's specification) as such, in the original state sold by Seller, infringe any patent effective in the said country. Subject to Condition 5.8(b), Seller will pay any damages and costs finally awarded against Buyer in respect of such a claim.
- 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.
- 7.3 Buyer shall indemnify Seller against any liability (including reasonable attorneys' fees) incurred by Seller from complying with any specification or other instruction of Buyer relating to the Products.
- 7.4 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 related to any circumstances beyond Seller's reasonable control including, but not limited to, strikes or other labour conflicts, shortage of raw materials or other production resources, unavailability of transportation facilities, plant break-down, fire and explosions, acts of God, war and which prevent or restrict Seller from complying with the Contract. Seller may where reasonable and without liability suspend or terminate all or some of its obligations under the Contract if Seller's ability to fulfil such obligation is materially impaired.

## 9 MISCELLANEOUS

- 9.1 The Contract may not be assigned by Buyer without Seller's prior written consent. The Contract may be assigned to and performed by any subsidiary or affiliate of Seller without notice to or the consent of Buyer, in which event any and all terms, conditions, limitations, exceptions, governing law and jurisdiction provisions as contained in this Agreement shall apply as between Buyer on one part and such subsidiary or affiliate of Seller on the other part.
- 9.2 Each right or remedy of Seller under the Contract is without prejudice to any other right or remedy of Seller whether under the Contract or not.
- 9.3 If any provision of the Contract is found to be invalid or unenforceable it shall have effect to the maximum extent permitted by law, or, if not so permitted, shall be deemed deleted and the remaining provisions shall continue in full force and effect.
- 9.4 Notices must be in writing to Seller's or Buyer's address and shall be deemed delivered on the first working day after sending by hand, courier or (subject to confirmation of transmission) by facsimile.
- 9.5 Failure or delay by Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 9.6 Any waiver by Seller of any breach of, or any default under, any provision of the Contract by Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other Conditions of the Contract.
- 9.7 This Contract shall be governed by and construed in accordance with the laws of Japan and the parties submit to the exclusive jurisdiction of the Tokyo District Court. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

