

Terms and Conditions of Sale

- 1 INTERPRETATION**
1.1 The definitions and rules of interpretation in this condition apply in these conditions.
- Buyer:** the person, firm or company who purchases the Goods from the Company.
- Company:** Biesterfeld Petroplas Limited
- Contract:** any contract between the Company and the Buyer for the sale and purchase of the Goods.
- Quotation:** Any supply of information by the Company (in whatever form and whether written or oral) in relation to the price of goods supplied by the Company.
- Delivery Point:** the place where delivery of the Goods is to take place under clause 5.
- Goods:** any goods agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).
- 1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.3 Words in the singular include the plural and in the plural include the singular.
- 1.4 A reference to one gender includes a reference to any other gender.
- 1.5 Clause headings do not affect the interpretation of these conditions.
- 1.6 The expressions "in writing" and "written" include fax and email transmissions.
- 2 APPLICATION OF TERMS**
2.1 Unless the Buyer is purchasing Goods as a consumer, the Contract shall be on these conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document). If the Buyer is a consumer, nothing in these conditions shall affect the Buyer's statutory rights.
- 2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract even if such document is referred to in the Contract.
- 2.3 These conditions apply to all the Company's sales and no variation to these conditions shall have any effect unless expressly agreed in writing and signed by a director for and on behalf of the Company. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Company which is not set out in the Contract, provided that nothing in this condition shall exclude or limit the Company's liability for fraudulent misrepresentation.
- 2.4 Each order or acceptance of a Quotation for Goods by the Buyer from the Company shall be deemed to be an offer by the Buyer to buy Goods subject to these conditions.
- 2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Goods to the Buyer.
- 2.6 The Buyer shall ensure that all details of its order and any applicable specification are complete and accurate.
- 2.7 Any Quotation is valid for a period of 15 days only, unless otherwise stated, from its date, provided that the Company has not previously withdrawn it.
- 3 CANCELLATION**
3.1 The Buyer shall not be entitled to cancel any order for Goods after the Company has sent its acknowledgement of order to the Buyer.
- 3.2 Notwithstanding any acknowledgement of the Buyer's order, the Company shall be entitled to cancel a Contract without incurring any liability to the Buyer in the event of any delay or failure on the part of the Company's supplier to deliver the Goods to the Company or if the Company's supplier materially increases the cost of the Goods to the Company after the date of the Company's acknowledgement of order to the Customer.
- 4 DESCRIPTION**
4.1 The quantity and description of the Goods shall be as set out in the Company's Quotation or acknowledgement of order.
- 4.2 All samples, drawings, descriptive matter, specifications and advertising and promotional material issued by the Company and any descriptions or illustrations contained in the Company's catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Goods described in them. They shall not form part of the Contract and this is not a sale by sample.
- 5 DELIVERY**
5.1 Any dates specified by the company for delivery of the goods are intended to be an estimate and time for delivery shall not be made of the essence by notice.
- 5.2 Subject to the other provisions of these conditions the Company shall not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence), nor shall any delay entitle the Buyer to terminate or rescind the Contract unless such delay exceeds 180 days.
- 5.3 If for any reason the Buyer fails to accept delivery of any of the Goods when they are ready for delivery, or the Company is unable to deliver the Goods on time because the Buyer has not provided appropriate instructions:
- (a) risk in the Goods shall pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (b) the Goods shall be deemed to have been delivered; and
- (c) the Company may store the Goods until delivery, whereupon the Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).
- 5.4 The Buyer shall at its expense provide adequate and appropriate equipment and manual labour for unloading the Goods at the point of delivery.
- 5.5 The Company may deliver the Goods by separate instalments. Each separate instalment shall be invoiced and paid for in accordance with the provisions of the Contract.
- 5.6 Each instalment shall be a separate Contract and no cancellation or termination of any one Contract relating to an instalment shall entitle the Buyer to repudiate or cancel any other Contract or instalment.
- 6 RISK/TITLE**
6.1 The Goods are at the risk of the Buyer from the time of delivery. Ownership of the Goods shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:
- (a) the Goods; and
- (b) all other sums which are or which become due to the Company from the Buyer on any account.
- 6.2 Until ownership of the Goods has passed to the Buyer, the Buyer shall:
- (a) hold the Goods on a fiduciary basis as the Company's bailee;
- (b) store the Goods (at no cost to the Company) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (c) not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- (d) maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company.
- 6.3 The Buyer's right to possession of the Goods shall terminate immediately if:
- (a) the Buyer enters into any voluntary arrangement or composition with its creditors or institutes or has instituted against it any process or proceedings intended to lead to the appointment of a liquidator, administrator or receiver over the whole or any part of its assets; or
- (b) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it; or
- (c) fails to observe or perform any of its obligations under the Contract or any other contract between the Company and the Buyer; or
- (d) the Buyer encumbers or in any way charges any of the Goods.
- 6.4 The Company shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from the Company.
- 6.5 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7 PRICE**
7.1 Unless otherwise agreed by the Company in writing, the price for the Goods shall be the price set out in the Company's price list published on the date of delivery or deemed delivery.
- 7.2 Unless otherwise agreed, the price for the Goods shall be exclusive of any value added tax and all costs or charges in relation to packaging, loading, unloading, carriage and insurance, all of which amounts the Buyer shall pay in addition when it is due to pay for the Goods.
- 8 PAYMENT**
8.1 Subject to clause 8.2 below, unless otherwise agreed by the Company, payment of the price for the Goods is due not more than 28 days after the date of the Company's invoice.
- 8.2 Should the Buyer be in arrears with the payment terms or should there be reasonable doubts as to the Buyer's solvency or credit rating (which is without limitation assumed in the event that the Company's credit insurer cancels totally or partially the Buyer's credit limit), then the Company is, without prejudice to any of its rights, entitled to require payment in advance for deliveries not yet made and to require immediate payment of any and all Goods arising from the business relation irrespective of whether they have become due or not.
- 8.3 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 8.4 If the Buyer fails to pay the Company any sum due pursuant to the Contract, the buyer shall be liable to pay interest and debt collection costs to the Company.
- 9 QUALITY**
9.1 The Company does not hold out the Goods as being fit for any particular purpose, and any advice given by the Company or agents of the Company as to fitness for any particular purpose will be given in good faith and will not give rise to any liability under contract or tort.
- 9.2 The Company warrants that (subject to the other provisions of these conditions) on delivery, and for a period of 6 months from the date of delivery, the Goods shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 9.3 The Company shall not be liable for a breach of the warranty in 9.2 unless:
- (a) the Buyer gives written notice of the defect to the Company within 7 days of the time when the Buyer discovers or ought to have discovered the defect; and
- (b) the Company is given a reasonable opportunity after receiving the notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business or other location requested by the Company at the Company's cost for the examination to take place there.
- 9.4 The Company shall not be liable for a breach of the warranty in 9.2 if:
- (a) the Buyer makes any further use of such Goods after giving such notice; or
- (b) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods or (if there are none) good trade practice; or
- 9.5 Subject to Clauses 9.3 and 9.4, if any of the Goods do not conform with the warranty in 9.2, the Company shall at its option replace such Goods or refund the price of such Goods to the Buyer.
- 9.6 If the Company complies with 9.5, it shall have no further liability for a breach of the warranty in 9.2 in respect of such Goods.
- 9.7 All warranties, conditions and other terms 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, excluded from the Contract.
- 10 LIMITATION OF LIABILITY**
10.1 The Company's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to the Contract price.
- 10.2 The Company shall not be liable to the Buyer for loss of profit, loss of business, or depletion of goodwill in each case whether direct, indirect or consequential, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.
- 10.3 Nothing in these conditions excludes or limits the liability of the Company:
- (a) for death or personal injury caused by the Company's negligence; or
- (b) for any matter which it would be illegal for the Company to exclude or attempt to exclude its liability; or
- (c) for fraud or fraudulent misrepresentation.
- 11 ASSIGNMENT**
11.1 The Company may assign the Contract or any part of it to any person, firm or company.
- 11.2 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 12 FORCE MAJEURE**
The Company reserves the right to defer the date of delivery or to cancel the Contract or reduce the volume of the Goods ordered by the Buyer (without liability to the Buyer) if it is prevented from or delayed in the performance of the Contract due to circumstances beyond the reasonable control of the Company including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labour disputes, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, provided that, if the event in question continues for a continuous period in excess of [30] days, the Buyer shall be entitled to give notice in writing to the Company to terminate the Contract.
- 13 GENERAL**
13.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.
- 13.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 13.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.
- 13.4 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- 13.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 13.6 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law, and the parties submit to the exclusive jurisdiction of the English courts.
- 14 COMMUNICATIONS**
14.1 All notices to be sent under the Contract shall be in writing and delivered by hand or sent by pre-paid first class post, fax or email:
- (a) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
- (b) (in the case of the communications to the Buyer) to its registered office (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall be notified to the Company by the Buyer.
- 14.2 Communications shall be deemed to have been received:
- (a) if sent by pre-paid first class post, two days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting); or
- (b) if delivered by hand, on the day of delivery; or
- (c) if sent by fax or by email on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.
- 14.3 Communications addressed to the Company shall be marked for the attention of the Managing Director.