

ETHIMEX SA

GENERAL TERMS AND CONDITIONS OF PURCHASE

1) Interpretation:

- a) The following definition and rules of interpretation shall apply:
- b) The Buyer: Ethimex SA as specified in contract.
- c) The Seller: the person, firm or company who sells the Product to the Buyer. Should the sales of the Product be made through an agent of the Seller, then such agent, as well as the principal, shall be bound by, and liable for all obligations as fully and as completely as if the agent were itself the principal, whether such principal be disclosed or undisclosed, and whether or not such agent purports to contract as agent only. Both principal and agent shall each be deemed to be a Seller for the purposes of the Contract.
- d) The contract: any contract between the Seller and the Buyer for the sale and purchase of product.
- e) The Product: any goods agreed in the Contract to be supplied to the Buyer by the Seller (including any part or parts of them)
- f) Trade and Shipping terms (i.e EXW, CIF, CFR, FOB, DAF, DES ect) shall have the meanings ascribed thereto in Incoterms 2000 (as amended from time to time) unless otherwise specifically indicated in the Contract.

2) Application of Terms:

- a) These Terms and Conditions shall apply to all the Buyer's purchases of Product and any variation of these Terms and Conditions and any representations about products shall have no effect unless expressly agreed in writing and signed by a Director of the Buyer.
- b) The Contract shall be deemed to incorporate these Terms and Conditions to the exclusion of all other Terms and Conditions (including any Terms and Conditions which the Seller purports to apply under any sales order, confirmation of order, specification or other document).
- c) No Terms or Conditions endorsed on, delivered with or contained in the Seller's sales order, confirmation of order, specification or other document shall form

part of the Contract simply as a result of such document being referred to in the contract.

3) Description / Quantity / Quality:

- a) The quantity, quality and description of the Product shall be as set out in the Contract.
- b) The quantity and quality of the Product delivered to the Buyer shall be determined as agreed in the Contract. If no method of determination is specified the delivered quantity and quality shall be determined by a method chosen by the Buyer in his absolute discretion and shall be binding on both parties.

4) Price:

- a) The purchase price of the Product is a fixed price as set up in the Contract and cannot be varied or modified without the express written agreement of the Buyer.

5) Payment:

- a) The payment terms, including the method of payment and any payment documents required to be presented by the Seller, are as set out in the Contract.
- b) In respect of any payment not made in full by the due date the Seller shall have the right to require the Buyer to pay interest on any unpaid amount at the rate of 5% p.a.
- c) The Seller acknowledge that in respect of all amounts due under the Contract the Buyer shall be entitled to assert any credit, set-off or counterclaim against the Seller in order to justify withholding payment of any such amount in whole or in part.

6) Delivery:

- a) Time is of the essence and save where delivery is prevented, delayed or hindered by reason of force majeure the Seller will comply with all delivery dates and times specified in the Contract.
- b) Should the Contract provide for the Product to be delivered by any way of installments and the Product delivered under one installment is damaged, off-specification or short-delivered the Buyer shall be entitled to refuse to accept any further deliveries from the Seller until the defective or short delivered Product has been replaced, remedied or the deficiency made good.

7) Risk:

- a) Unless otherwise provided in the Contract risk passes in accordance with the provisions of Incoterms 2000 (as amended from time to time).

8) Title:

- a) Unless otherwise provided in the Contract title and property in the Product, including full legal and beneficial ownership, shall pass to the Buyer on delivery or upon payment of the purchase price being made by the Buyer to the Seller, whichever occurs earlier.
- b) **Claims/Liability:**
- c) The Seller acknowledge that it shall be liable to the Buyer for any pure economic loss or expenses, loss of profit or anticipated profit, loss of business or use or commercial opportunity, depletion of goodwill or market reputation or otherwise, in each case whether direct, indirect or consequential, and/or for any claims consequential compensation whatsoever (howsoever caused) whether or not foreseeable which arise out of/or in connection with a breach of the Contract terms by Seller.

9) Force Majeure:

- a) Neither Seller nor Buyer shall be liable for damages or otherwise for any failure or delay in performance of any obligation hereunder other than the obligation to make payment, where such a failure or delay is caused by force majeure, being any event, occurrence or circumstance whatsoever which is reasonably beyond the control of that party namely: failure or delay caused by or resulting from act of God, war (declared or undeclared) or the threat or apprehension thereof, act of terrorism, riot, civil disturbance, strike, lockout, fire, explosion, embargoes, destruction of the Product, government regulation/restriction, delay of carrier due to breakdown or adverse weather, peril of the sea, breakdown of machinery and plant or severe adverse weather conditions.
- b) If either party is completely prevented in the performance of any of its obligations under the Contract by a force majeure event that party will forthwith serve notice in writing on the other party specifying the nature and extent of the circumstances giving rise to force majeure. The existence and duration of the force majeure event shall be evidenced by a Certificate issued by the Chamber of Commerce of the country in which the event is claimed to have occurred.
- c) If under the Contract terms the Product is to be delivered by way of a single delivery and the performance of the Contract is delayed for 40 days or more due to a force majeure event either party may give written notice to the other party to cancel the Contract in which case neither party will have any liability to the other except for those rights and liabilities which accrued prior to such

cancellation. Unless and until such written notice is given the Contract will continue in full force effect. The existence and duration of the force majeure event shall be evidenced by a Certificate issued by the Chamber of Commerce of the country in which the event is claimed to have occurred.

- d) However if under the Contract terms Product is to be delivered by two or more installments and one of the installments under the Contract hindered or delayed for 40 days or more due to a force majeure event either party may give written notice to other party to cancel the installment which is affected by force majeure in which case neither party will have any liability to the other for that installment and all remaining installments will continue to be made pursuant to the terms of the Contract. The existence and duration of the force majeure event shall be evidenced by a Certificate issued by the Chamber of Commerce of the country in which the event is claimed to have occurred.

10) Assignment:

- a) Neither party shall be entitled to assign the contract or any part of it without the prior written consent of the other.

11) Liquidation:

- a) Without limiting any other rights that may be available to the Buyer in the event that the Seller or any guarantor hereunder of the Seller:
- b) Is the subject of a bankruptcy, insolvency or other similar proceedings or fails to pay its debts generally as they become due or,
- c) fails to pay or perform, when due, any obligation to the Buyer (including, without limitation, failure to make payment as required under this Contract or to provide any margin or other security it is obligated to provide) whether under this Contract or otherwise or,
- d) fails to provide adequate assurance of its liability to perform all of its outstanding obligations to the liquidating party under this Contract or otherwise within 48 hours (but at least one business day) of demand therefore when the liquidating party has reasonable grounds for insecurity;
- e) then in any such event (each, a "Default") the Buyer shall have the right, exercisable in its sole discretion and at any time, to terminate and liquidate this and any or all other contracts then outstanding between the parties by declaring any or all such contract terminated (whereupon they shall become automatically terminated, except for the payment obligation referred to below), calculating its losses and cost (or gains) at such time in Pounds Sterling which the Buyer incurs as a result of the termination and liquidation of such transaction(s) (other than

consequential damages) including (at the election of the Buyer) costs which such party incurs as a result of its maintaining, terminating and/or re-establishing any hedge or related trading positions (as determined by the Buyer in a commercially reasonable manner), and netting such losses and costs (or gains) to a single liquidated settlement payment that will be due and payable upon demand therefore by the party owed such payment.

- f) The Buyer's rights under this clause are in addition to, and not in limitation or exclusion of, any other rights which the Buyer may have (whether by agreement, operation law, in equity or otherwise). If a default occurs, the Buyer may (at its election) from time to time set off any or all amounts which the defaulting party owes to it (whether under this Contract or otherwise and whether not then due), provided that any amount not then due which is included in such setoff shall be discounted to present value as at the time of setoff to take account of the period between the date of setoff and the date on which such amount would have otherwise been due.
- g) After a default, the Seller shall be responsible for all costs and expenses incurred by the Buyer as a result of that default (including, without limitation, reasonable legal fees and disbursements).

12) Governing Law and Jurisdiction:

- a) The construction, validity and performance of the Contract shall be governed in all respect by English Law.
- b) The parties to the Contract irrevocably submit to the exclusive jurisdiction of High Court of Justice in London in respect of any and all disputes arising out of or in connection with the Contract.
- c) However the Buyer shall not be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court.

13) Miscellaneous:

- a) If any position of the Contract is declared to be wholly or partly invalid, void, void able, illegal, unenforceable or unreasonable the remainder of the Contract (and of such provision) shall not be affected except to the extend necessary to delete such invalidity, void ness, void ability, illegality, enforceability or unreason ability.
- b) Failure or delay by the Buyer 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.

- c) Any waiver by the Buyer of any breach of, or any default under, any provision of the Contract by the Seller shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.
- d) Each of the parties to the Contract shall be responsible for obtaining all consents, authorizations, approvals and assurances of whatsoever nature necessary to enable it to comply with its obligations under the Contract.
- e) The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contract (Rights of Third Parties) Act 1999 by any person who is not a party to the Contract.
- f) The United Nations Convention on Contracts for the International Sale of Goods of Vienna April 1980, shall not apply to the Contract.