

# ETHIMEX SA

## GENERAL TERMS AND CONDITIONS OF SALES

### 1) Interpretation:

- a) The following definition and rules of interpretation shall apply:
- b) The Seller: Ethimex SA as specified in contract.
- c) The Buyer: the person, firm or company who purchases the Product from the Seller. Should the Product be ordered by an agent, then such an 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 buyer 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 Seller (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 Seller's sales 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 Seller. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of the Seller which is not set out in the Contract.
- 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 Buyer purports to apply under any purchase order, confirmation of order, specification or other document).
- c) 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 simply as a result of such document being referred to in the contract.

- d) Each order or acceptance of a quotation for the Product by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase the Product subject to these Terms and Conditions.
- e) No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of the order is issued by the Seller or (if earlier) the Seller delivers the Product to the Buyer.
- f) The buyer shall ensure that the Terms of its order and any applicable specification are complete and accurate. Any quotation given by the Seller is given on the basis that no Contract shall come into existence until the Seller dispatches an acknowledgement of order to the Buyer. A quotation, including as to price, can be varied or withdrawn by the Seller at any time.

### **3) Description / Quantity / Quality:**

- a) The quantity, quality and description of the Product shall be as set out in the Contract. The Seller otherwise makes no warranties of description, quality and fitness for purpose and (save to the extent that exclusion thereof is not permitted or is ineffective by operation of law). All statutory or other conditions or warranties, express or implied, with respect to the description or satisfactory quality of the Product or its fitness for any particular purpose or otherwise are hereby excluded.
- b) If for any reason whatsoever the quantity of the Product available to the Seller is insufficient to meet the quantity specified in the Contract the Seller may by written notice to the Buyer reduce the quantity of Product to be delivered to the Buyer under Contract.
- c) 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 Seller in his absolute discretion and shall be binding on both parties.

### **4) Price:**

- a) The price of the Product is that set out in the Contract. However the Seller may at any time give written notification to the Buyer of an increase in the stated price if the Seller's costs have increased since the date the Contract was entered into (e.g. increased material cost, increase import or export duties and/or taxes). If the price increase amounts to more than 15% of the total Contract price the Buyer may by giving written notification to the Seller within 14 days of receiving notification of the price increase cancel the Contract in respect of any Product quantities not yet delivered.

## **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 applicable under the Late Payment of Commercial Debts (Interest) Act 1998 and any Regulations issued pursuant to that Act.
- c) Any expenses incurred by the Seller, including but not limited to reasonable legal fees, court fees and collection agency fees, caused by the delayed or non-payment by the Buyer of the amount(s) due shall be for the account of the Buyer and payable upon demand with supporting documentation.
- d) All amounts due under the Contract shall be paid in full without any deduction or withholding other than as required by law and the Buyer shall not 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) Save where delivery is prevented, delayed or hindered by reason of force major and save as provided in 6.2 below the Seller will comply with all delivery dates and times specified in the Contract.
- b) Where the Contract provides for deliveries by installments if the Buyer fails to pay for any delivery in accordance with the terms of the Contract, the Seller may withhold future installment deliveries until the Buyer pays for the deliveries already made.
- c) If Product delivered to the Buyer is damaged, off-specification or short delivered the Seller shall have the option to replace the damaged or off-specification Product or remedy the short delivery:
  - i) with a subsequent installment if the Contract provides for deliveries by installments or,
  - ii) within a reasonable time if the Contract does not provide for deliveries by installments or it was the last installment delivered under the Contract terms.
- d) Where the Contract provides for deliveries by installments then if the Product delivered under an installment is damaged, off-specification or short delivered the Buyer shall not be entitled to refuse to accept further deliveries from the Seller made pursuant to the terms of the Contract.

**7) Title:**

- a) Notwithstanding delivery and the passing of risk in the Product, title and property in the Product, including full legal and beneficial ownership, shall not pass to the buyer until the Seller has received in cash or cleared funds payment in full for all Product delivered to the Buyer under the Contract and any other goods delivered to the Buyer under all other Contract between the Seller and the Buyer for which payment of the full price there under has not been paid. Payment of the full price shall include the amount of any interest or other sum payable under the terms of the Contract or any other Contract between the Buyer and the Seller under which the Product or other goods were delivered.
- b) The Buyer acknowledge that he has custody and/or possession of the goods solely as bailed until such time as the Seller has received in cash or cleared funds payment in full for all the Product delivered to the Buyer under the Contract and any other goods delivered to the Buyer under all other Contract between the Seller and the Buyer for which payment of the full price there under has not been paid.
- c) Pending the Buyer acquiring title and property in the Product if so required by the Seller, the Buyer will keep the Product separate and apart from other goods and identified as the Seller's goods.
- d) The Seller may for the purposes of recovery of the Product enter the Buyer's premises in where the Product is stored or thought to be stored and reposes the same.
- e) Pending making payment in full pf the purchase price for the Product, the Buyer may deal with the Product only by way of resale in the ordinary course of its business but this authority shall automatically terminate if the Buyer fails to pay by the due date the purchase price of the goods or if the Buyer shall enter into any composition or arrangements with its creditors or if any distress or execution is levied upon any goods or property of the Buyer or if the Buyer commits any act of bankruptcy or if being an incorporated company shall have a receiver appointed of the whole or any parts of its undertaking or assets or shall pass a resolution for winding up (except solely for the purpose of amalgamation or reconstruction) or a Court shall make an order to that effect or if not being an incorporated company shall have a receiving order made against it or if the Seller gives to the Buyer written notice terminating such authority.
- f) If the Buyer's authority to resell is so terminated, the entire Product in the possession, custody or under the control of the Buyer whether paid for or not shall be returned to the Seller who may enter any premises where the same maybe to repossess them.
- g) The Seller shall be under no duty to effect or resell at any particular value or price the Product so repossessed but if it does resell, any surplus remaining after satisfaction of the price payable as between Buyer and Seller including any legal

expenses incurred by the Seller in the exercise of it's under this clause shall be paid to the Buyer.

- h) In the event that the Buyer shall sell or otherwise dispose of the goods prior to the receipt of the price thereof by the Seller such sale or disposal shall be deemed to be a sale or disposal on behalf of the Seller and the proceeds of any such sale disposal shall be held by the Buyer in trust for and on behalf of the Seller.
- i) The proceeds derived from any such sale or disposal as mentioned in above at 8.8 shall be paid into a separate and readily identifiable bank account until the purchase price of all the Product delivered to the Buyer under the Contract and any other goods delivered to the buyer under all other Contract between the Seller and the Buyer for which payment of the full price there under has not been paid has been satisfied.
- j) The Buyer, if so required by the Seller, shall within 5 days of being so required, assign to the Seller the benefit of any Contract by which the Product was sold or disposed by the Buyer.

**8) Limitation of Liability:**

- a) The Seller'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.
- b) In addition the Seller shall not 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, or any claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract whether or not foreseeable.
- c) In the event that the Seller fails or is delayed in carrying out in full or in part any of its obligations under the Contract the Buyer is precluded from requesting a court to order specific performance from the Seller.
- d) The provisions of this subsection shall continue to apply notwithstanding the termination or expiry of the Contract for any reason whatsoever.

**9) Administrative Accompanying Document ("AAD"):**

- a) The Buyer shall ensure that upon the Product being delivered a receipted/stamped Folio 3 of the Administrative Accompanying Document ("AAD") (or other relevant document) is returned as soon as possible and within a period of 28 days, or such other period as the Seller may in writing specify, to the Consignor named in the "AAD".

- b) In the event the Buyer fails to comply with Clause 10.1 the Buyer shall upon written demand being made by the Seller immediately reimburse in full to the Seller any and all payments which the Seller has paid and/or has liability to pay:
- c) to the Competent Authority at dispatch named in the "AAD" in respect of fines and/or excise duty or;
- d) to any other party in order to reimburse that party for any fines and/or excise duty which it has paid and/or liability to pay
- e) arising out of and/or in connection with and/or as a result of the "AAD" not being returned within the required time or at all.

**10) 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, including without prejudice to the generality of the foregoing, failure or delay caused by or resulting from act an of Gad, 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, default of or delay by suppliers or sub-contractors, unavailability of raw materials, government regulation/restriction (however for the avoidance of doubt this does not include an increase of import or export duties or taxes), delay of carrier due to breakdown or adverse weather conditions or unavailability of means of transport or transportation facilities.
- b) Such force majeure shall not excuse the Buyer's obligation to make payment for Product already delivered.
- c) 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.
- d) However if under the Contract terms Product is to be delivered by installments and one of the installment under the Contract is hindered or delayed for 40 days or more due to a force majeure event either party may give written notice to other party 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 installment will continue to be made pursuant to the terms of the Contract.

**11) Assignment:**

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

## 12) Liquidation:

- a) Without limiting any other rights that may be available to the Seller in the event that the Buyer or any guarantor hereunder of the Buyer:
- 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 Seller (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 Seller under this Contract or otherwise within 48 hours (but at least one business day) of demand therefore when the Seller has reasonable grounds for insecurity;
- e) then in any such event (each, a "Default") the Seller 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 Seller incurs as a result of the termination and liquidation of such transaction(s) (other than consequential damages) including (at the election of the Seller) costs which have been incurred as a result of its maintaining, terminating and/or re-establishing any hedge or related trading positions (as determined by the Seller 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 Seller's rights under this clause are in addition to, and not in limitation or exclusion of, any other rights which the Seller may have (whether by agreement, operation law, in equity or otherwise). If a default occurs, the Seller may (at its election) from time to time set off any or all amounts which the Buyer 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 Buyer shall be responsible for all costs and expenses incurred by the performing party as a result of that default (including, without limitation, reasonable legal fees and disbursements).

### **13) Claims:**

- a) Any claim by the Buyer against the Seller shall notify to the Seller in writing as soon as practically possible and in any event within 10 days of delivery failing which any such claim shall be deemed to be waived and absolutely barred. The Buyer shall not use or commingle the Product prior to bringing any claim against the Seller and for a period of 10 days thereafter and shall allow, if so required by the Seller, the Product to be inspected by a surveyor appointed by the Seller during this period.

### **14) 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 Seller shall not be precluded from pursuing arrest, attachment and/or other conservatory, interlocutory or interim actions in any court.

### **15) Miscellaneous:**

- i) 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 Seller 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 Seller 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.
- 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.

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