

TERMS AND CONDITIONS OF SALE

Article n° 1: Definitions.

“**Buyer**” means the person or entity acquiring Goods from Seller.
“**Contract**” means these Terms and Conditions and any and all Orders accepted from time to time subject to these Terms and Conditions.
“**Goods**” means goods to be supplied to Buyer by Seller.
“**Intellectual Property Rights**” means all patents, registered and unregistered designs, copyrights, trademarks, know-how and other forms of intellectual property, wherever in the world enforceable.
“**Parties**” means Buyer and Seller, collectively.
“**Order**” means an offer by Buyer to purchase Goods from Seller, as the same may be modified by Change Orders that become effective from time to time in accordance with these Terms and Conditions.
“**Seller**” means Dysol SOCOMORE.

Article n° 2: General.

2.a. These Terms and Conditions shall apply to any sale of Goods by Seller to Buyer to the exclusion of all other terms and conditions referred to, offered or relied on by Buyer at any stage in the dealings between the Parties, including, but not limited to, any standard or printed terms tendered by Buyer, and shall supersede all prior representations or arrangements and contain the entire agreement between the Parties in connection with the sale of Goods to Buyer, except as provided in the immediately following sentence. Any variation to these Terms and Conditions (including any special terms and conditions agreed between the Parties) shall be inapplicable unless agreed to in writing by Seller.
2.b. Any description given or applied to Goods is given by way of identification only, and the use of such description shall not constitute a sale by description. Without limiting the foregoing, pictures and texts appearing in Seller’s catalogues, leaflets and other business documents or appended to Offers are for informational purposes only, and are not contractually binding. In delivering any Offer to Seller, Buyer affirms that it does not in any way rely on any description in contracting to purchase Goods from Seller.

Article n° 3: Acceptance.

An Order will be deemed accepted by Seller upon the first of the following to occur: (a) Seller making, signing, or delivering to Buyer any letter, form, or other writing or instrument acknowledging acceptance; or (b) any performance by Seller under the Order. The date of deemed acceptance of an Order pursuant to this paragraph is referred to as the “Order Date.”

Article n° 4: Change Order.

Buyer may, from time to time, request changes to an Order by issuing to Seller written notices (each, a “Change Order”) that alter, add to, or deduct from Goods, and Seller will comply with the terms of a Change Order, subject to the following:
4.a. In no event shall Buyer be entitled to effectuate a change to material of manufacture, sources of supply, manufacturing process or location, without the prior written consent of Seller.
4.b. If any Change Order would cause a material increase or decrease in Seller’s costs or time of performance, Seller promptly shall notify Buyer, and the Parties shall work in good faith to negotiate a pricing adjustment. If the Parties cannot agree to a pricing adjustment within thirty (30) days after Buyer’s initial submission of the Change Order (the “Price Renegotiation Period”), then Buyer shall have the option of withdrawing the Change Order or cancelling the Order. If Buyer elects to cancel the Order, such election must be in a writing delivered to Seller, and such cancellation shall not affect Buyer’s obligation to pay for Goods delivered prior to cancellation. If Buyer fails to deliver written notice of cancellation within five (5) days after expiration of the Price Negotiation Period, then Buyer’s Change Order shall be deemed withdrawn, and Buyer shall have no further cancellation right.
4.c. A Change Order shall not affect Buyer’s obligations to pay for Goods delivered prior to the submission of the Change Order to Seller.

Article n° 5: Price and Payment.

5.a. Except as provided in this subparagraph, the Price (herein so called) for Goods shall be Seller’s price applicable to such Goods on the Order Date and shall be designated in U.S dollars and calculated before taxes. As a result, they shall be increased by any sales, use, excise taxes or similar taxes, the VAT rate (if applicable) and by duties, fees, carriage and other costs applicable as of the Order Date (collectively, “Costs”). Seller reserves the right to change its pricing at any time, and unless the Order states that pricing shall be fixed, Seller may increase prices for undelivered balances in accordance with pricing increases occurring after the date of acceptance of the Order but before dispatch.
5.b. The Minimum Price (herein so called) for any Order shall be 500 €, before Costs, regardless of the nature of the Goods sold. It is agreed that if Buyer submits an Order for Goods aggregating to less than the Minimum Price, the Minimum Price (plus Costs) will be charged.
5.c. Credit terms may be offered subject to satisfactory credit vetting of Buyer by Seller, but the offer of credit will be at the sole discretion of Seller. Where credit is offered, payment of the Price plus Costs shall be due within thirty (30) days of the date of the invoice supplied by Seller, unless otherwise agreed in writing by Seller. In cases where credit is not offered, payment will be required before release of Goods or provision of Services by Seller.
5.d. Payment shall be made by cheque, draft, promissory note or bank transfer. No discounts will be granted in the event of early payment.
5.e. Any overdue invoice automatically shall bear interest, day to day from the due date until the date of payment, at the highest rate permissible by applicable law. In addition, in the event of any late payment, Buyer automatically shall owe fixed compensation to cover Seller’s collection costs, in an amount of 40 €.
5.f. If Buyer does not tender payment to Seller on or before the date upon which such payment is due, Seller reserves the right to: (i) require payment in advance of delivery in relation to any Goods not previously delivered; (ii) refuse to make delivery of any undelivered Goods without incurring liability to Buyer for non-delivery or delay in delivery; and/or (iii) refuse any Change Order submitted with respect to an existing Order or any subsequent Order tendered by Buyer.

Article n° 6: Delivery.

6.a. Unless otherwise agreed by the Parties in writing, delivery of Goods shall be made at the address specified by Buyer on, or as close as possible to, the date required by Buyer. Delivery dates quoted by Seller are provided by Seller in good faith but are not guaranteed unless so stated in writing. Delivery dates not guaranteed as provided in the immediately preceding sentence are given for informational purposes only and are not binding on Seller.
6.b. Partial deliveries are permitted unless otherwise stated in an Order accepted by Seller in accordance with these Terms and Conditions.

6.c. Buyer shall make all arrangements necessary to accept delivery of Goods whenever they are tendered (it being acknowledged that Seller may make early delivery where reasonable). If Seller is unable to deliver Goods because of actions or circumstances under the control of Buyer, then Seller shall be liable for any costs incurred by Seller as a result. Without limiting the foregoing, Seller shall be entitled to place Goods in storage until such time as delivery may be effected, and Buyer shall be liable for Seller’s storage expenses. Buyer is responsible for unloading.
6.d. Deliveries are made “ex works,” such that the transfer of risks for Goods sold by Seller takes place upon the delivery of the Goods to Buyer’s carrier or upon exit from Seller’s warehouse. Buyer’s, or its carrier’s, receipt shall be conclusive evidence of delivery. The weight or quantity stated on Seller’s dispatch note shall be conclusive evidence of the amount of Goods delivered, except in cases of manifest error.

Article n°7: Cancellation, Returns and Restocking.

7.a. Once accepted by Seller, an Order can only be cancelled: (i) in accordance with the terms of Subparagraph 4(b) above; or (ii) with Seller’s written consent and on terms that will indemnify Seller against loss.
7.b. All Goods are sold to Buyer on a “firm sale” basis, i.e., Seller will not take back any Goods without Seller’s prior written agreement. If Buyer accepts a return in accordance with this Paragraph 7, the following terms shall apply.
7.b.i. Returns must be made by Seller’s designated carrier, but Buyer will be responsible for ensuring that returned Goods are carefully packaged to avoid any damage in transit. Seller will not be obligated to accept any Goods that are damaged in any way, and any credit for returns accepted by Seller in writing shall only be given for Goods in saleable condition.
7.b.ii. Return costs shall be borne by Buyer, unless an apparent defect in Goods (a “Defect”) or a shortage in Goods (a “Shortage”) is acknowledged by Seller. If Seller acknowledges a Defect or Shortage and proceeds within a reasonable time to replace the defective Goods or deliver the missing Goods, then Buyer shall have no further recourse against Seller with respect to the Defect or Shortage. Buyer agrees not to grant discharge to the carrier of Goods before making sure that Goods are in complete and perfect condition. Any Defect or Shortage must be reported to Seller within seven (7) days of receipt of the Goods by Buyer.
7.b.iii. If Seller accepts a return other than in connection with a Defect or Shortage acknowledged by Seller, a restocking charge equal to 25% of the invoice total will apply, plus freight charges at cost.

Article n°8: Title Transfer.

Notwithstanding that risks associated with Goods transfer to Buyer “ex works,” title to Goods delivered pursuant to an Order does not transfer to Buyer until Seller receives the Price plus Costs for such Goods, together with any other amounts that become due and owing under the Contract. As such, until title to Goods transfers to Buyer in accordance with the immediately preceding sentence:
8.a. Buyer shall hold the Goods on a fiduciary basis as bailee for Seller and shall store the Goods (at no cost to Seller) separately from all other goods in Buyer’s possession and marked in such a way that they are clearly identified as Seller’s property.
8.b. Buyer shall insure and keep insured the Goods in an amount equal to the Price plus Costs for such Goods against “all risks” (to Seller’s reasonable satisfaction), and, upon request of Seller, deliver proof of such insurance coverage in form and content reasonably acceptable to Seller.
8.c. Buyer shall not pledge, grant a security interest in, or otherwise encumber any of the Goods which remain titled in Seller.
8.d. Buyer may sell or use the Goods in the ordinary course of Buyer’s business at full market value, but for the account of Seller. Any such sale or dealing shall be a sale or use of Seller’s property by Buyer on Buyer’s own behalf, and Buyer shall occupy the role of principal in such sales or dealings. Until title to Goods passes from Seller in accordance with this Paragraph 8, the entire proceeds of sale of those Goods shall be held in trust for Seller and shall not be commingled with other funds but, rather, shall be segregated and identified as Seller’s funds.
8.e. Upon a default by Buyer in its obligations owed to Seller, Buyer shall upon request deliver up such of the Goods as remain in the possession of Buyer, and if Buyer fails to do so, Seller may enter upon any premises owned, occupied or controlled by Buyer where the Goods are situated and repossess the Goods. The Contract shall serve as a security interest for purposes of the Uniform Commercial Code (“UCC”), reserving in Seller a security interest until Seller has received payment in full (and the terms of the UCC shall govern in the event of an inconsistency between the UCC and the Contract)

Article n°9: Seller’s Warranty; Limitations on Liability.

Seller warrants its packaging of the Goods to be in compliance with applicable governmental specifications for shipments. Seller warrants the Goods to be free from defects in material and workmanship under normal use and service, not arising from misuse, negligence or accident, by Buyer, its agents and employees. Seller’s obligations under this warranty are limited to remedying any deficiencies in the Goods at such place or places as may be designated by Seller. This warranty shall pertain to any Goods to which Buyer has, within one (1) year following delivery of such Goods to Buyer, its nominees or the carrier, as the case may be, given written notice of claimed defects to Seller. Buyer shall be required to furnish Seller with details of such defects and this warranty shall be effective as to such Goods which Seller’s examination shall disclose to its satisfaction to have been defective and which at Seller’s option promptly shall be returned to Seller or its nominees. THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL THE SELLER BE LIABLE TO THE BUYER OR TO ANY OTHER PERSON FOR ANY LOSS OR DAMAGE, DIRECT OR INDIRECT, ARISING OUT OF OR CAUSED BY THE USE OR OPERATION OF THE GOODS, OR FOR THE LOSS OF PROFITS, BUSINESS, OR GOODWILL. SELLER SHALL IN NO EVENT BE LIABLE TO ANY PERSON OR FIRM (INCLUDING ANY ASSIGNEE OF BUYER) EXCEPT BUYER AND ITS SUCCESSORS. SELLER FURTHER DISCLAIMS ANY RESPONSIBILITY WHATSOEVER TO BUYER OR TO ANY OTHER PERSON FOR INJURY TO PERSON OR DAMAGE TO, OR LOSS OF, ANY PROPERTY OR ITS VALUE CAUSED BY ANY PRODUCT OF SELLER OR WHICH HAS BEEN IMPROPERLY USED. IN NO CASE SHALL SELLER’S LIABILITY EXCEED THE PURCHASE PRICE OF THE GOODS THAT GAVE RISE TO THE CLAIM. Seller’s liability is limited to furnishing or repairing (at Seller’s option) Goods determined

by Seller to be defective. Buyer is responsible for determining the suitability of Goods for their different applications. Buyer must insure that Seller’s products are stored and utilized in accordance with all local, state, federal and private governing bodies and meet all applicable health and safety standards. Should Goods be used in an application that is safety critical, Buyer must provide appropriate safety testing of the products along with providing adequate safety devices, guarding, warning notices and provide specific training to protect the user from injury.

Article n°10: Force Majeure.

Seller shall not be liable for any failure to deliver or late performance where such failure or late performance results from circumstances (whether or not involving Seller’s negligence) that are beyond Seller’s reasonable control and prevent or restrict Seller from fully complying with its obligations to Buyer (each, a “Force Majeure Event”). Force Majeure Events shall include, but not be limited to: strikes; lockouts; manufacturing accidents’ carrier failures; frost; fire; storms; floods; epidemics; terrorism; and supply shortages. Should a Force Majeure Event continue for more than three (3) months, Seller may terminate an Order upon written notice to Buyer, whereupon the delivery and other obligations of Seller, and the payment and other obligations of Buyer, shall cease. Further, in the event of a Force Majeure Event relating to or resulting in the full or partial discontinuation of the usual raw material and energy supply sources that are necessary for the performance of Seller’s manufacturing activities, Seller may, upon written notice to Buyer, continue to deliver Goods to Buyer but upon a reduced basis consistent with raw material and energy availability.

Article n°11: Termination and Suspension.

11.a. Except where Buyer has caused or contributed to any delay, Buyer may (as Buyer’s sole remedy) terminate the Contract by written notice to Seller:
11.a.i. If Seller fails to deliver Goods by a date expressly stated by Seller in writing to be a “guaranteed” delivery date;
11.a.ii. Within sixty (60) days after any delivery date otherwise quoted or indicated by Seller (unless the Goods in question have been specially manufactured or adapted for Buyer; or
11.a.iii. Upon the occurrence of a breach by Seller of its express obligations under the Contract, if such breach is not cured by Seller within sixty (60) days after written notice of such breach delivered by Buyer to Seller.
11.b. Seller may (without prejudice to its other rights and remedies) terminate or suspend Seller’s performance under the Contract in whole or in part if:
11.b.i. Buyer fails to take delivery of or pay for Goods within the time frames specified in the Contract, or breaches any other Contract terms;
11.b.ii. Buyer is adjudicated a bankrupt or insolvent, or a receiver or administrator takes possession of any material part of Buyer’s assets; or
11.b.iii. Seller has reasonable grounds for suspecting that an event in clause (ii) above has occurred or will occur, or that Buyer will not pay for Goods as and when payment is due, Seller notifies Buyer of such concerns in writing, and Buyer fails to provide Seller with security for payment (reasonably acceptable to Seller) within three (3) business days after such notice.

Article n°12: Miscellaneous.

If for any reason a provision of the Contract is deemed to be legally invalid, then in such event the rest of the Contract shall remain in full force and effect. Any amendment to the Contract shall require the prior written consent of both parties. If any term or provision of the Order is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

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