

**STANDARD TERMS AND CONDITIONS OF SALE**

THESE CONDITIONS CONTAIN LIMITATIONS OF SELLER'S LIABILITY

**1. GENERAL**

a) These conditions supersede all prior representations or arrangements and contain the entire agreement between the parties in connection with the products. All other terms and conditions express or implied, are excluded. None of Seller's employees or agents has authority either to modify or supplement these conditions except expressly by written agreement between Seller and Buyer.

b) Nothing in these conditions shall restrict the statutory rights of a buyer who deals as a consumer.

c) References to the products include their packaging. If Seller has not issued an order confirmation, "Seller's order confirmation" means any document issued by seller indicating the terms on which the products are supplied.

d) Subject to the provisions of this contract, terms defined in the 2010 edition of Incoterms have the same meaning when used in these conditions.

**2. DELIVERY**

a) Delivery or dispatch dates quoted or requested are given or accepted by Seller in good faith but are not guaranteed unless stated to be "guaranteed" in writing.

b) Delivery shall be to the place and by the method(s) stated on Seller's order confirmation or if none, to such a point as Seller may reasonably specify prior to delivery. Buyer is responsible for unloading. Buyer's, or its carrier's, receipt shall be conclusive evidence of delivery.

c) Packaging is included in the price and is not returnable unless otherwise agreed in writing by Seller. Returnable packaging will be charged to the Buyer but if returned empty, clean, securely closed and in good condition within 60 days after receipt by Buyer,

d) Seller will credit Buyer with the amount charged. Any Special packaging requirements will incur a non-refundable additional charge.

e) The weight or quantity stated on Seller's dispatch note shall be conclusive evidence of the amount delivered except in cases of manifest error.

f) Save for the purposes of Clauses 8 and 9, each delivery shall be treated as a separate contract and partial deliveries are permitted unless otherwise stated on Seller's order confirmation. Accordingly, failure to make any particular delivery or any breach of contract by Seller relating thereto shall not affect any other deliveries.

g) Buyer shall take delivery of the products by any date quoted by Seller or requested by Buyer or (if none) within a reasonable time. Seller may deliver early where reasonable. Buyer shall be responsible for all storage and other costs arising from Buyer's failure to comply with the contract.

h) Buyer shall promptly supply all information and assistance required for Seller to execute Buyer's order.

i) If the products are sold FAS, FOB, Free Alongside Quay (FAQ) or to Buyer's agent, an on-board bill of lading, a mate's receipt or other document in proof of such delivery is conclusive evidence of delivery irrespective of whether the person giving the receipt of the document has authority from Buyer so to do. If Seller or its carrier is unable for any reason to place the products on board ship upon their arrival at the port of delivery, a warehouse receipt for the products shall be treated as sufficient delivery.

j) If the products are sold CIF or CPT - Carriage Paid To, a receipted bill of lading or way bill is conclusive evidence of delivery.

k) If appropriate, Seller undertakes to obtain any Irish License required for the export of the products from Ireland. Buyer undertakes to comply with any such licence(s) and to obtain and comply with all other necessary licenses, permits and consents (including all other export/import licenses).

**3. PRICE**

a) Unless otherwise agreed prices are exclusive of GST or QST, as the case may be, and all other duties, fees or taxes. Any delivery charge will be as agreed in writing with Buyer. In the absence of such agreement delivery will be charged to Buyer at cost.

b) Unless otherwise agreed in writing by Seller payment is due thirty days from date of invoice but Seller may require security for payment before dispatch.

c) Charges for products will normally be stated in the currency shown in the price list. However, payment may be made in any freely negotiable currency using the middle rate of exchange at which major clearing banks in Montreal will exchange those currencies on the earlier of the date on which payment is made and the due date of payment. Seller reserves the right to recover any loss on exchange due to delays in payment.

d) Unless the contract states prices(s) to be fixed, Seller may increase prices for undelivered balances in accordance with increases in Seller's costs and/or general price list increases occurring after the date of acceptance of order but before dispatch. Buyer shall pay for any increases in delivery costs after the date of acceptance of order.

e) In the circumstances described in Clause 7(c), all unpaid balances owing to Seller from Buyer shall become a debt immediately due and payable to Seller, irrespective of whether property in the products has passed to Buyer.

f) Time of payment is of the essence of the contract. Without prejudice to any other remedy Seller may, unless otherwise agreed in writing between Buyer and Seller, charge interest at 4% above Bank of Ireland base rate per annum for the time being (to accrue from day to day) on any sum owed to Seller under the contract which is not paid on the date specified in Clause 3(b) after as well as before any judgment. Buyer may not withhold payment or make any set-off on any account.

g) Seller may appropriate sums received from Buyer against any debt due to Seller from Buyer (under this or any other contract) irrespective of any purported appropriation by Buyer.

**4. CANCELLATION, RETURNS, RE-STOCKING CHARGES**

Orders once placed and accepted by seller can only be cancelled with seller's consent and on the terms that will indemnify the seller against loss. Re-stocking charges of 25% of invoice total will apply, plus freight charges at cost.

**5. SELLERS WARRANTY**

Seller warrants its packaging of the goods to be in compliance with DOT specifications for shipments. Seller warrants the goods sold hereunder to be free from defects in material and workmanship under normal use and service not arising from misuse, negligence or accident, in connection with the use, of the goods by Buyer, its agents, servants, employees. Seller's obligations under this warranty are limited to remedying any deficiencies in the goods at such place or places in the United States of America as may be designated by Seller. This warranty shall pertain to any Products to which Buyer has, within 1 year following delivery of such goods to Buyer or 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 shall promptly thereafter be returned to Seller or its nominees. This warranty is expressly in lieu of all other warranties expressed 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 GOOD WILL. 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 products determined by Seller to be defective.

**6. SHORTAGE AND NON-CONFORMITY**

Any claim of shortage or that the goods do not conform with the specifications of the order must be made in writing within ten (10) days after delivery of the goods (as to which such claim is made) to Seller or its nominees, but in no event shall the claim be later than within the time limit provided by the carrier or insurance company, otherwise such claim shall be deemed waived. The samples, measurements, dimensions and weights contained in the Seller's catalogues, sales manuals, photographs, and drawings constitute only an approximate guide. The Seller reserves the right to make any changes that which the Seller, in its absolute discretion, considers necessary.

In the event that Buyer has a verified claim of shortage or of nonconformity of the goods to the specifications of the order and if such claim has been submitted within the required time limits as set forth above, Seller shall, at its own expense, make up for the shortage of the goods, or replace or refund the purchase price of the goods, as the case may be, but in no event shall Seller be or become liable to Buyer or to any other person or persons for any loss or damage, direct or indirect, arising out of or caused by such incidents, or for the loss of profits, business or good will.

**7. FORCE MAJEURE**

a) The obligation of Seller hereunder shall be modified or excused as the case may be, for reasons of Act of God, war, governmental law or regulations, strikes or lockouts, fire, breakdown of machinery, whether in its own business enterprise, or if for any other cause beyond Seller's control, the goods cannot be delivered or their delivery becomes delayed in whole or in part. In the above instances, time for delivery shall be extended for the period of the delay caused, with the proviso, however, that either party may cancel in writing the undelivered portion of the order or contract if the delay exceeds six (6) months from the delivery date originally confirmed by Seller. In no event shall Seller become liable in the aforesaid instances to Buyer or any third party for consequential damages or business loss

b) Without prejudice to Clause 7(a) Seller may where reasonable in all the circumstances (whether or not involving Seller's negligence) without liability suspend or terminate (in whole or in part) its obligations under the contract, if Seller's ability to manufacture, supply, deliver or acquire materials for the production of the products by Seller's normal means is materially impaired.

c) The relevant circumstances are if:

1. 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
2. Seller has reasonable grounds for suspecting that an event in Clause 7(c)(1) has occurred or will occur, or that Buyer will not pay for the products on the due date, and so notifies Buyer.

**8. TERMINATION AND SUSPENSION**

a) Except where Buyer has caused or contributed to any delay, Buyer may (as Buyer's sole remedy, without affecting the balance of the contract quantity) terminate the contract by notice to Seller in respect of any instalment of products which is not dispatched:

1. by any date stated to be "guaranteed" on Seller's order confirmation; or
2. within 60 days after any date indicated by the Seller or quoted on Seller's order confirmation



(unless the goods have been specially manufactured or adapted for Buyer).

b) Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of the contract in the circumstances described in Clause 8(c). Seller may also suspend deliveries while investigating any claim relating to prior shipments (under any contract) of products.

c) The relevant circumstances are if:

1. Buyer fails to take delivery of or to pay for the products by the date required under Clause 2(f) or 3(b) respectively, or breaches any other term of the contract; or

2. 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

3. Seller has reasonable grounds for suspecting that an event in Clause 8(c)(2) has occurred or will occur, or that Buyer will not pay for the products on the due date, and so notifies Buyer; or

4. Where the contract provides for fixed price(s), there has been a substantial increase(s) in Seller's costs of manufacture and supply of products between the date of contract and date of dispatch arising from circumstances beyond Seller's reasonable control and Seller and Buyer have failed within 30 days of Seller notifying Buyer of such increase(s), to reach agreement on a reasonable adjustment in the price for remaining deliveries to recognize such increase(s).

d) If Buyer provides Seller with security for the contract price, reasonably acceptable to Seller, within 3 working days after a notice has been given under Clause 8 (c)(3), Seller

e) shall withdraw the notice.

#### 9. RISK AND RETENTION OF TITLE

a) The goods shall be at the Buyer's risk as from delivery.

b) In spite of delivery having been made property in the Goods shall not pass from the Seller until:

1. the Buyer shall have paid the price plus GST and QST, as the case may be, in full: and

2. no other sums whatever shall be due from the Buyer to the Seller.

c) Until property in the Goods passes to the Buyer in accordance with Clause 2 the Buyer shall hold the Goods and each of them on a fiduciary basis as bailee for the Seller. The Buyer shall store the goods (at no cost to the Seller) separately from all other Goods in its possession and marked in such a way that they are clearly identified as the Seller's property.

d) Notwithstanding that the Goods (or any of them) remain the property of the Seller the Buyer may sell or use the Goods in the ordinary course of the Buyer's business at full market value for the account of the Seller. Any such sale or dealing shall be a sale or use of the Seller's property by the Buyer on the Buyer's own behalf and the Buyer shall deal as principal when making such sales or dealings. Until property in the Goods passes from the Seller the entire proceeds of sale or otherwise of the goods shall be held in trust for the Seller and shall not be mixed with other money or paid into any overdrawn bank account and shall be at all material times identified as the Seller's money.

e) The Seller shall be entitled to recover the Price (plus GST and QST, as the case may be) notwithstanding that property in any of the Goods has not passed from the Seller.

f) Until such time as property in the Goods passes from the Seller, the Buyer shall upon request deliver up such of the Goods as have not ceased to be in existence or resold to the Seller. If the Buyer fails to do so the Seller may enter upon any premises owned, occupied or controlled by the Buyer where the Goods are situated and repossess the Goods. On the making of such request the rights of the Buyer under clause 5 shall cease.

g) The Buyer shall not pledge or in any way charge by way of security for any indebtedness any of the Goods which are the property of the Seller. Without prejudice to the other rights of the Seller, if the Buyer does so all sums whatever owing by the Buyer

to the Seller shall forthwith become due and payable.

h) The Buyer shall insure and keep insured the goods to the full Price against "all risks" to the reasonable satisfaction of the Seller until the date that property in the Goods passes from the Seller, and shall whenever requested by the Seller produce a copy of the policy of insurance Without prejudice to the other rights of the Seller, if the buyer fails to do so all sums whatsoever owing by the Buyer to the Seller shall forthwith become due and payable.

#### 10. INTELLECTUAL PROPERTY AND THIRD PARTY CLAIMS

a) Seller will defend Buyer against any third party claim made against Buyer in the country where the products were supplied alleging that the products as such, in the original state sold by Seller, infringe any patent effective in the said country, and Seller will pay any damages and costs finally awarded against Buyer in respect of such a claim. Seller may modify the products so that they cease to infringe so long as Buyer is not substantially prejudiced by the modification.

b) Clause 10(a) shall not apply to the extent that the products are manufactured to Buyer's specification (or as provided in Clause 10(d)(1) or in respect of any use of the products not contemplated by Seller at the date the order was accepted.

c) 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 by the Seller.

d) BUYER SHALL INDEMNIFY SELLER AGAINST ANY LIABILITY INCURRED BY SELLER;

1. AS A RESULT OF INCORPORATING PROPERTY OF BUYER IN THE PRODUCTS OR APPLYING ANY TRADEMARK, TRADE NAME OR DESIGN TO THE PRODUCTS ON BUYERS INSTRUCTIONS, OR COMPLYING WITH ANY SPECIFICATION OR OTHER INSTRUCTIONS OF BUYER RELATING TO THE PRODUCTS; AND

2. IN RELATION TO ANY THIRD PARTY CLAIMS ARISING FROM THE USE MADE OF OR DEALINGS BY BUYER, ITS AGENTS, OR SUBCONTRACTORS OR EMPLOYEES IN THE PRODUCTS (IRRESPECTIVE OF WHETHER THEY INVOLVE THE NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES) EXCEPT AS PROVIDED IN CLAUSE 5 AND CLAUSE 10(a) OR IF ARISING FROM SELLER'S WILFUL DEFAULT

e) The indemnified party shall promptly notify the other of any relevant claim, shall comply with the other's reasonable requirements to minimize liability and/or avoid further liability and shall allow the other conduct of any action and for settlement negotiations on reasonable terms.

#### 11. ADVICE AND ASSISTANCE

SELLER SHALL NOT BE LIABLE IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES, FOR ANY REPRESENTATIONS ADVICE OR ASSISTANCE GIVEN ( UNDER THIS CONTRACT OR OTHERWISE AND WHETHER BEFORE OR AFTER THE DATE OF THE CONTRACT) BY OR ON BEHALF OF SELLER IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT, UNLESS AND THEN ONLY TO THE EXTENT THAT SELLER HAS MADE SUCH REPRESENTATIONS AND/OR AGREED TO PROVIDE SUCH ADVICE OR ASSISTANCE FOR A FEE UNDER A SEPARATE WRITTEN CONTRACT WITH BUYER.

#### 12. LIMITATION OF LIABILITY

a) WITHOUT PREJUDICE TO ANY OTHER LIMITATION OF SELLER'S LIABILITY (WHETHER EFFECTIVE OR NOT):

1. IN NO CIRCUMSTANCES WHATEVER SHALL SELLER BE LIABLE (IN CONTRACT, TORT OR OTHERWISE, AND IRRESPECTIVE OF ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES OR AGENTS) FOR ANY INDIRECT OR CONSEQUENTIAL LOSSES (INCLUDING LOSS OF GOODWILL, BUSINESS OR ANTICIPATED SAVINGS), LOSS OF PROFITS OR USE OF (SUBJECT TO CLAUSE 5 AND 10(a) ANY THIRD PARTY CLAIMS, IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT.

2. EXCEPT AS PROVIDED UNDER CLAUSES 5 AND 10(a), SELLERS TOTAL AGGREGATE LIABILITY IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT (IN CONTRACT, TORT OR OTHERWISE AND

WHETHER OR NOT RELATED TO ANY NEGLIGENCE OR OTHER ACT, DEFAULT OR OMISSION OF SELLER OR ITS EMPLOYEES OR AGENTS), IS LIMITED TO THE CONTRACT PRICE (FOR THE INSTALMENT(S) CONCERNED) EX. GST and QST

b) WITHOUT PREJUDICE TO SELLER'S WARRANTY OR CLAUSE 7(a) BUYERS SOLE REMEDY SHALL BE IN DAMAGES

c) SELLERS WARRANTY AND BUYERS REMEDIES UNDER CLAUSES 5, 6 AND 10(a) ARE IN SUBSTITUTION FOR ANY OTHER WARRANTIES OBLIGATIONS, REPRESENTATIONS, LIABILITIES, TERMS OR CONDITIONS (WHETHER THEY ARE EXPRESS OR IMPLIED, OR ARISE IN CONTRACT, TORT, OR OTHERWISE AND IRRESPECTIVE OF THE NEGLIGENCE OF SELLER, ITS EMPLOYEES OR AGENTS) IN CONNECTION WITH THE PRODUCTS (INCLUDING, WITHOUT LIMITATION, ANY RELATING TO MERCHANTABILITY, FITNESS FOR PURPOSE, CONFORMITY WITH DESCRIPTION OR SAMPLE, CARE AND SKILL OR COMPLIANCE WITH REPRESENTATIONS) AND ALL SUCH WARRANTIES, OBLIGATION, REPRESENTATIONS, LIABILITIES, TERMS OR CONDITIONS ARE HEREBY EXPRESSLY EXCLUDE.

d) WITHOUT PREJUDICE TO CLAUSE 5, NO ACTION MAY BE BROUGHT AGAINST SELLER IN CONNECTION WITH THE PRODUCTS OR THE CONTRACT UNLESS PROCEEDING ARE ISSUED AGAINST SELLER WITHIN TWO YEARS AFTER BUYER BECAME OR OUGHT TO HAVE BECOME AWARE OF THE CIRCUMSTANCES GIVING RISE THERETO.

e) THIS CAUSE 10 APPLIES NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR A BREACH OF A FUNDAMENTAL TERM OF THE CONTRACT BY SELLER.

#### 13. HEALTH AND SAFETY AT WORK

a) Buyer shall ensure that all products are safely and lawfully received, stored, maintained, used or applied by Buyer and that Buyer obtains relevant information in Seller's possession relating thereto.

b) Buyer shall ensure that all appropriate safety information (whether supplied by Seller, Buyer or others) is distributed and drawn to the attention of customers and all others (including Buyer's employees) who require it for the safe handling of use of the products.

#### 14. MISCELLANEOUS

a) The contract may not be assigned by Buyer without Seller's prior written consent.

b) Notices must be in writing to Seller's or Buyer's address and are deemed delivered on the first working day after sending by hand or (subject to confirmation of transmission) by telex or facsimile, or within Ireland on the third working day after being placed prepaid in the first class post to Buyer's or Seller's Irish address. Qualified acceptances by Buyer on delivery notes shall not constitute notice of any acceptance by Seller of any such qualification.

c) No failure by Seller to enforce any provision of this contract shall be construed as a release of its rights relating thereto or to sanction any further breach.

d) 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.

#### 15. LAW

This contract shall be governed by and construed in accordance with the law of the Province of Québec. Buyer hereby agrees, for Seller's exclusive benefit, that the courts of the Province of Québec shall have sole jurisdiction to hear all claims or proceedings connected with the products or the contract. Seller may nevertheless bring claims in any other courts of competent jurisdiction.

Magchem Inc. - 2016