

AGCHEMACCESS LIMITED
TERMS AND CONDITIONS OF BUSINESS
PURCHASE OF GOODS

1. DEFINITIONS:

1.1 **ACA** means AgChemAccess Limited of Killiney, 1 La Rue DE La Blinerie, St Clements, Jersey, JE2 6QT or any employee licensee or agent of ACA or any other party approved by ACA in relation to the delivery Goods or its assigns and successors in title

1.2 **Conditions** means the conditions of purchase set out in this document

and any special terms and conditions agreed in writing by the

ACA

1.3 **Contract** means the contract for the provision of the Goods

1.4 Delivery

Address means the place of delivery of the Goods as set out in the

Order or otherwise agreed in writing

1.5 **Delivery Date** means the date specified by ACA when the Goods are to be delivered

1.6 **Goods** means the items ACA agrees to buy from the Seller (together with any services to be provided by the Seller) as set out in the Order

1.7 **Order** means ACA's written Order for the Goods as provided to the Seller which shall include any specifications relating to the Goods.

1.8 **Price** means the price of the Goods as set out in the Order

1.9 **Seller** means the party selling or agreeing to sell the Goods to ACA

2. CONDITIONS APPLICABLE:

2.1 The Conditions shall apply to the Contract to the exclusion of all other terms and conditions including any terms or conditions which the Seller may

purport to apply under any sales offer or similar document

2.2 Any variation to the Conditions (including any special terms and conditions agreed between the parties) shall be inapplicable unless agreed in writing by

ACA

2.3 Despatch or delivery of the Goods by the Seller to ACA shall be deemed conclusive evidence of the Seller's acceptance of these Conditions

2.4 Where applicable (and unless otherwise provided in the Conditions) any terms referred to in these Conditions any Order or other documentation

issued by ACA relating to the rights and obligations of the parties to the

Contract with respect to the delivery of the Goods shall have the meaning

set out in "Incoterms 2000"

2.5 Except as otherwise provided no Order which has been accepted by the Seller may be cancelled by the Seller except with ACA's

agreement in writing

and on terms that the Seller shall fully and effectively indemnify ACA against

all loss (including loss of profit) costs damages charges and expenses

incurred by ACA as a result of the cancellation.

2.6 The Seller acknowledges that it shall be the Seller's responsibility to notify

ACA of all governmental statutory local authority requirements (or other

requirements) relating to the supply of the Goods to ACA of which the Seller

is aware (or in respect of which it is reasonable for the Seller to be aware).

3. DELIVERY:

3.1 Delivery of the Goods shall be made to the Delivery Address by the Delivery

Date

3.2 Time for delivery of the Goods is of the essence of the Contract. If the Seller

fails to deliver all the Goods in accordance with the Contract on the Delivery

Date then without prejudice to any other right or remedy available to ACA

and subject to ACA notifying the Seller accordingly ACA may terminate the

Contract by giving notice to the Seller. In this event without prejudice to

ACA's other remedies the Seller shall within [72] hours of ACA's notification

collect at the Seller's expense (which shall include but is not limited to all sea

and/or road transit packaging and insurance charges levied) any Goods

which have been delivered

3.3 Where delivery of a quantity of the Goods which correspond to the Contract

which is less than the agreed quantity has been tendered and ACA has not

exercised its right of termination under clause 3.2 above ACA may:-

(a) accept the Goods which correspond to the Contract and recover for

the Seller's breach in respect of the failure to deliver the remainder of

the Goods; or

(b) require the Seller promptly to deliver sufficient Goods which

correspond to the Contract to comply with the quantity required

3.4 The Seller's invoice for the Goods shall bear ACA's order number. A

packing note quoting this number shall be despatched with the Goods to the

Delivery Address and the Seller shall send separately an advice note to ACA

on the day of despatch of the Goods

3.5 If for any reason ACA is unable to accept delivery of the Goods on the

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Delivery Date ACA shall notify the Seller accordingly and in such event the Seller shall store the Goods at its expense and shall safeguard the Goods and take all reasonable steps to prevent their deterioration until actual delivery

3.6 Certified loading tickets shall be supplied directly to ACA by e-mail or fax as proof of loading prior to the Delivery Date

3.7 In addition or as an alternative to clause 3.6 above and depending upon export requirements ACA may require as evidence loading photographs to be supplied to ACA at the Seller's expense by e-mail (or if notified in a format otherwise acceptable to ACA) within 48 hours exclusive of the date of any such request

4. PRICE AND PAYMENT:

4.1 Unless otherwise agreed the Price is inclusive of all packaging insurance transportation and delivery costs to the Delivery Address. Property and risk of damage to or loss of the Goods shall pass to ACA upon the later of

delivery or ACA's acceptance of delivery of the Goods

4.2 Subject to any special terms agreed in writing between ACA and the Seller payment for the Goods is due within 90 days of the end of the month following delivery to the Delivery Address

4.3 ACA may set off against and deduct from any payment due to the Seller under the Contract the amount of any sum which is or is about to be due from the Seller to ACA whether in relation to the Contract or otherwise

5. WARRANTIES AND LIABILITIES:

5.1 The Seller shall ensure that all Goods:-

(a) shall be manufactured stored tested and packed in accordance with all relevant British European and/or international standards applicable to them; and

(b) shall be of the very best quality and fit for the purposes (including but not limited to worldwide resale) for which ACA intends the Goods; and

(c) will correspond with the specification at the time of actual delivery and will be free from defects for the period of 12 months from the date of actual delivery.

5.2 Where Goods are purchased following sample the Goods must in every respect be at least of the quality of the sample and must conform to the sample's specification

5.3 The Seller shall ensure that the Goods comply fully with all relevant legislation by-laws or regulations applicable in the United Kingdom and any country of destination as detailed in the Order. In the event that ACA

notifies the Seller that the Goods are intended for supply to another country or jurisdiction then the Seller shall ensure that the Goods comply with all relevant legislation by-laws or regulations applicable in that country or jurisdiction

5.4 The Goods shall be marked in accordance with ACA's instructions and all lawful requirements and properly packed and secured for delivery to ACA in an undamaged condition. It is the Seller's responsibility to ensure that all relevant information to ensure compliance with this sub-clause is requested from ACA in the event that such information is not made available at the time of ACA placing the Order

5.5 The Seller shall remain fully liable to ACA for the performance of the Contract notwithstanding that any part of it (whether or not with the ACA's consent or knowledge) is subcontracted. The Seller shall procure that all property and all materials comprised in the Goods (including all packaging) obtained by the Seller from third parties passes to ACA in accordance with clause 4.1 above

5.6 The Seller shall ensure that it takes all reasonable steps to ensure that performance of the Contract does not result in personal injury to or damage

to the property or environment of any persons firm or company. The Seller must promptly give ACA full information about any risk of such damage which at any time the Seller believes to exist in relation to the transportation and storage handling or use of any Goods supplied. All personnel of the Seller or agent or subcontractors must comply with all reasonable safety instructions whilst on ACA's or any third parties premises or the premises of any customer of ACA. The Seller shall fully and effectively indemnify ACA immediately on demand from time to time against any loss claim liability or expense suffered by reason of the personal injury or death or loss or damage of property (including pecuniary

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loss whether directly or consequentially suffered) to any person firm or company (including but not limited to ACA or any third party including a customer of ACA) arising from any representation or any implied warranty condition or other term or any duty at common law or under the express terms (including an acknowledgement(s)) of the Contract resulting wholly or in part from any act or default by the Seller its agents its subcontractors or any such personnel

5.7 The Seller warrants that the sale of the Goods to ACA does not infringe of any patent registered design trade-name copyright or other intellectual property rights protected in the United Kingdom (or where the Goods are to be supplied overseas then in any other relevant jurisdiction)

5.8 The Seller shall ensure that it is insured on terms reasonably acceptable to ACA from time to time (and in any case for a sum insured of at least £1,000,000) against all risks of liability for anyone's death personal injury or loss or damage of property. The Seller shall ensure that every subcontractor keeps similar insurance and will on request by ACA produce such evidence as ACA may reasonably require in this respect (including policy documents and certificates of insurance)

6. ACKNOWLEDGEMENTS:

The Seller acknowledges that:

- (a) all data chemical formula process and other technical requirements or background information forming any part or the whole of the Contract specification (“background information”) supplied to ACA about and/or with the Goods are accurate and precise
- (b) ACA is not a manufacturer of and applies no process to and generally has no technical knowledge of the Goods supplied by the Seller or the specific effects of customers’ use of such Goods
- (c) further to clause 6(b) above ACA does not check or otherwise verify the quality or otherwise of the Goods purchased from the Seller prior to ACA’s resale. ACA rely on the representations of the Seller and the Seller further acknowledges that the Goods are as stated to it by the Seller
- (d) ACA itself relies on and is dependent upon and disseminates to all potential customers orally and/or through its web site by way of marketing material all

background information supplied about and/or with the Goods

(e) ACA’s customers will be induced to purchase Goods from ACA based on the

background information supplied about and/or with the Goods

(f) ACA intends to resell the Goods worldwide

(g) where any Goods supplied to ACA by the Seller fail to accurately and

precisely reflect and correspond with the related background information

supplied about Goods ACA shall be entitled to cancel the Contract for the

supply of Goods (in accordance with clause 7 below) without liability and the

Price for the Goods shall not be payable. On cancellation by ACA the Seller

shall promptly collect at the Seller’s expense (which shall include but is not

limited to all sea and/or road transit charges levied) any Goods delivered

7. REJECTION AND CANCELLATION:

7.1 ACA may cancel the Contract at any time prior to delivery of the Goods by

giving notice of cancellation at least 5 working days before the Delivery Date.

On giving such notice the Seller shall promptly refund to ACA any sums paid

in respect of the Price. ACA shall not be liable for any loss or damage

whatsoever arising from such cancellation

7.2 In the event that the Goods (or any part of them) fail in any respect to

conform to the Contract specification ACA may at its option either:

(a) reject the Goods by giving notice of rejection to the Seller within 5

working days of discovery of the relevant breach of Contract; or

(b) reject such proportion of the Goods as fail to conform to the Contract

specification by giving notice of rejection to the Seller within 5 working

days of discovery of the relevant breach of Contract

7.3 In the event ACA exercises its right to reject the Goods pursuant to clause

7.2 ACA at its option shall be entitled either:

(a) to have the Goods (or such a proportion of the Goods as notified as

failing to conform to the Contract specification) replaced free of

charge; or

(b) to cancel with immediate effect and without charge both the Seller’s

obligation to provide and ACA’s obligation to pay for such proportion of

the Goods as rejected by ACA; or

(c) to cancel the Contract without liability whereupon the Seller shall

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promptly refund any sums paid in respect of the Price
7.4 Notwithstanding clause 2.4 above, all risk in and all removal of and other costs associated with (including but not limited to all sea and/or road transit packaging and insurance charges incurred) the Goods rejected pursuant to this clause will be borne by the Seller with effect from notice of rejection

7.5 ACA's exercise of any rights under this clause is without prejudice to any other rights which ACA may have against the Seller and none of ACA's rights will be adversely affected or deemed to have been waived by any inspection approval or acceptance of any Goods by ACA prior to ACA's discovery of any breach of Contract to which that right might apply

7.6 Without prejudice to any other right or remedy available to it ACA shall be entitled to cancel the Contract without any liability on the part of ACA at any time in the event that:

- (a) the Seller makes any voluntary arrangement with its creditors or becomes subject to an Administration Order or (being an individual or a firm) becomes bankrupt or goes into liquidation (otherwise for the purposes amalgamation or reconstruction);
- (b) an encumbrancer takes possession or a receiver is appointed of any of the property or assets of the Seller;
- (c) the Seller ceases or threatens to cease to carry on business;
- (d) the Seller breaches any of these Conditions;
- (e) ACA reasonably apprehends that any of the events mentioned

above is about to occur in relation to the Seller and notifies the Seller accordingly

8. INTELLECTUAL PROPERTY:

8.1 The Seller will not acquire any rights in any intellectual property in the Goods or in packaging or under labels which include copyright trade marks or logos other than those belonging to the Seller and any such rights which the Seller may by law acquire will be held by the Seller on trust absolutely for ACA

8.2 No contract will give the Seller licence to use any of ACA's intellectual property rights referred to herein on any Goods other than for sale to ACA

8.3 The Seller shall fully and effectively indemnify ACA against action claim demand costs charges and expenses arising from or

incurred by reason of any infringement or any alleged infringement of any patent registered design trade-name copyright trade-name or other intellectual property rights protected in the United Kingdom (or where the Goods are to be supplied overseas then in any other relevant jurisdiction) by the use or sale of the Goods and against all costs and damages which ACA may incur in any such action.

8.4 In the event of any claim being made or any action brought against ACA arising out of the matters referred to in this clause the Seller shall be promptly notified thereof and may at its own expense conduct all negotiations for the settlement of the same and any litigation that may arise therefrom. ACA shall not unless the Seller shall fail to take over the conduct of the negotiation or litigation make any admission which might be prejudicial thereto. The conduct by the Seller of such negotiations and litigation shall be conditional upon the Seller having first given to ACA such reasonable security as shall from time to time be required by ACA to cover the amount ascertained or agreed or estimated (as the case may be) of any compensation damages expenses and costs for which ACA may become liable. ACA shall at the request of the Seller afford all reasonable assistance for any such purpose and shall be repaid any expenses incurred in so doing.

9. GENERAL:

9.1 All rights and obligations of the Seller under the Contract are non-assignable

9.2 The headings in the Conditions are for convenience only and shall not affect their interpretation

9.3 No waiver by ACA of any breach of the Contract by the Seller shall be considered as a waiver of any subsequent breach of the same or other provision

9.4 No failure of ACA to exercise any power given to it or to insist upon strict compliance by the Seller with any obligation hereunder and no custom or practice of the parties at variance with the terms hereunder shall constitute

any waiver of any of the ACA's rights under the Contract

9.5 If any provision of these Conditions is held by any

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competent authority to
be invalid or unenforceable in whole or in part the validity of
the other
provisions of these Conditions and the remainder of the
provisions in
question shall not be affected thereby

9.6 Any notice given hereunder must be given in writing and
delivered or sent
by post or facsimile transmission to the residence or
principal place of
business of the party to whom it is addressed

9.7 Except as otherwise expressly provided nothing in this
Contract shall
confer on any third party any benefit or the right to enforce
any terms of
this Contract.

9.8 ACA reserves the right to assign the benefit of the
Contract on giving
written notice to the Seller

9.9 The Contract shall be governed by the laws of England
and subject to the
jurisdiction of the English courts