

# AGCHEMACCESS LIMITED – TERMS AND CONDITIONS OF BUSINESS – SALE 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 **Buyer** means the person firm or company purchasing or agreeing to purchase Goods from ACA in accordance with the Conditions

### 1.3 Conditions

means the terms and conditions set out in this document and any special terms and conditions agreed in writing between ACA and the Buyer

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

1.5 **Deposit** means 10% of the Price plus VAT or such other sum as

may be agreed in writing by ACA from time to time

### 1.6 Delivery

**Address** means place of delivery of the Goods as may be agreed by ACA

1.7 **Goods** means all goods materials or any part thereof (together with any services) being the subject of any contract to which the Conditions apply particulars of which are set out in any quotation or otherwise specified in writing to the Buyer

1.8 **Price** means the price calculated in accordance with the rates or

charges set out in any quotation or ACA's quoted price for the Goods (or where no price has been quoted a reasonable price) excluding VAT

### 1.9 Specification(s)

means any data chemical formula process other technical requirements or information whether included on any web site the order form or otherwise relating to the Goods agreed between the parties

## 2. CONDITIONS APPLICABLE:

2.1 ACA shall supply the Goods to the Buyer subject to these Conditions which shall govern the Contract to the exclusion of any other terms and conditions which the Buyer may purport to apply under the

Buyer's purchase order confirmation of order or similar document

2.2 No variation to these Conditions (including any special terms and conditions agreed between the parties) shall be binding unless agreed

in writing between the authorised representatives of ACA and the Buyer

2.3 Any representations made by ACA's employees licensees or agents concerning the Goods shall not be incorporated into the Contract unless confirmed in writing by ACA and in entering into the Contract the Buyer acknowledges that it does not rely on and waives any claim

for breach of any such representations which are not so confirmed

2.4 Any quotation given by ACA may be withdrawn at any time prior to acceptance by the Buyer and in any event shall lapse after thirty (30) days

2.5 Any typographical clerical or other error or omission in any sales

Goods literature quotation price list acceptance of offer invoice or

other documentation or drawings illustrations or other publications

issued by the ACA (whether part of the Specifications or otherwise)

shall be subject to correction without any liability on the part of ACA

2.6 Where applicable (and unless otherwise provided in the Conditions)

any terms referred to in any quotation 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 edition or such superseded

issue in force from time to time)

## 3. ORDERS SPECIFICATIONS AND DELIVERY:

3.1 The placing of an order by the Buyer for the Goods shall constitute

acceptance of these Conditions

3.2 No order shall be deemed to be accepted by ACA unless accepted in

writing by ACA's authorised representative

3.3 The Buyer shall be responsible to ACA for ensuring the accuracy of

the terms of any order submitted by the Buyer

3.4 The quantity quality description functionality functions of the Goods

shall subject as provided in these Conditions be as specified in the

order and in accordance with the applicable Specification as set out

either in ACA's quotation or on ACA's web site or any documents

referred to in the order. In the event of conflict preference will be given to

the Specification as set out in the order form

3.4 ACA reserves the right to make changes in the Specification of the

Goods which are required to conform to any applicable safety or other

statutory or regulatory requirements or which do not materially affect their

performance.

3.5 Any dates quoted for delivery of the Goods are approximate only and

ACA shall not be liable for any reasonable delay in delivery. The Buyer

shall not be entitled to serve any notice making time for delivery of the

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essence and time for delivery shall not be of the essence unless

previously agreed by ACA in writing

3.6 Unless otherwise agreed the Price is exclusive of all packaging insurance transportation and delivery costs to the Delivery Address and the Buyer shall make all arrangements necessary to take delivery of the Goods

whenever they are tendered for delivery

3.7 ACA may deliver the Goods by separate instalments of any size and in

any order and failure by ACA to deliver any one or more of the

instalments in accordance with these Conditions or any claim by the

Buyer in respect of any one or more instalments shall not entitle the

Buyer to treat the Contract as a whole as repudiated.

3.8 Any alteration to the Contract Specification required by the Buyer must be

notified to ACA before ACA undertake any acts in reliance on this

agreement and in any event within 24 hours of acceptance of the Buyer's

order for the Goods in which case ACA may accept such alteration.

(subject to any increase in the Price to reflect the alteration) at its sole

discretion.

3.9 Where delivery of the Goods is to be made by ACA in bulk ACA reserves

the right to deliver up to 5 per cent more or 5 per cent than the quantity

ordered without any adjustment in the Price and the quantity so delivered

shall be deemed to be the quantity ordered.

3.10 Subject always to clause 3.9 above the Buyer shall

inspect the Goods

on delivery and shall within 48 hours of delivery (or arrival at the Buyer's

premises if earlier) and notify ACA of any alleged defect shortage in the

quantity quality or condition of the Goods or damage or their failure to

correspond with the Specification or description. The Buyer shall afford

ACA an opportunity to inspect the Goods within a reasonable time

following delivery and before any use is made of them. If the Buyer shall

fail to comply with these provisions the Goods shall be conclusively

presumed to be in accordance with the Contract free from any defect or

damage which would be apparent on a reasonable examination of the

Goods and the Buyer shall be deemed to have accepted the Goods

3.11 If the Buyer fails to take delivery of the Goods or fails to give ACA

adequate delivery instructions at the time stated for delivery

(otherwise

than by reason of ACA's fault) then without prejudice to any other right or

remedy available to it the ACA may:

(a) store the Goods until actual delivery and charge the Buyer the

reasonable costs (including transportation and insurance) of storage;

or

(b) sell the Goods at the best price readily obtainable and (after

deducting all reasonable storage and selling expenses) account to

the Buyer for the excess over the Price or charge the Buyer for any

shortfall below the Price

3.12 Any charges quoted for delivery of the Goods including (but not limited

to) transport packaging and insurance are approximate only and ACA

shall not be liable for any changes to the charges quoted however

caused

3.13 The Buyer acknowledges that it shall be the Buyer's responsibility to

notify ACA of all governmental statutory local authority requirements (or

any other requirements) relating to the supply of the Goods of which the

Buyer is aware (or in respect of which it is reasonable to expect the Buyer

to be aware)

3.14 The Buyer shall be responsible for obtaining all necessary licences

and permissions and for complying with any legislation or regulations

governing the importation of the Goods into the country of destination and

for the payment of any duties on them.

### **4. PRICE AND PAYMENT:**

4.1 Subject to any special terms agreed in writing between ACA and the

Buyer ACA shall be entitled to invoice the Buyer for:-

(a) the Deposit and VAT at the rate prevailing on the date of ACA's

invoice on or at any time after acceptance of the order

(b) the balance of the Price and VAT (or instalments thereof by way of

interim invoices) at the rate prevailing on the date of ACA's invoice

before on or at any time after delivery of the Goods

4.2 If at any time before delivery of the Goods ACA deems it necessary to

increase the Price to give effect to any increase in the cost to ACA

which is due to factors outside of ACA's control (other than for any

increase as a consequence of a change to any tax or duty or equivalent) ACA shall have the right to give written notice of

any such

increase to the Buyer increasing the Price and in the event such

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increase does not exceed 10% of the Price the Buyer shall not have the right to cancel the Contract

4.3 ACA reserves the right to increase the Price to reflect any taxes or duties which are or may from time to time be levied by any governmental statutory or local authority upon the sale of the Goods and any necessary additions shall be charged at the rates prevailing at the date of invoice

4.4 Notwithstanding the provisions of clause 4.2 above any increase in the cost to ACA necessitating an increase in the Price which is a result of any change in Specification of the Goods which is requested by the Buyer or as a result of any delay caused by any instructions of the Buyer or failure of the Buyer to give to ACA adequate information or instructions shall not entitle the Buyer to cancel the Contract on receipt of a written notice of such increase in the Price

4.5 The Buyer shall pay ACA's invoices (without any set-off or otherwise in accordance with clause 11.11 below) as may be rendered from time to time immediately on receipt of the said invoices on the ("Due Date") or otherwise agreed in writing by ACA. Time of payment of ACA's invoices shall be of the essence.

4.6 Unless otherwise agreed in writing payment for any export order shall be by irrevocable letter of credit at sight confirmed by a clearing bank in the United Kingdom and issued under the Incoterms then in force.

4.7 If the Buyer fails to make payment by the Due Date then without prejudice to any other right or remedy available to it ACA shall be entitled to:-

(a) cancel the Contract and/or suspend any further deliveries of the Goods to the Buyer (whether under this Contract or any other contract with the Buyer);

(b) require payment in full of the Price prior to delivering any further Goods

(c) charge the Buyer interest (before or after judgment) at the rate of 5% per annum above HSBC Bank Plc base rate from time to time until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest); or

(d) charge the Buyer in accordance with the provisions of the Late Payment of Commercial Debts (Interest) Act 1998

4.8 The Price is exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay to ACA.

### 5. WARRANTIES AND LIABILITIES:

5.1 ACA warrants that the Goods will correspond with the Specification on the order form.

5.2 Any warranty given by ACA in respect of the Goods supplied shall be subject to the following conditions:-

(a) ACA shall be under no liability in respect of any defect in the Goods arising from any drawing design or specification supplied by the Buyer

(b) ACA shall be under no liability in respect of any defects arising from the Buyer's negligence abnormal working conditions failure to follow ACA's instructions (whether oral or in writing) misuse or alteration without ACA's approval and any alteration of the Goods including but not limited to any attempted or actual tampering with the chemical process or formula

(c) ACA shall be under no liability under any warranty condition or guarantee if the Price (and VAT and any other taxes due if applicable) has not been paid by the Due Date

(d) Save for that given in clause 5.1 above no warranty extends to Goods not manufactured by ACA. The Buyer shall only be entitled to the benefit of any manufacturer's warranty or guarantee as displayed on the Goods.

(e) unless agreed in writing ACA shall be under no liability in respect of any alleged defects in respect of any failure of the Goods to comply with any governmental statutory or other provisions relating to the Goods in the country of destination of the Goods and the Buyer acknowledges that it shall be the Buyer's responsibility to ensure that the Goods comply with such provision as may apply to the Goods

5.3 Except in respect of death or personal injury caused by ACA's negligence ACA shall not be liable to the Buyer by reason of any representation or any implied warranty condition or other term or any duty at common law or under the express terms (including any acknowledgement(s)) of the Contract for any direct or indirect or consequential loss or damage (whether for loss of profit or otherwise) costs expenses or other claims for direct or indirect or consequential compensation whatsoever (and

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whether caused by the negligence of ACA its employees licensees or agents or otherwise) which arise out of or in connection with the supply (including but not limited to transit) of Goods or their use or resale by the

Buyer except as expressly provided in the Conditions  
5.4 Any liability of ACA hereunder for any delay in performing or any failure to perform any of ACA's obligations in relation to the Goods shall be limited to the excess (if any) of the cost to the Buyer in the cheapest available market of similar Goods to replace those not delivered over the Price

5.5 The Buyer shall fully and effectively indemnify and hold harmless ACA against all claims losses costs and expenses made against or suffered by ACA arising from or incurred by reason of:-  
(a) any loss injury of damage suffered by a third party and arising out of the Buyer's its employees agents sub-contractors or others use or misuse of the Goods;  
(b) the Buyer's breach or breaches of any one or more of these Conditions

5.6 Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are extended to the fullest extent permitted by Law

5.7 Where the Goods are supplied under a Consumer Transaction (as defined by the Consumer Transactions (Restrictions on Statements) Order 1976) the statutory rights of the Buyer are not affected by the Conditions

### 6. ACKNOWLEDGEMENTS:

The Buyer acknowledges:

(a) in accordance with clause 3.3 above that any instructions or recommendations of ACA rely and are dependent upon all the information and technical background given to ACA by the Buyer.

(b) notwithstanding clause 5.1 above ACA does not manufacture or apply any process to the Goods purchased by the Buyer

(c) that ACA rely on the representations of the manufacturer and/or supplier of the Goods as to Specification quality or otherwise of the Goods and beyond this ACA is not obliged to check or otherwise verify the

Specification quality or otherwise of the Goods prior to purchase by the Buyer. Notwithstanding this AGA may at its sole discretion at any time prior to during or within 48 hours of delivery (or arrival at the

Buyer's premises if later) and always with the full co-operation of the Buyer

undertake all or any of the following in order to check or otherwise verify that the Goods conform to the Specification quality or otherwise:-

(i) seek documentary evidence of the Goods originality and/or

(ii) take photograph(s) the Goods and/or

(iii) undertake site inspection of the Goods before delivery and/or

(iv) undertake laboratory tests of the Goods

(d) where any Goods purchased are not suitable for the Buyer's purpose the

Buyer shall not be entitled to cancel the Contract without liability and the

Price for the Goods shall be due in full

(e) ACA does not warrant that the Goods will be fit for any particular purpose

of the Buyer and that any modifications and improvements made by

manufacturers to Goods from time to time are outside the control of ACA

(f) ACA does not warrant that the effect of the Goods shall be identical to

goods previously supplied by ACA (or to be supplied under any future

contract) and it is the Buyer's sole responsibility to carry out all

appropriate due diligence prior to submitting any order to ensure that the

quality and quantity of Goods ordered under the Contract are sufficient

for the Buyer's purposes

(g) the Buyer shall comply with any applicable legislation or any guidelines

issued by any Health and Safety authority or other

appropriate or

equivalent regulatory authority current at the time of use of the Goods by

the Buyer or any of its employees agents or sub-contractors or others

(h) ACA is not an insurer and unless otherwise agreed in writing by ACA

insurance cover (if any) shall be obtained directly by the Buyer

(i) that at the time of entering into the Contract with ACA the Buyer warrants

that it is not (and has not been immediately prior to entering into the

Contract) insolvent or bankrupt or (including without limitation) as

otherwise described in clauses 8.1(a) or (c) below and

knows of no

reason that would now or in the future entitle any third party to act as

described in clause 8.1(b) below.

### 7. TITLE AND RISK:

7.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon

delivery of the Goods or if the Buyer wrongfully fails to take

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delivery of the Goods the time when ACA has tendered delivery of the Goods.

7.2 Notwithstanding delivery and the passing of risk in the Goods or any provision of these Conditions the property in the Goods shall not pass to the Buyer until ACA has received in actual cleared funds payment in full of the Price and VAT and any other taxes due and the price of all other goods agreed to be sold by ACA to the Buyer for which payment is then due

7.3 Until such time as the property in the Goods passes to the Buyer ACA shall be entitled at any time to require the Buyer to deliver up the Goods to ACA and if the Buyer fails to do so forthwith to enter upon any premises of the Buyer or any third party where the Goods are stored and repossess the Goods

7.4 The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods which remain the property of ACA but if ACA does so all monies owing to ACA by the Buyer shall (without prejudice to any other right or remedy of ACA) forthwith become due and payable

**8. CANCELLATION:**

8.1 Without prejudice to any other right or remedy available to it ACA shall be entitled to cancel the Contract or suspend any further deliveries or performance under the Contract without any liability on the part of ACA to the Buyer and if Goods and materials are in transit ACA shall be entitled to stop those Goods and materials and if the Goods have been delivered but not paid for the Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary in the event that:-

(a) the Buyer makes any voluntary arrangement with its creditors or a notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying charge holder (as defined in paragraph 14 of Schedule B1 to the insolvency Act 1986) or (being an individual or a firm) becomes bankrupt or goes into liquidation (otherwise for the purposes of amalgamation or reconstruction); or

(b) an encumbrancer takes possession or a receiver is appointed (by any debenture holder or secured creditor or otherwise) of any of

the property or assets of the Buyer; or

(c) the Buyer ceases or threatens to cease to carry on business; or

(d) ACA reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly

(e) the Buyer breaches any term or terms of these Conditions

8.2 Subject always to clause 8.3 below no order which has been accepted by ACA may be cancelled by the Buyer except with the agreement in writing of ACA and on terms that the Buyer shall fully and effectively indemnify and hold harmless ACA against all loss costs damages charges and expenses incurred by ACA as a result of cancellation.

8.3 In the event that any Price increase under clause 4.2 above exceeds [10%] of the Price the Buyer shall have the right to cancel the Contract on giving written notice to ACA together with full and cleared payment of any part or all of the Price that remains outstanding at that date

**9. FORCE MAJEURE:**

Neither party shall be liable for any delay in performing or failure to perform (other than a payment obligation) due to any act of god war strike lock-out industrial action fire flood drought tempest or any other event beyond the reasonable control of either party. Such delay or failure will not constitute a breach of this Contract and time for the performance of the affected obligations will be extended by such period as is reasonable

**10 INTELLECTUAL PROPERTY:**

10.1 Unless otherwise agreed the Buyer 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 Buyer and any such rights which the Buyer may by law acquire will be held by the Buyer on trust absolutely for ACA or any other third party nominated by ACA and the Buyer shall not remove deface or cover up any ACA or third party name plates or marks appearing on the Goods

10.2 The Buyer shall keep ACA fully and effectively indemnified against actions claims proceedings costs and damages (including any damages or compensation paid by the ACA on the advice of

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its legal advisors to compromise or settle any claim) arising out of any breaches by the Buyer of any of the above warranties in clause 10.1 above

### **11. GENERAL:**

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

11.2 ACA may perform any of its obligations or exercise any of its rights

hereunder by itself or through its employees licensees agents sub-contractors or any other party approved by ACA

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

11.4 If any provision of these Conditions is held by any 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

11.5 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

11.6 Save as otherwise provided nothing in this Contract shall confer on any third party any benefit of the right to enforce any terms of this Contract

11.7 Any reference in these Conditions to any provisions of a statute shall be construed as a reference to that provision as amended re-enacted

or amended at the relevant time

11.8 The Buyer shall not assign the benefit of the Contract without ACA's prior written consent

11.9 ACA reserves the right to assign the benefit of the Contract on giving written notice to the Buyer

11.10 The Contract shall be governed by the laws of England and subject to the non-exclusive jurisdiction of the English courts

11.11 The Buyer shall make all payments due under the Contract in full

without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by ACA to the Buyer

11.12 Without prejudice to any other rights or remedies available to it under the Contract or otherwise ACA may at any time or times,

without notice to the Buyer, set off any liability of the Buyer to ACA against any liability of ACA to the Buyer, whether any such liability is present or future (whensoever arising), liquidated or unliquidated, under the Contract or not and irrespective of the currency of its denomination.