

F.I.S. CHEMICALS LIMITED TERMS AND CONDITIONS OF SALE

1. Interpretation

1.1 Definitions:

- 1.1.1 "**Business Day**" means a day other than a Saturday, Sunday or public holiday in Scotland, when banks in Edinburgh are open for business.
- 1.1.2 "**Conditions**" means the terms and conditions set out in this document as amended from time to time in accordance with clause 11.4.
- 1.1.3 "**Contract**" means the contract between FIS Chemicals and the Customer for the sale and purchase of the Goods in accordance with these Conditions.
- 1.1.4 "**Customer**" means the person or firm who purchases the Goods from FIS Chemicals.
- 1.1.5 "**Delivery Location**" has the meaning given in clause 4.2.
- 1.1.6 "**FIS Chemicals**" means F.I.S. CHEMICALS LIMITED (registered in Scotland with company number SC070834).
- 1.1.7 "**Force Majeure Event**" means an event, circumstance or cause beyond a party's reasonable control including, without limitation:
 - 1.1.7.1 epidemic or pandemic;
 - 1.1.7.2 any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition;
 - 1.1.7.3 acts of God, flood, drought, earthquake or other natural disaster;
 - 1.1.7.4 terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
 - 1.1.7.5 nuclear, chemical or biological contamination or sonic boom;
 - 1.1.7.6 collapse of buildings, fire, explosion or accident;
 - 1.1.7.7 any labour or trade dispute, strikes, industrial action or lockouts; and/or
 - 1.1.7.8 interruption or failure of utility service.
- 1.1.8 "**Goods**" means the goods (or any part of them) set out in the Order.
- 1.1.9 "**Order**" means the Customer's order for the Goods, as set out in the Customer's purchase order form.
- 1.1.10 "**Specification**" means any specification for the Goods, available on the Website, as updated from time to time.
- 1.1.11 "**Website**" means www.fischem.co.uk.

1.2 Interpretation:

- 1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.2 A reference to a party includes its successors and permitted assigns.
- 1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- 1.2.4 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.2.5 A reference to **writing** or **written** includes email.

2. Basis of contract

- 2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing.
- 2.2 The Order constitutes an offer by the Customer to purchase the Goods in accordance with these Conditions. The Customer is responsible for ensuring that the terms of the Order are complete and accurate.
- 2.3 The Order shall only be deemed to be accepted when FIS Chemicals issues a written acceptance of the Order, at which point the Contract shall come into existence.
- 2.4 The Customer waives any right it might otherwise have to rely on any term endorsed upon, delivered with or contained in any documents of the Customer that is inconsistent with these Conditions.
- 2.5 Any samples, drawings, descriptive matter or advertising produced by FIS Chemicals and any descriptions or illustrations contained in FIS Chemicals' catalogues, brochures or Website are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of the Contract nor have any contractual force.

3. Goods

- 3.1 The Goods are described in the Specification.
- 3.2 FIS Chemicals reserves the right to amend the Specification if required by any applicable statutory or regulatory requirements.

4. Delivery

- 4.1 FIS Chemicals shall ensure that each delivery of the Goods is accompanied by a delivery note that shows the date of the Order, the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 4.2 FIS Chemicals shall deliver the Goods to the location set out in the Order or such other location as the parties may agree (**Delivery Location**) at any time after FIS Chemicals notifies the Customer that the Goods are ready.
- 4.3 Delivery is completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. FIS Chemicals shall not be liable for any delay in delivery of the Goods that is caused by a Force Majeure Event or the Customer's failure to provide FIS Chemicals with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.5 If FIS Chemicals fails to deliver the Goods, its liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. FIS Chemicals shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide FIS Chemicals with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 4.6 If the Customer fails to accept delivery of the Goods within five Business Days of FIS Chemicals notifying the Customer that the Goods are ready, then, except where such failure or delay is caused by a Force Majeure Event or FIS Chemicals' failure to comply with its obligations under the Contract:
 - 4.6.1 delivery of the Goods shall be deemed to have been completed at 9.00 am on the fifth Business Day after the day on which FIS Chemicals notified the Customer that the Goods were ready; and
 - 4.6.2 FIS Chemicals shall store the Goods until delivery takes place, and may charge the Customer for all related costs and expenses (including insurance).
- 4.7 If ten Business Days after the day on which FIS Chemicals notified the Customer that the Goods were ready for delivery the Customer has not accepted actual delivery of them, FIS Chemicals may resell or otherwise dispose of part or all of the Goods.
- 4.8 FIS Chemicals may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.

5. Quality

- 5.1 FIS Chemicals warrants that on delivery, the Goods shall:
 - 5.1.1 conform in all material respects with their description and any applicable Specification;
 - 5.1.2 be free from material defects in design, material and workmanship; and
 - 5.1.3 be fit for any purpose held out by FIS Chemicals.
- 5.2 Subject to clause 5.3, if:
 - 5.2.1 the Customer gives notice in writing to FIS Chemicals within a 21 days of discovery that some or all of the Goods do not comply with the warranty set out in clause 5.1;
 - 5.2.2 FIS Chemicals is given a reasonable opportunity of examining such Goods; and
 - 5.2.3 the Customer (if asked to do so by FIS Chemicals) returns such Goods to FIS Chemicals' place of business at the Customer's cost, FIS Chemicals shall, at its option, repair or replace the defective Goods, or refund the price of the defective Goods in full, which shall constitute the sole and exclusive remedy of the Customer.
- 5.3 FIS Chemicals shall not be liable for the Goods' failure to comply with the warranty set out in clause 5.1 in any of the following events:
 - 5.3.1 the Customer makes any further use of such Goods after giving notice in accordance with clause 5.1;

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- 5.3.2 the defect arises because the Customer failed to follow FIS Chemicals' oral or written instructions as to the storage or use of the Goods or good trade practice regarding the same;
 - 5.3.3 the Customer alters such Goods without the written consent of FIS Chemicals;
 - 5.3.4 the defect arises as a result of wilful damage, negligence, or abnormal storage or working conditions; or
 - 5.3.5 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.
- 5.4 Except as provided in this clause 5, FIS Chemicals shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in clause 5.1.
- 5.5 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from the Contract.

6. Title and risk

- 6.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 6.2 Title to the Goods shall not pass to the Customer until FIS Chemicals receives payment in full (in cash or cleared funds) for the Goods and any other goods that FIS Chemicals has supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums.
- 6.3 Until title to the Goods have passed to the Customer, the Customer shall:
- 6.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as FIS Chemicals' property;
 - 6.3.2 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
 - 6.3.3 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
 - 6.3.4 notify FIS Chemicals immediately if it becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4; and
 - 6.3.5 give FIS Chemicals such information relating to the Goods as FIS Chemicals may require from time to time.
- 6.4 Subject to clause 6.5, the Customer may resell the Goods in the ordinary course of its business (but not otherwise) before FIS Chemicals receives payment for the Goods. However, if the Customer resells the Goods before that time:
- 6.4.1 it does so as principal and not as FIS Chemicals' agent; and
 - 6.4.2 title to the Goods shall pass from FIS Chemicals to the Customer immediately before the time at which resale by the Customer occurs.
- 6.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, then, without limiting any other right or remedy FIS Chemicals may have:
- 6.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and
 - 6.5.2 FIS Chemicals may at any time:
 - 6.5.2.1 require the Customer to deliver up all Goods in its possession that have not been resold, used or irrevocably incorporated into another product; and
 - 6.5.2.2 if the Customer fails to do so promptly, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

7. Price and payment

- 7.1 The price of the Goods shall be the price set out in the Order.
- 7.2 FIS Chemicals may, by giving notice to the Customer at any time before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 7.2.1 any factor beyond FIS Chemicals' control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials and other manufacturing costs);
 - 7.2.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, or the Specification; or
 - 7.2.3 any delay caused by any instructions of the Customer or failure of the Customer to give FIS Chemicals adequate or accurate information or instructions.

- 7.3 The price of the Goods:
- 7.3.1 excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to FIS Chemicals at the prevailing rate, subject to the receipt of a valid VAT invoice; and
 - 7.3.2 excludes the costs of the delivery of the Goods, which shall be invoiced to the Customer at the rate set out in the Order.
- 7.4 FIS Chemicals may invoice the Customer for the Goods on or at any time after the completion of delivery.
- 7.5 The Customer shall pay each invoice submitted by FIS Chemicals:
- 7.5.1 within 30 days of the date of the invoice or in accordance with any credit terms agreed by FIS Chemicals and confirmed in writing to the Customer; and
 - 7.5.2 in full and in cleared funds to a bank account nominated in writing by FIS Chemicals, and time for payment shall be of the essence of the Contract.
- 7.6 If the Customer fails to make a payment due to FIS Chemicals under the Contract by the due date, then, without limiting FIS Chemicals' remedies under clause 9 (Termination), the Customer shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.6 will accrue each day at 4% a year above the Bank of Scotland's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 7.7 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

8. Limitation of liability

- 8.1 The limits and exclusions in this clause reflect the insurance cover FIS Chemicals has been able to arrange and the Customer is responsible for making its own arrangements for the insurance of any excess loss.
- 8.2 The restrictions on liability in this clause 8 apply to every liability arising under or in connection with the Contract including liability in contract, delict (including negligence), misrepresentation, restitution or otherwise.
- 8.3 Nothing in the Contract limits any liability which cannot legally be limited, including liability for:
- 8.3.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
 - 8.3.2 fraud or fraudulent misrepresentation;
 - 8.3.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
 - 8.3.4 defective products under the Consumer Protection Act 1987.
- 8.4 Subject to clause 8.3, FIS Chemicals' total liability to the Customer shall not exceed the lesser of £5,000 and 100% of the price paid for Goods under the Contract.
- 8.5 Subject to clause 8.3, the following types of loss are wholly excluded:
- 8.5.1 loss of profits;
 - 8.5.2 loss of sales or business;
 - 8.5.3 loss of agreements or contracts;
 - 8.5.4 loss of anticipated savings;
 - 8.5.5 loss of use or corruption of software, data or information;
 - 8.5.6 loss of or damage to goodwill; and
 - 8.5.7 indirect or consequential loss.
- 8.6 Unless the Customer notifies FIS Chemicals that it intends to make a claim in respect of an event within the notice period, FIS Chemicals shall have no liability for that event. The notice period for an event shall start on the day on which the Customer became, or ought reasonably to have become, aware of the event having occurred and shall expire 3 months from that date. The notice must be in writing and must identify the event and the grounds for the claim in reasonable detail.
- 8.7 This clause 8 shall survive termination of the Contract.

9. Termination

- 9.1 Without limiting its other rights or remedies, FIS Chemicals may terminate this Contract with immediate effect by giving written notice to the Customer if:
- 9.1.1 the Customer commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

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- 9.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 9.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 9.1.4 the Customer's financial position deteriorates to such an extent that in FIS Chemicals' opinion the Customer's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.
- 9.2 Without limiting its other rights or remedies, FIS Chemicals may suspend provision of the Goods under the Contract or any other contract between the Customer and FIS Chemicals if the Customer becomes subject to any of the events listed in clause 9.1.2 to clause 9.1.4, or FIS Chemicals reasonably believes that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due under this Contract on the due date for payment.
- 9.3 Without limiting its other rights or remedies, FIS Chemicals may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 9.4 On termination of the Contract for any reason the Customer shall immediately pay to FIS Chemicals all of FIS Chemicals' outstanding unpaid invoices and interest and, in respect of Goods supplied but for which no invoice has been submitted, FIS Chemicals shall submit an invoice, which shall be payable by the Customer immediately on receipt.
- 9.5 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination.
- 9.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination of the Contract shall remain in full force and effect.
- ### 10. Force majeure
- Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure result from a Force Majeure Event. In such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed.
- ### 11. General
- 11.1 Assignment and other dealings.
- 11.1.1 FIS Chemicals may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract.
- 11.1.2 The Customer may not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of FIS Chemicals.
- 11.2 Confidentiality.
- 11.2.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 11.2.2.
- 11.2.2 Each party may disclose the other party's confidential information:
- 11.2.2.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 11.2; and
- 11.2.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 11.2.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.
- 11.3 Entire agreement.
- 11.3.1 This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 11.3.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.
- 11.4 Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 11.5 Waiver. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 11.6 Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this agreement. If any provision of the Contract is deemed deleted under this clause 11.6 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 11.7 Notices.
- 11.7.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:
- 11.7.1.1 delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- 11.7.1.2 sent by email to the address specified in the Order.
- 11.7.2 Any notice shall be deemed to have been received:
- 11.7.2.1 if delivered by hand, on signature of a delivery receipt;
- 11.7.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; and
- 11.7.2.3 if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 11.7.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 11.7.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 11.8 Third party rights. Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contract (Third Party Rights) (Scotland) Act 2017 to enforce any term of the Contract.
- 11.9 Governing law. The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation, shall be governed by and construed in accordance with the laws of Scotland.
- 11.10 Jurisdiction. Each party irrevocably agrees that the Scottish Courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract or its subject matter or formation.