

## **DISTRUPOL LTD**

### **CONDITIONS OF SALE**

In these conditions "Seller" refers to Distrupol Ltd and/or its subsidiary, associated or operating companies and "Buyer" refers to the individual firm or company to whom a quotation is addressed or whose order is accepted by the Seller. These conditions shall apply in respect of all Contracts ("Contract") between the Seller and Buyer for the purchase of goods or services from the Seller. No other conditions are incorporated or implied into any Contract between the Buyer and the Seller unless expressly accepted in writing by the Seller.

All references to prices, goods and services contained in these conditions shall be taken to mean the prices, goods and services detailed in the relevant order form issued by you ("**Purchase Order**") as subsequently amended by our acknowledgement of order form ("**Acknowledgement of Order**").

#### **1. Application of Conditions**

All quotations, offers and tenders are made subject to the following conditions. Except as otherwise provided in these conditions, all other terms, conditions, representations or warranties are excluded from any Contract between the Seller and the Buyer unless expressly accepted in writing by the Seller.

#### **2. Delivery**

(a) Time for delivery of the goods and completion of the services is given as accurately as possible but is not guaranteed. Except where otherwise agreed, the Seller shall deliver to the Buyer's premises stated in the Buyer's order. In the event that the Seller is unable to deliver the goods at the agreed time, it shall use its reasonable endeavours to notify the Buyer of the delay. Upon notice by the Seller, the Buyer agrees to negotiate in good faith with the Seller to agree a new delivery date. In the event that the goods cannot be delivered, or the parties cannot agree a new delivery date, the Buyer may cancel the contract and seek alternative goods at its own cost and risk.

(b) The Seller reserves the right to deliver less or more than the quantity of goods ordered by up to 5% and the Buyer shall pay for the quantity actually delivered. Measurements of volume or weight are also subject to variation as a result of normal manufacturing or packing processes and the Buyer must accept such variations up to 5% of the stated measurement.

(c) Failure by the Buyer to take delivery of any one or more installments of goods delivered in accordance with the Contract shall entitle the Seller to terminate the Contract either in whole or part.

(d) No liability can be accepted for damage in transit unless the Buyer notifies the site from which the goods were ordered or the Buyer's usual customer representative within 3 days of receipt of the goods, and confirms by notification in writing within 7 days of receipt of the goods. Where the Seller is notified of the damage to the goods in accordance with this provision, the Seller shall repair or replace the goods at its sole option.

(e) If the Buyer does not promptly discharge road tankers used to deliver the goods to the Buyer, the Buyer shall indemnify the Seller against any liability whatsoever, including, but not limited to, a liability to pay demurrage or similar payments owed to the owner/operator of the road tanker in respect of the consequent delay.

### **3. Price and Payment**

(a) Subject to condition 3(b), the price for the services or each delivery of goods will be as detailed in the relevant Purchase Order, as amended by the relevant Acknowledgement of Order, as amended in accordance with condition 3(b) or, if no pricing information is contained therein, will be in accordance with the Seller's price list in force from time to time. In the event of a conflict any price revision in accordance with condition 3(b) shall prevail, or if the price has not been revised, the price in the Acknowledgement of Order shall prevail and, if no price information is contained therein, the price in the Purchase Order shall prevail.

(b) (i) The Seller shall be entitled to increase the price of the goods every six months after the date of the Acknowledgement of Order for any reason or more frequently if the Seller (in its sole discretion) considers the same to be justified by reason of any material increase in the prices of raw materials used by the Seller or other overhead costs incurred by the Seller in the supply of the goods.

(ii) The Seller shall provide the Buyer with 21 days advance notice of any price increase. The Buyer shall be entitled to cancel its order by providing written notice to the Seller, only if the goods or services provided under that relevant Purchase Order are provided by the Seller out of the Seller's normal stock offering and do not form part of a particular stocking arrangement, such notice to be given within 7 days of the Buyer receiving notice of the price increase. If written notice of cancellation is not received by the Seller within 7 days then the Contract will continue in force.

(c) All prices (which unless otherwise specifically stated are exclusive of VAT and any other applicable taxes, including hydrocarbon oil duty, where applicable, and do not include delivery or package charges) are net and are not subject to any discount. Unless an earlier date is specified by the Seller, payment is due and shall be made in cash at the Seller's offices by the 20th day of the month following the month of delivery of the goods or services, and the Seller has total discretion as to whether there will be any set-off or deduction.

(d) At the Seller's complete discretion, it may charge interest at:

(i) the rate of 5% per annum above National Westminster Plc base rate from time to time in force; or

(ii) at 1% above such a rate as the Seller may be charged by a commercial lending bank; or

(iii) In the alternative the Seller may claim interest at its discretion under the Late Payment of Commercial Debts (Interest) Act 1998.

The sum shall be payable daily and compounded quarterly and shall be chargeable on the entire sum outstanding where payment is not made in accordance with condition 3(c).

(e) Where the Buyer defaults in payment, the Seller shall be entitled to suspend any or all further deliveries and the performance of services under the Contract and under any other Contract between the Seller and the Buyer.

(f) Where goods are delivered by instalments or the services performed in stages the Seller may invoice each installment or stage separately and the Buyer shall pay such invoice in accordance with these conditions.

(g) The Seller has the right to issue a supplementary invoice in respect of any increase in tax or duty between the date of dispatch and the date of delivery for which the Seller may be liable to the appropriate authorities.

(h) No disputes arising under the Contract or delays (other than delays acknowledged by the Seller in writing) shall interfere with prompt payment by the Buyer.

### **4. Credit**

The Seller reserves the right, at any time, to withhold credit facilities from or to limit the amount or period of credit it will grant to Buyer.

### **5. Guarantee**

(a) Except as otherwise provided in these conditions, section 12 of the Sale of Goods Act 1979 is implied into the Contract and all other warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

(b) The goods supplied by the Seller shall be in accordance with the specification supplied by the Seller (if any) and shall be of satisfactory quality but are not tested or sold as fit for any particular

purpose unless specifically agreed in writing by the Seller. The services shall also conform to the specification supplied by the Seller (if any) and be carried out with all reasonable care and skill.

(c) If the condition of the goods or services is such as might or would (subject to these conditions) entitle the Buyer to claim damages, to repudiate the Contract or to reject the goods or services the Buyer must first ask the Seller to repair the goods or supply satisfactory substitute goods or services and the Seller shall then be entitled at its option to repair or supply satisfactory substitute goods or services free of cost and within a reasonable time or to repay the price of the goods or services in respect of which the complaint is made.

(d) If the Seller does so repair or supply satisfactory substitute goods or services or effect repayment under condition 5 (c), the Buyer shall be bound to accept such repaired or substituted goods or services or repayment and the Seller shall be under no further liability in respect of any loss or damage of whatever nature arising in relation to those goods or services.

(e) In addition, the Buyer agrees to comply with all of its obligations under the REACH Regulations. In particular, but without limitation, the Buyer shall provide, on a timely basis, to Distrupol all relevant new information on hazardous properties of the products. The buyer shall comply with any safety information on the products supplied to it and ensure that their customers are provided with all the information required to use their products safely.

## **6. Liability**

(a) Nothing contained in these Conditions shall limit or restrict the Seller's liability for death or personal injury caused as a result of the Seller's negligence, nor does the Seller limit or restrict its liability for fraudulent misrepresentation under the Misrepresentation Act 1967.

(b) The Seller or the Seller's manufacturers or suppliers provide written instructions and/or advice to the Buyer for the safe use of the Seller's goods and containers (such as crates, drums, boxes, cases or carboys) and other types of packaging (further copies available on request). The Seller accepts no liability whatever for any losses, costs or other claims caused where the Buyer uses its own containers or caused as a result of the Buyer's failure to use the Sellers' goods, containers or other packaging in accordance with the written safety instructions and/or advice.

(c) Where the Seller delivers goods and containers/packaging to the Buyer, the point of delivery will be the delivery vehicle's side and the Seller accepts no liability whatever for any losses, costs or other claims in connection with the transfer of the goods and containers/ packaging from the vehicle side to the Buyer's storage location.

(d) Where the Buyer receives goods via a Power Take Off delivery system, it is the Buyer's responsibility to ensure that all operating instructions and health and safety procedures are followed at the point of delivery and the Seller accepts no responsibility for any claims, losses, costs or damage caused at and from the point of transfer to the Buyer's installation.

(e) Where the Seller delivers the goods to the Buyer, the Seller ensures that all packaging in the form of crates, drums, boxes, carboys etc are suitable to protect the goods from damage during delivery. The Seller can accept no liability for any loss or damage caused where such packaging is used for the further transportation of the goods or other unconnected goods and the Buyer must satisfy himself that the goods are safely packaged for such transportation.

(f) Where the Buyer collects the goods from the Seller, although the Seller may inspect any collection vehicle used by the Buyer, the Seller shall not be responsible for any losses caused or claims made to the Buyer as a result of the unsuitability/inappropriateness of the vehicle in any respect whatsoever.

(g) Unless the Seller has specifically confirmed to the Buyer that the goods are suitable to be mixed with any other goods, the Seller accepts no liability for admixture of the goods with any other goods and it shall be the Buyer's sole and entire responsibility to ensure that the products concerned and the containers to be used are entirely suitable for such admixture and/or for transfer of such.

(h) The Seller's maximum aggregate liability under or in connection with the Contract, whether in contract, tort (including negligence) or otherwise, will in no circumstances exceed the price of the goods or services under the Contract.

(i) In no circumstances shall the Seller be liable in contract, tort (including negligence or breach of statutory duty) or otherwise for any loss (whether direct or indirect) of profits, goodwill or business opportunity or for any indirect, special or consequential loss (whether or not reasonably

foreseeable and even if the Seller had been advised of the possibility of the Buyer incurring the same) which arises out of or in connection with the Contract.

#### **7. Trade Marks etc**

All trade marks, registered or unregistered design rights, copyrights, confidential information such as colour schemes, knowhow and other intellectual property rights of any nature ("Intellectual Property") in all goods or services supplied by the Seller are owned by the Seller and/or its suppliers. The Seller reserves the right at any time to require Buyer forthwith to discontinue the use in any manner whatsoever any such trade marks or other Intellectual Property.

#### **8. Risk**

The risk in the goods shall remain with the Seller until delivery by the Seller or collection of the goods by the Buyer or payment for the goods by the Buyer, whichever is the earlier, at which time the risk in the goods shall be transferred to the Buyer.

#### **9. Reservation of Title**

(a) Title to the goods shall only pass to the Buyer if the Buyer has paid to the Seller all sums (including any default interest) due from it to the Seller under this Contract and under all other contracts between the Seller and the Buyer (including any sums due under contracts made after this Contract) whether or not the same are immediately payable. (b) The Seller may recover goods in respect of which title has not passed to the Buyer at any time and the Buyer irrevocably licences the Seller, its officers, employees and agents to enter upon any premises of the Buyer, with or without vehicles, for the purpose either of satisfying itself that Condition 9 (c) below is being complied with by the Buyer or of recovering any goods in respect of which title has not passed to the Buyer.

(c) Until title to the goods has passed to the Buyer under these conditions it shall possess the goods as fiduciary agent and bailee of the Seller. The Buyer shall store the goods separately from other goods and shall ensure that they are clearly identifiable as belonging to the Seller. During such time as the Buyer possesses the goods with the Seller's consent, the Buyer may in the normal course of business sell or hire the goods as principal but without committing the Seller to any liability to the person dealing with the Buyer. Each paragraph or sub-paragraph of this condition is separate, severable and distinct.

#### **10. Ex Stock Goods**

Ex-stock goods are offered subject to the same not having been sold elsewhere prior to receipt of unqualified acceptance of the Seller's quotation.

#### **11. Variations**

No variation to any Contract shall have effect unless signed in writing on behalf of the Seller by an Officer of the Seller.

#### **12. Assignment**

The Contract is between the Seller and the Buyer as principal and is not assignable without the consent of the Seller.

#### **13. Termination**

The Seller shall be entitled forthwith to terminate any Contract between it and the Buyer by written notice if the Buyer fails to pay any invoice in accordance with these conditions, where the control of the Buyer changes during the period of the Contract or where the Buyer commits any continuing or material breach of these conditions of sale or makes any composition with its creditors or suffers any distress or execution to be levied upon its assets or is wound up either compulsorily or voluntarily or suffers a receiver of any of its assets to be appointed or otherwise ceases or threatens to cease to carry on business.

#### **14. Force Majeure**

The Seller shall have the right to cancel or delay performance of the services or deliveries of the goods if it is prevented from or hindered in or delayed in manufacturing or delivering the goods or

services or any part thereof through any circumstances beyond its reasonable control, including but not limited to war, riot, government requisitions of any kind, suspension or loss of means of transport, strikes, lock outs, labour disputes, fire, explosion, flood, accident, failure of any third party to supply the Seller, breakdown of machinery or anything directly or indirectly interfering with the goods or services (including but not limited to the price or supply of raw materials, services or any other goods relating to the contract) or the manufacture, supply, shipment, arrival or delivery of the goods. During any such period of cancellation, the Buyer shall have the right to purchase elsewhere at his own risk and cost such quantities of the goods or services as may be necessary.

**15. Jurisdiction**

The Contract shall be governed and interpreted according to the laws of England and shall be subject to the jurisdiction of the English Courts.

**16. Rights of Third Parties**

A person who is not a party to the Contract has no right under the Contract (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

**17. Severability**

If any of these terms, conditions, clauses or sub-clauses are found by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of these terms and conditions, which will remain in full force and effect.