

## 1. Definitions

In these general terms and conditions, unless the contrary intention is expressed the following definitions apply:

“Buyer”	means the person whose order for the Goods is accepted by the Seller.
“Conditions”	means the standard terms and conditions of sale set out in this document and, unless the context otherwise requires, includes any special terms and conditions agreed in writing between the Buyer and the Seller.
“Goods”	means the goods (including any installment of the goods or any part of them) which the Seller is to supply in accordance with these Conditions.
“Incoterms”	means the rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the contract of sale is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these Conditions, but if there is any conflict between the provisions of Incoterms and these Conditions, the latter shall prevail.
“Parties”	means the Buyer and the Seller.
“Sales Contract”	means the purchase agreement for the Goods between the Parties which is based on Buyer's order and Seller's order confirmation.
“Seller”	means BrueggemannChemical Asia Limited, incorporated with limited liability in Hong Kong.
“Trademarks”	means any and all trade names and trademarks, including BRUEGGEMANN CHEMICAL, and the brand names which may be applied to the Goods.
“Writing”	includes fax transmission, email and other comparable means of communication.

## 2. Scope of Application

1. The Seller shall sell and the Buyer shall purchase the Goods in accordance with the Sales Contract, subject to these Conditions. In the case of dispute, these Conditions shall apply to the exclusion of any other terms and conditions which may be imposed by the Buyer.
2. No variation to these Conditions shall be binding unless agreed in Writing between the Buyer and the Seller.
3. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Seller shall be subject to correction without any liability on the part of the Seller.

## 3. Order

1. No quotations issued by the Seller shall be binding with regard to price, quantity, and terms of delivery.
2. The conclusion of a Sales Contract between the Seller and the Buyer shall be deemed to occur once an order issued by the Buyer is accepted by the Seller in Writing which could be in the form of an order confirmation by fax or by email. Each order placed by a Buyer and accepted by the Seller is a separate contract.
3. The quantity, quality and description of and any specification for the Goods and the time of delivery shall be those as set out in the Seller's order confirmation or as accepted by the Seller in Writing.
4. No order which has been accepted by the Seller may be cancelled by the Buyer except with the agreement in Writing of the Seller and on terms that the Buyer shall indemnify the Seller in full against all loss (including, but not limited to, loss of profit), costs (including, but not limited to, the cost of all labour and materials used), damages, charges and expenses incurred by the Seller as a result of cancellation.

5. The unit price of the Goods shall be the price stipulated in Seller's order confirmation and unless otherwise agreed, the Seller prices are calculated on a CIF port of destination basis (sea transport) or CIP basis (other modes of transport).
6. The Seller and Buyer agree that due to the market situation, the Seller shall be entitled to amend the unit price of the Goods at any time between the date of the Seller's order confirmation and the date of shipment. If the Seller amends unit price of the Goods, it shall immediately inform the Buyer in Writing. The Buyer must immediately reply to the Seller in Writing whether or not it accepts the new price. If the Buyer does not agree or fails to inform the Seller within 3 working days after it receives the notification from the Seller, the Seller shall be entitled to treat the contract as void from the beginning. Working days are all days from Monday to Friday with the exception of statutory public holidays at Seller's registered office. Neither party shall have any claims against the other for loss or damage.

#### **4. Payment**

1. The Seller shall state the payment terms in the Seller's order confirmation.
2. If the Buyer fails to make any payment on the due date, without prejudice to any of the Seller's other rights and remedies (whether at law, under contract or otherwise), the Seller shall be entitled to charge interest at the lower of (i) 2% per month on the overdue payment from the due date until the date that the Seller receives payment in full; and (ii) the highest rate permitted by applicable law, and all moneys owing by the Buyer to the Seller shall forthwith become due and payable. The Buyer acknowledges and agrees that the charging of such interest is not intended as a forfeiture or penalty within the meaning of any applicable law, but is intended to constitute liquidated damages representing a genuine pre-estimate of the loss and damage that may be suffered or incurred by the Seller as a result of the Buyer failing to make payments to the Seller by the applicable due dates. In addition, if the Buyer fails to make payment on the due date or fulfill any of the payment terms, the Seller may treat the contract as repudiated by the breach of the Buyer and, without prejudice to the Seller's rights and remedies (whether at law, under contract or otherwise) to sue for its losses, the Seller shall cease to be obliged to perform its obligations under the relevant Sales Contract.
3. Payments shall be made to a bank account designated by the Seller. All bank charges shall be borne by the Buyer.
4. Payments by means of a draft or cheque require the prior consent of the Seller in Writing and shall be deemed only as additional security for the payment. The payment obligation is not fulfilled until the payment amount is transferred to the Seller.
5. Even if there are complaints on the grounds of defects or other claims, the Buyer is not entitled to offset or retention. For the avoidance of doubt, all payments to the Seller shall be made in full and without any set-off, deduction or counterclaim.
6. If the financial circumstances of the Buyer deteriorate after conclusion of a Sales Contract or if a deterioration only becomes noticeable once a Sales Contract has been concluded so that the payment claim of the Buyer is at jeopardy the Seller may, subject to any further claims, revoke payment targets granted and make further deliveries dependent on advanced payment or the grant of other securities. The same shall apply in the event of default in payment.

#### **5. Delivery**

1. Delivery of the Goods shall be made by the Seller delivering to the port of destination or as agreed by the Seller in Writing. The Buyer must collect the Goods in accordance with the provisions of the relevant Sales Contract and all costs arising thereafter shall be borne by the Buyer should it fail to collect the Goods accordingly.
2. Any dates quoted for delivery of the Goods are approximate only and the Seller shall not be liable for any delay in delivery of the Goods howsoever caused. Time for delivery shall not be of the essence unless previously agreed by the Seller in Writing.

3. Subject always to clause 6 below, risk of loss or damage to the Goods shall pass to the Buyer in accordance with the relevant Incoterms as stated in Seller's order confirmation.
4. If any payments are overdue for 21 days or the Buyer becomes insolvent or unable to pay its debts or, if a limited company, satisfies any statutory ground for winding up by the court or voluntarily (other than for the purposes of amalgamation or reconstruction) then, without prejudice to any other remedies, the Seller may terminate any Sales Contract with the Buyer and by its servants or agents enter the Buyer's premises to recover all goods in respect of which property has not passed.
5. The Buyer shall be responsible for complying with all applicable laws, legislation and regulations governing the importation of the Goods into the country of destination and for the payment of any duties thereon.
6. The Seller may deliver Goods in partial shipments and the Buyer shall not be entitled to reject acceptance thereof. If the Buyer, in breach of its obligations, fails to take delivery of any part shipment of the Goods, the Seller shall be entitled to treat such failure as a repudiatory breach on the part of the Buyer and opt to treat the Sales Contract as terminated. Without prejudice to any other damage suffered by the Seller, all costs incurred by the Seller, whether storage costs, transport costs or otherwise, shall be borne by the Buyer.
7. Any default in payment of any sums payable by the Buyer shall be a breach of the relevant Sales Contract.
8. In addition to clause 5.2 above, the Seller shall not be liable to the Buyer or deemed to be in breach of contract by reason of any delay in performing, or any failure to perform, any of the Seller's obligations in relation to the Goods, if the delay or failure was due to any cause beyond the Seller's reasonable control. Without prejudice to the generality of the foregoing, causes beyond the Seller's reasonable control include, but are not limited to: Acts of God, explosion, flood, tempest, fire or accident; war or threat of war, sabotage, insurrection, civil disturbance or requisition; acts, restrictions, regulations, bye-laws, prohibitions or measures of any kind on the part of any governmental parliamentary or local authority; import or export regulations or embargoes; strikes, lock-outs or other industrial actions or trade disputes (whether involving employees of the Seller or of a third party); difficulties in obtaining raw materials, labour, fuel, parts or machinery; power failure or breakdown in machinery, or disease warnings issued by the World Health Organisation.

#### **6. Reservation of title**

1. Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the legal title and property in the Goods shall not pass to the Buyer until the Seller has received payment in full for the Goods.
2. Until such time as the legal title and property in the Goods passes to the Buyer, the Buyer shall hold the Goods in trust absolutely for the Seller as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and properly stored, protected and insured and clearly identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of business. If the Goods are resold by the Buyer in the ordinary course of business prior to the passing of legal title and property in the Goods, the Buyer shall hold the proceeds of such sale in trust absolutely for the Seller until such time that the Seller shall have received payment in full in accordance with these Conditions.
3. The Buyer shall not encumber, mortgage, pledge, transfer, assign, dispose of, or in any way charge by way of security for any indebtedness any of the Goods which remain the property of the Seller, but if the Buyer does so all moneys owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable to the Seller.
4. If any payments are overdue or the Buyer commits any act of bankruptcy or if a limited company, satisfies any legal ground for winding up by the court or voluntarily (other than for the purposes of amalgamation or reconstruction) then, without prejudice to any other remedies, the Seller may terminate any Sales Contract with the Buyer and by its servants or agents enter the Buyer's premises to recover all Goods in respect of which legal title and property has not yet passed to the Buyer.

**7. Product Quality and  
Notification of defects**

1. Subject as expressly provided in these Conditions, all warranties, conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
2. Unless otherwise agreed, the quality of the Goods is determined by the Seller's product specifications. The properties of specimens or samples are only binding if they have been expressly agreed in Writing by the Seller to define the quality of the Goods.
3. The Buyer shall examine the Goods immediately upon delivery and note any defects in Writing on the delivery note. The Buyer shall send a copy of the delivery note immediately to the Seller as notification of a claim. If delivery is not refused and the Buyer does not notify the Seller in accordance with this clause, the Buyer shall not be entitled to reject the Goods and the Seller shall have no liability for such defect or failure, and the Buyer shall be bound to pay the price as if the Goods had been delivered in accordance with the relevant Sales Contract.
4. Where the defect or failure was not apparent on reasonable inspection, the Buyer must notify the Seller in Writing within 7 days from the date after discovery of the defect or failure (as the case may be). The notification shall include information about the invoice and shipping number, the product name and the packaging used. If the Buyer does not notify the Seller in accordance with this clause, the Seller shall have no liability for such defect or failure.
5. The Buyer shall test the Goods or take samples of the Goods before using the Goods to ensure that the Goods are not defective. The Buyer must notify the Seller in Writing of any defect with the Goods within 7 days from the date of sampling or the issue of the test result. If the Buyer fails to test or sample the Goods and if, upon reasonable testing or sampling, the Goods would have been found to be defective, the Seller shall not be liable to the Buyer for any losses, direct or consequential, arising from the use of the defective Goods. This exclusion of liability also applies where the Buyer fails to notify the Seller in accordance with this clause.
6. LIMITATION OF LIABILITY. Where any valid claim in respect of any of the Goods is notified to the Seller in accordance with these Conditions or any Sales Contract and the Seller is of the opinion that such claim is valid, the Seller shall, in its discretion, replace the Goods (or the part in question) free of charge or refund to the Buyer the price of the Goods (or a proportionate part of the price, as the case may be), but the Seller shall have no further liability to the Buyer subject to the fullest extent as permitted by the applicable law.
7. Except in respect of death or personal injury caused by the Seller's negligence and subject to the fullest extent as permitted by the applicable law, the Seller 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 of the relevant Sales Contract, for any consequential loss or damage (whether for loss of profit or otherwise), costs, expenses or other claims for consequential compensation whatsoever (and whether caused by the negligence of the Seller, its employees or agent or otherwise) which can arise out of or in connection with the supply of the Goods or their use or resale by the Buyer, except as expressly provided in these Conditions.
8. No Goods may be returned to the Seller without the Seller's prior consent in Writing, unless the Seller has failed to provide the remedies set out in clause 7.6 within a reasonable period of time and the Buyer has sent a reminder to the Seller.

**8. Advice on technical application**

1. Any advice given by the Seller with regard to the applications for the Goods shall not be legally binding and the Seller shall not be liable for any such advice given. The Buyer shall ensure that it verifies the suitability of the Goods and that the Goods comply with any laws or regulations for the purpose intended by the Buyer and carries out the necessary tests.
2. The Buyer shall provide the Seller with information about the current national technical standards applicable to the delivered Goods in Writing. If the Buyer fails to do so he may not hold the Seller responsible for non-compliance with these standards and shall indemnify, defend and hold the Seller harmless from and against all liabilities, costs, damages, and claims, unless the Seller has violated the aforesaid standards intentionally or by gross negligence.

#### **9. Protection of Trademarks**

1. Buyer acknowledges that Seller or its holding company is the owner of all rights in the Trademarks and that Seller has the exclusive right to use the Trademarks or any confusingly similar trade names or trademarks. Buyer will not use the Trademarks or any confusingly similar trade names or trademarks (i) in any manner except as specified herein and (ii) on or in connection with any goods other than the Goods.
2. In using the Goods for manufacturing or processing purposes, the Buyer shall not use any product specification, brand or Trademarks of the Seller on products or its packaging or in any relevant printing or advertising material, in particular, in a table of contents without the prior consent of the Seller. The delivery of Goods under the brand or Trademarks of the Seller shall not be regarded as such consent.

#### **10. Legal Defects**

1. In as far as rights of third parties prevent the contractually intended use of the Goods, the Buyer shall inform the Seller without undue delay of the assertion of such rights of third parties and shall grant to the Seller at no extra charge all powers of attorney and grant all authorities required to defend the Goods against the rights of third parties asserted at its own costs. The Buyer shall on demand forthwith execute (including under seal) and deliver all such documents, and do all such things, as the Seller may from time to time reasonably require for the purpose of giving full effect to this clause 10.1 and these Conditions.
2. In as far as the rights of third parties prevent the contractually intended use of the Goods, the Seller shall, in its discretion, introduce appropriate measures to eliminate the rights of third parties or the assertion thereof, procure the right of use from the third party at its cost or alter or replace the Goods in such a manner that it no longer infringes the rights of third parties if and insofar as the compliance of the Goods with the Sales Contract is not impaired. The Seller shall have no further liability to the Buyer.
3. The Buyer may not assert the aforementioned claims if infringement of the rights of third parties is based on the Buyer's specifications or requirements and the Seller had no knowledge of the contradictory rights of third parties.

#### **11. Third party rights**

A person (which expression includes, but is not limited to, a natural person, body corporate, unincorporated association or firm) who is not a party to the Sales Contract shall not have any rights under the Contracts (Rights of Third Parties) Ordinance (Cap. 623 of the Laws of Hong Kong) to enforce any of its terms.

#### **12. Confidentiality**

The Parties will exchange business or technical information. As long as and to the extent that such information is not publicly known, the receiving party shall not disclose such information to third parties and shall only use such information for the purposes of the Sales Contracts. The receiving party may only disclose such information to persons in the receiving party's own company or to its affiliated companies as long as and to the extent that this is required for the purposes of the Sales Contracts; the receiving party must oblige such persons and its affiliated companies to observe secrecy.

#### **13. Place of performance & Governing law**

All disputes arising from the Sales Contracts shall be governed by the laws of Hong Kong for the time being in force under the exclusion of the United Nations Convention on Contracts for the international Sale of Goods and the Parties agree to submit to the exclusive jurisdiction of the courts of Hong Kong.