

Dated the 1st day of November 2014

THE NATIONAL CHEMICAL COMPANY LIMITED

TERMS AND CONDITIONS OF SALE

**1. Definitions**

In these Terms and Conditions of Sale the following expressions shall have the following meanings:

"Contract"	means any contract between the Seller and the Purchaser for the purchase and sale of Goods made subject to these Terms and Conditions.
"Contract Price"	means the price of the Goods stipulated in the Contract.
"Goods"	means the products manufactured and/or sold (including any instalment of the goods or parts for them) by the Seller.
"Order"	means an order placed by the Purchaser for the supply of Goods.
"Purchaser"	means any person, firm, association, company or partnership purchasing the Goods from the Seller under these Terms and Conditions.
"Seller"	means the National Chemical Company Limited, and any subsidiary, agent, employee, nominee, representative, successor or assign thereof.
"Terms and Conditions"	means these terms and conditions of trading.
"Third Party Goods"	means Goods sold by the Seller which have been manufactured by a party other than the Seller.

Further Definitions

- (i) Any reference to any provision of any legislation shall include any modification, re-enactment or extension thereof.
- (ii) Words such as "hereunder", "hereto", "hereof" and "herein" and other words commencing with "here" shall unless the context clearly indicates to the contrary refer to the whole of these Terms and Conditions and not to any particular clause thereto.
- (iii) Save as otherwise provided herein, any reference to a clause, paragraph or sub-paragraph shall be a reference to a clause, paragraph or sub-paragraph (as the case may be) of these Terms and Conditions and any reference in a clause to a paragraph or sub-paragraph shall be a reference to a paragraph or sub-paragraph of the clause or paragraph in which the reference is contained unless it appears from the context that a reference to some other provision is intended.
- (iv) The masculine gender shall include the feminine and neuter and the singular number shall include the plural and vice versa and words importing persons shall include firms and companies.
- (v) The headings in the clauses in these Terms and Conditions are inserted for convenience of reference only and shall not be considered a part of or affect the constructions or interpretation of these Terms and Conditions.

**2. Basis of Sale**

The Seller's employees or agents are not authorised to make any representations concerning the Goods unless such representations are confirmed by the Seller in writing. In entering into a Contract the Purchaser acknowledges that it does not rely on, and waives any claim for breach of, any such representations which are not so confirmed. Any advice or recommendation given by the Seller or its employees or agents to the Purchaser or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Seller is followed or acted on entirely at the Purchaser's own risk and, accordingly, the Seller shall not be liable for any such advice or recommendation which is not so confirmed.

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 liability on the part of the Seller.

The giving by the Purchaser of an Order, or any delivery instructions or the acceptance by the Purchaser of delivery of Goods shall constitute an un-qualified acceptance by the Purchaser of these Terms and Conditions.

**3. Orders**

All Orders accepted by the Seller are subject to these Terms and Conditions and these Terms and Conditions comprise the entire contract between the Seller and the Buyer and supersede any or all representations, warranties, course of dealing or arrangement, whether written or oral, heretofore made or entered into between the Seller and the Buyer relating to the Goods. Verbal Orders will be processed only on receipt of written confirmation from the Purchaser. Any decision on the Seller's part not to apply one or more clauses in these general conditions shall have no effect on the validity of the other clauses which shall be deemed to remain applicable. An Order placed further to a quotation made by the Seller shall constitute a contract only upon acceptance by the Seller in writing. These Terms and Conditions are not capable of being varied, supplemented, qualified or interpreted by reference to any prior course of dealing between the parties. In consideration of the Seller accepting orders by electronic mail the Purchaser undertakes to indemnify and hold harmless and keep indemnified and held harmless the Seller from and against all loss, claims, costs, (including legal costs) damages, expenses and demands of whatever nature the Seller may incur or sustain directly or indirectly as a result of any misinterpretation by the Seller of any such order received by Electronic mail due to the poor quality of such order.

In the event of the Seller or his/its employees or agents giving delivery instructions and afterwards finding it necessary to cancel them, such cancellation will only be accepted on terms that the Purchaser accepts full responsibility to the Seller for any loss (including loss of profits), costs (including the cost of all labour and materials used), damages, charges and expenses incurred by the Seller up to the time of cancellation. The Seller's estimate of any such loss, costs, damages, charges and/or expenses incurred shall be final and conclusive. The Purchaser indemnifies the Seller in respect of any and all such loss, costs, damages, charges and expenses.

**4. Force Majeure**

In the event of any Acts of God, governmental direction or other authoritative direction or intervention, strikes, lockouts, disputes or refusal of labour, difficulties in obtaining raw materials, fuel, parts or machinery or other industrial, civil or international unrest (whether the same affects the Seller or its agents) or any other cause of whatsoever nature beyond the control of the Seller or force majeure, the Seller shall not be liable for any delay in delivery, non-delivery, destruction or deterioration of all or any part of the Goods or for any other default in the performance of the contract arising therefrom and the Seller shall have the option either to cancel this contract either wholly or partially or to extend the time of delivery during such period as such circumstances or any or them shall continue. In the event of any such cancellation by the Seller or any such postponement, the Purchaser shall have no claim whatever against the Seller.

**5. Risk**

The risk in the Goods shall remain with the Seller until the point of delivery stated in these Terms and Conditions, thereafter the risk shall be with the Purchaser notwithstanding the provisions of Clause 6.

**6. Retention of Title**

The full legal and beneficial title to the ownership of the Goods shall remain with the Seller until the Purchaser has paid the Seller in full in respect of the Goods and all other sums due by the Purchaser to the Seller. Until payment in full for the Goods and all other sums due, the Purchaser will have possession of the Goods as bailee for the Seller and will have authority until such authority is countermanded by the Seller or until the appointment of a receiver, liquidator or examiner over the assets of the Purchaser, the presentation of a petition to wind up or place under protection or the convening of a creditors' meeting by the Purchaser, whichever is the earlier, to sell the Goods in the ordinary course of the Purchaser's business. At any time prior to the Purchaser paying for the Goods and any other sums due, the Seller may, by notice in writing, determine the Purchaser's right to sell the Goods. The Purchaser shall hold in trust for the Seller until the price of the Goods and all other sums due by the Purchaser to the Seller have been discharged, such portion of the proceeds of the sale of the Goods as equates to the sums due by the Purchaser to the Seller. The Purchaser shall retain the aforesaid portion of the proceeds of sale in a manner that allows the proceeds to be separately identifiable and the proceeds shall be lodged by the Purchaser to a separate account as may be designated by the Seller from time to time. The Seller shall be entitled to all rights and claims which the Purchaser may have against his/its customers arising from sales of the Goods until payment in full for the Goods and all outstanding sums is made to the Seller.

Until title to the Goods has passed to the Purchaser, the Purchaser shall at his/its own expense separately store the Goods and prevent any loss or damage due to deterioration and will take all reasonable steps to maintain the Goods separately identifiable.

For as long as any money is due by the Purchaser to the Seller, the Seller shall be entitled to enter any premises where the Goods are located to take possession of and to resell same and for this purpose, the Purchaser hereby grants the Seller an irrevocable right and licence to enter any such premises. This right shall continue notwithstanding termination of the Contract for any reason and shall be without prejudice to any accrued rights of the Seller. In the event of the Seller recovering the Goods, it shall retain all payments made, if any, for the Goods as damages for breach of Contract.

**7. Quantities**

The Seller will endeavour to supply the Goods sold hereunder to the specification and in the quantity agreed with the Purchaser. However, the Purchaser agrees to accept such Goods despite variation in the quantity and/or specification so long as such variation does not extend beyond that accepted in the general trade for the sale of such Goods or such variation as the Seller and the Purchaser have agreed in writing.

Where the delivery of Goods is to be made in bulk, the Seller reserves the right to deliver up to 10% more or less than the quantity ordered without any adjustment in the Contract Price and the quantity so delivered shall be deemed to be the quantity ordered.

**8. Failure to Collect Goods**

Should the Purchaser fail to collect the Goods from the works or the depot, on the conditions and within the agreed time limits, the Seller shall be entitled to terminate the Contract and claim for damages and to demand that the Contract be properly performed. These Terms and Conditions shall not alter or affect any Common Law or Statutory Rights or the Seller in contract or otherwise.

**9. Acceptance and Use of Goods**

The Purchaser shall be deemed to have accepted the Goods on delivery thereof. Delivery shall be deemed to have taken place as follows:

- (a) in the case of Goods to be delivered to the Purchaser's Premises by the Seller - by a representative of the Purchaser handing to the Seller's representative a signed receipt docket or on completion of the off-loading of the Seller's order (whichever is the earlier);
- (b) in the case of Goods to be collected by the Purchaser at the premises of the Seller - by the Purchaser's representative handing a signed receipt docket to the Seller's representative or on completion of the loading of the Purchaser's order (whichever is the earlier); or

- (c) where the Goods are delivered to the Purchaser's premises but consigned other than by the Seller's transport - on presentation of the relevant signed transit docket to the carrier concerned or on consignment of the Purchaser's order to the carrier concerned (whichever is the earlier).

Unless reservations in writing are made at the time of acceptance of the Goods by the Purchaser, the Purchaser shall not be entitled to make any claim or seek any damages in respect of defects or damage or their failure to correspond with specification or quantity that could have been ascertained at the time of acceptance. All such reservations must be made in writing to the Seller not later than seven (7) days after the said time of acceptance and must be made in accordance with the terms relating to such in the relevant insurance policy in force at that time. Where the Purchaser asks for a special acceptance testing, such will only be done at the Seller's premises. The Seller's liability for goods accepted by it to be defective is strictly limited to free replacement of defective Goods. In no circumstances whatever shall the Seller be liable in contract or tort or otherwise for any consequential or indirect damage or loss howsoever caused. No liability for defects will be accepted by the Seller if the defect has been caused by the Purchaser. This warranty does not extend to Third Party Goods or a situation where the Seller has only manufactured a component part of the Goods. In such a situation, the Seller warrants only to replace the component part if the Seller is satisfied that same was defective. Any transport costs in respect of the component part shall be borne by the Purchaser.

**10. Precautions**

The Purchaser must comply with the legislation, regulations and rules in force for Goods whose characteristics require that precautions be taken in their use or storage (temperature, fire, explosion, etc).

**11. Delivery Dates**

Times of delivery shall not be of the essence. The Seller will make all reasonable efforts to adhere to the agreed date for delivery, if any. The Seller shall not be liable for any losses, costs, damages or expenses suffered by the Purchasers or any other person or company howsoever arising whether caused directly or indirectly out of any failure to meet the date for delivery.

**12. Warranty**

a) 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.

b) No warranty, express or implied, is given as to the life or wear of the Goods nor that they will be suitable for any particular purpose or for use under any specific conditions notwithstanding that such purpose or conditions may have been made known to the Seller. All statutory and other warranties as to quality and fitness for any purpose are excluded.

c) Without prejudice to the generality of clause 12 (a), the Seller gives no guarantees as defined in Section 15 of the Sale of Goods and Supply of Services Act 1980 in relation to the Goods. In the event of the Goods being sold under a contract with a guarantee from the original manufacturer thereof the Seller undertakes no liability to the Purchaser for the observance of the terms of such guarantee. This clause is for the express provision of excluding the Seller's liability under Section 17(1) of the Sale of Goods and Supply of Services Act 1980.

d) The Purchaser indemnifies the Seller against all proceedings, claims or demands in any way connected with the Contract brought or threatened against the Seller by a third party except to the extent that the Seller is liable to the Purchaser under the terms of the Contract.

**13. Claims**

The Seller shall not be liable for any damaged or defective Goods unless a claim in respect thereof is made by the Purchaser in writing to the Seller within seven (7) days after the time of acceptance thereof or where the defect in the Goods was not apparent on reasonable inspection at the time of acceptance, within seven (7) days after discovery of the defect and the Purchaser shall make the Goods available for examination by the Seller's representative before the remainder of the consignment is used or returned to the Seller. Goods represented by the Purchaser to be defective shall not form the subject of any claim for work done by the Purchaser or for any loss, damage or expenses whatsoever arising directly or indirectly from such defects.

**Defects in quality and dimensions in any delivery shall not be a ground for cancellation of the remainder of an Order or contract.**

**14. Prices**

**Unless otherwise stated prices are based on costs and taxes current at the date of quotation and the Seller reserves the right to charge all subsequent increases up to the date of delivery. All Goods are deemed to be sold at prices prevailing at the date of delivery. All stamp and bills of exchange costs shall be borne by the Purchaser. The Contract Price is exclusive of costs of delivery, packaging costs (save as provided in Clause 17 hereof) any tax or other governmental charges and any costs in respect of import or export licences and clearances which the Seller must pay in respect of the Goods (including without limitation Value Added Tax and such taxes or charges now in effect or as may hereafter be imposed prior to delivery of the Goods). The Seller shall be entitled to add to the Contract Price the amount of any such costs, tax governmental charges, costs of import or export licences or other licences and clearances.**

**15. Payment**

**Payment for the Goods shall be made by the Purchaser within thirty days of delivery or as agreed by the parties. Interest at the rate of 2% plus that applied by the Allied Irish Banks plc to advance loans on stocks, shall be charged on all overdue accounts. VAT will be added to such interest for deferred payments. Such interest shall accrue from day to day and shall be payable before as well as after any judgement. In the case of part deliveries, invoices shall be payable as and when presented and not on final delivery of the Order.**

**All payments received by the Seller shall first be utilised in settlement of accounts which have been outstanding longest and/or at the option of the Seller any accumulated interest or arrears. The Purchaser shall on or before the date for payment pay the Contract Price to the Seller and any additional expenses or charges due by the Purchaser to the Seller under the terms of the Contract and without any deductions. The Purchaser shall not make any set-off against the sum due or paid or raise any counter-claim in diminution of the sum due but must pay the Contract Price and other charges on the date or dates agreed. Any complaints regarding short delivery, alleged defects or faults in the Goods or failure to deliver in accordance with the terms of the Contract shall not release the Purchaser from its obligations to pay the entire Contract Price and other charges due.**

**16. Right to use Goods Prior to Payment and Termination**

**A. (i) Prior to the payment in full of all sums due by the Purchaser to the Seller the Purchaser shall, subject to the provisions of Clauses 6 and 16.A.(ii), be entitled to use the Goods in the manner set out in this Clause 16.A(i). The Purchaser may:**

- (a) offer the Goods for sale;**
- (b) incorporate the Goods in any process of manufacture either in a worked or unworked state; or**
- (c) use the Goods for his own private use or consumption.**

**(ii) The Purchaser may not offer the Goods as security for the performance of any obligations of the Purchaser to any third party and any attempt by the Purchaser to offer the Goods as security shall be null and void as it is accepted unreservedly by the Purchaser that the title in the Goods shall not pass save in accordance with Clause 6 hereof.**

**B. At any time prior to the Purchaser paying all the sums due to the Seller, the Seller may by notice in writing delivered to the Purchaser's last known residence or place of business determine the Purchaser's right to use the Goods in the manner detailed above or at all whereupon the Purchaser shall forthwith return the Goods to the Seller and/or the Seller may enter the Purchaser's premises for the purposes of recovering the said goods from the Purchaser.**

**C. Furthermore, the happening of any of the events set out below shall forthwith (without notice from the Seller) determine the Purchaser's right to use the Goods:**

- (i) any notice to the Purchaser that a receiver or manager is to be or has been appointed to the Purchaser;**

- (ii) any notice to the Purchaser that a Petition to appoint an examiner to the Purchaser or to wind up the Purchaser is to be or has been presented or any notice of a resolution to wind up the Purchaser (save for the purposes of and followed by a bona fide reconstruction or amalgamation) or an encumbrancer takes possession of any of the property of the Purchaser;
- (iii) a decision by the Purchaser that the Purchaser intends to make an arrangement with its/his creditors;
- (iv) the insolvency of the Purchaser within the meaning of Section 62(3) of the Sale of Goods Act, 1893;
- (v) the Purchaser ceases, or threatens to cease, to carry on business; and
- (vi) any event analogous to any of the foregoing occurs in any jurisdiction in relation to the Purchaser.

Upon the happening of any of the events set out above, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to cancel the Contract or suspend any further deliveries of Goods under the Contract without any liability to the Purchaser and if the Goods have been delivered but not paid the Contract Price shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

#### 17. Packing

Packing is provided to Purchaser on the conditions specified on shipment or, failing that, in accordance with the following conditions:

- (a) **Returnable, rental or loaned packing.** Such packing shall remain the property of the Seller or its agents and shall not be used for other purposes. The Purchaser shall be liable for any damage or loss caused by such packing while in the Purchaser's possession. The packing must be returned to the Seller not later than two months after the date of delivery and in the event of its destruction, deterioration or non-return within this time, the Purchaser shall be liable for the loss or replacement of the packing or its repair or for damages suffered by the Seller;
- (b) **Invoiced packing.** Such packing shall on delivery become the property of the Purchaser and the Purchaser shall after delivery forthwith remove the name of the Seller from the packing and any other markings thereon not corresponding to its use. The Seller shall not be liable for any loss or damages caused through improper use of the packing not in accordance with its technical capacity or purpose;
- (c) **Customer packing.** Subject to the provisions of Clauses 9, 12 and 13 the Seller guarantees the quality of the Goods and such packing only up to the time of actual packing;
- (d) **Tankers and containers.** The time taken to empty containers and tankers shall not exceed two hours. After such time, the Seller reserves the right to charge demurrage at the official rate;
- (e) **Special pressurised packing.** Notwithstanding any special arrangements, the Seller reserves the right to invoice such packing to the Purchaser at replacement cost plus compensation should the Purchaser fail to return the packing within a period of four months. This time limit cannot be extended without the express consent of the Seller;
- (f) **Re-testing of packing.** The building, testing and re-testing of containers used by the Seller for goods under pressure are done in compliance with the Irish and International Transport Regulations. These containers are re-tested at intervals laid down by the said Regulations with which the Purchaser declares that it is conversant. The last date of testing is marked on each container and, where such container is delivered to the Purchaser and not returned to the Seller's works prior to

the next test date, the Seller shall not be liable for any damage, loss or injury caused by the container.

**18. Notice**

Any notice required or permitted to be given by either party to the other under these Terms and Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at the relevant time have been notified pursuant to this clause to the party giving the notice. Any notice under this clause shall be deemed to have been received:

- (i) if sent by hand - on delivery;
- (ii) if sent by electronic mail- on transmission provided in the case of a notice by electronic mail that it has been preceded by a telephone call notifying the party to whom the notice is being transmitted that the electronic mail is being transmitted; and
- (iii) if sent by prepaid post - 48 hours after posting.

**19. Severance**

These Terms and Conditions of Sale and every clause thereof shall be construed and shall have effect separately and apart.

In the case of one or more of the above clauses being ineffective or inoperative in whole or in part for any reason whatsoever, this shall not be construed as having any effect on the enforceability or validity of any of the remainder of these Terms and Conditions.

**20. Complaints**

Notwithstanding the provisions in the Contract regarding delivery or payment for the Goods sold hereunder, if the Purchaser makes any claim against the Seller that the Goods are not in accordance with the specification agreed, that there is a shortage in delivery or that the Goods delivered are faulty/defective the Seller may suspend all further deliveries of the Goods pending the determination of the said dispute or alternatively the Seller at its sole option may insist that all further deliveries of Goods are paid for in full prior to despatch from the Seller's premises. In the event of suspension of delivery of Goods any applicable delivery date or dates shall be delayed accordingly. In the event of suspension of delivery of Goods or alternatively of the Seller insisting on payment in full prior to delivery of Goods no liability shall attach to the Seller by reason of any delay thereby caused.

**21. Arbitration and Applicable Law**

All disputes which arise between the parties in connection with this Agreement, or the subject matter of this Agreement, shall be governed by the laws of Ireland and be subject to the Arbitration Acts 1954-2010 and shall be decided by an arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of Ireland or in the event of his being unwilling to do so by the next senior officer of the Society who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement arbitrator) has been removed by order of the High Court, or refuses to act, or is incapable of acting or dies.