

NUTRIAD LTD
GENERAL CONDITIONS OF SALE – 1998 EDITION

1 DEFINITIONS

In these Conditions of Sale:-

- 1.1 "Buyer" means any person or persons, firm or firms, company or companies, authority or authorities who shall order or buy the Goods and/or the Services.
- 1.2 "Seller" means NUTRIAD LTD. and/or its successor's assignees sub-contractors and agents and any subsidiary or associated undertaking of the Seller by which the Goods and/or the Services are sold.
- 1.3 "Contract" means the particular individual contract for the sale or supply of the Goods and/or the Services by the Seller to the Buyer incorporating these General Conditions and (if applicable) the Special Conditions.
- 1.4 "Special Conditions" means such additional terms notified from time to time in writing by the Seller to the Buyer in respect of a Contract or series of Contracts which shall be deemed incorporated into the Contract or Contracts unless specifically requested in writing by the Buyer within 5 working days of notification by the Seller.
- 1.5 "Goods" means the goods and/or materials supplied or sold by the Seller to the Buyer in accordance with the terms of the Contract (including any instalments of the goods or any parts for them if applicable).
- 1.6 "Services" means any services provided by the Seller in accordance with the terms of the Contract.
- 1.7 "Order" means an order placed for the Goods or the Services.
- 1.8 "Point of Delivery" means the time specified in Clause 7 in relation to the Contract.
- 1.9 "Safety Legislation" means the Health and Safety at Work Act 1974 the Consumer Protection Act 1987 and all regulations thereunder the General Product Safety Regulations 1994 and all other legislation from time to time amended (including subordinate legislation and European Community legislation to the effect that it has direct effect in Member States) imposing legal requirements with respect to the safety of goods the handling transportation storage or disposal of goods or goods incorporating the Goods and the health and safety of the users of the Goods;
- 1.10 "Intellectual Property" means patents, registered and unregistered trademarks, registered designs (in each case for the full period thereof and all extensions and renewals thereof), applications for any of the foregoing and the right to apply for any of the foregoing in any part of the world, confidential information, business names, brand names, copyright and rights in the nature of copyright and design rights and get up.
- 1.11 Reference to any statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended or re-enacted.
- 1.12 To the extent on any conflict between these General Conditions and the Special Conditions, the Special Conditions shall apply.
- 1.13 Reference to any Clause is to a Clause of these Conditions of Sale.

2 APPLICABILITY OF TERMS

- 2.1 Unless otherwise expressly agreed in writing by an authorised representative of the Seller every Contract shall be governed in all respects by these General Conditions of Sale and any Special Conditions.

- 2.2 The Seller's quotation is merely an invitation for an order subject to these Conditions and no Contract shall take effect unless and until an Order is accepted by an authorised representative of the Seller.
- 2.3 The Seller is prepared to receive the Buyer's Order by telephone but will accept no responsibility whatsoever for any error or omission arising therefrom.
- 2.4 The Buyer by placing an Order after it has received or has been notified or been referred to these Conditions of Sale acknowledges that these Conditions of Sale shall prevail over any qualification or condition purported to be imposed by the Buyer and any previous course of dealing between the Buyer and the Seller.

3 PUBLICATIONS AND REPRESENTATIONS

- 3.1 All descriptions and illustrations contained in the Seller's catalogues, price lists, advertising matter and other publications are to present merely a general idea of the goods described in them and shall not form part of a Contract unless specifically incorporated therein in writing by an authorised representative of the Seller.
- 3.2 The Buyer acknowledges that in entering into the Contract, it has not relied upon any oral or written representations made by or on behalf of the Seller save as set forth in writing and expressly included in the Contract. The Seller shall have no liability for any representation not so reducing to writing and incorporated in the Contract.

4 PRICES

- 4.1 Save as otherwise agreed in writing by an authorised representative of the Seller or in the Special Conditions all Goods and Services will be charged at prices current at the point of Delivery. All prices of Goods shall be stated as a price per tonne, litre or kilogram as appropriate or as otherwise indicated in the Contract.
- 4.2 Save as expressly stated otherwise by the Seller in writing prices quoted for Goods and services are exclusive of VAT.
- 4.3 Prices indicated in the Seller's quotations, catalogues, price lists and other advertising material shall not be binding on the Seller.

5 RESERVATION OF TITLE - RISK AND PROPERTY

- 5.1 Risk of damage to or loss of the Goods shall pass to the Buyer at the Point of Delivery as specified in Clause 7 below.
- 5.2 Notwithstanding delivery and the passing of risk in the Goods, or any other provision of these Conditions, the property in the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the price of the Goods and all other goods agreed to be sold by the Seller to the Buyer for which payment has become due.
- 5.3 Unless custom and practice determine otherwise, until such time as the property in the Goods passes to the Buyer, the Buyer shall hold the Goods as the Seller's fiduciary agent and bailee, and shall keep the Goods separate from those of the Buyer and third parties and property stored, protected and insured and identified as the Seller's property, but shall be entitled to resell or use the Goods in the ordinary course of its business.

- 5.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in separate identifiable existence and have not been resold), the Seller shall be entitled at any time to require the Buyer to deliver up the Goods to the Seller 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.
- 5.5 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 the Seller, but if the Buyer does so all monies owing by the Buyer to the Seller shall (without prejudice to any other right or remedy of the Seller) forthwith become due and payable.

6 PAYMENT

- 6.1 The Seller shall be entitled to submit an invoice to the Buyer for the Goods and/or the Services at any time on or after the Point of Delivery.
- 6.2 The Buyer shall pay for the Goods and/or the Services in full by the 20th day of the month following the Point of Delivery.
- 6.3 Notwithstanding the provisions of Clauses 6.1 and 6.2 the Seller reserves the right to require payment in full for the Goods and/or the Services on or before the Point of Delivery.
- 6.4 In the event of any delay in payment beyond the date payment is due the Seller reserves the right to charge the Buyer interest, on a daily basis, at the rate of 3% per annum above the base leading rate of Lloyds Bank Plc from time to time, for each day or part thereof that payment is overdue.
- 6.5 The Buyer shall make no deduction from the invoice price of the Goods and/or Services on account of any set-offs or claim or counter-claim unless both the validity and the amount thereof have been admitted by an authorised representative of the Seller in writing.

7 DELIVERY

- 7.1 Where the Buyer states a specified delivery date the Seller shall if it accepts the Order pursuant to Clause 2.2 above use all reasonable endeavours to comply but shall be under no obligation to make delivery at any specified time. Time shall not be of the essence with respect only to the Seller's delivery obligations and there shall be no liability on the Seller in respect of any loss incurred by the Buyer arising from any delay in delivery of the Goods or performance of the Services or any part thereof.
- 7.2 Where the Goods are delivered by road tanker the Point of Delivery shall be when the Goods pass the final flange on the road tanker.
- 7.3 Where the Goods are delivered by drum or other container the Point of Delivery shall be when the Goods are removed from the transporting vehicle.
- 7.4 Where the Goods are collected from the Seller's storage tank or store tank where applicable the Point of Delivery shall be when the Goods pass out of the delivery line in such storage tank.
- 7.5 Where the Goods are delivered by road tanker or discharged into the Buyer's tank from other containers, the Point of Delivery shall be when the Goods pass the final flange on the road tanker or other container.

8 DELIVERY BY INSTALMENTS

- 8.1 The Seller shall be entitled to deliver the Goods by instalments. Each instalment shall be treated as if it constituted a separate and distinct contact between the Seller and the Buyer.
- 8.2 Any failure, suspension or delay by the Seller in respect of any part-delivery of the goods or the discover of any defect in any of the Goods so delivered shall not entitle the Buyer to cancel the remainder of the contract and shall not affect the obligation of the Buyer to pay the price of the Goods.

9 SUITABILITY OF STORAGE AND OFFLOADING FACILITIES

The Seller reserves the right at any time to refuse to make delivery of the Goods or any of them if in its sole opinion the storage and offloading facilities proposed by the Buyer are inadequate for the Goods. All reasonable costs incurred by the Seller in attempting to make delivery shall be for the account of the Buyer. Where any of the Goods are delivered by the Seller or the Seller's agent such delivery shall in no way constitute a commitment or representation by the Seller as to the suitability of the Buyer's storage or offloading facilities so that the Seller shall be under no liability in respect of the storage or offloading facilities used by the Buyer.

10 FAILURE TO ACCEPT DELIVERY WHEN TENDERED

If for any reason the Buyer fails to take delivery of the Goods or permit performance of the Services when tendered by the seller without giving to the seller in writing a standard period of notice of 10 days or such other reasonable notice period in order to enable the Seller to avoid the costs and expenses in attempting to make delivery of the Goods or perform the services then, in addition to and without prejudice to the Seller's other rights and remedies, the Buyer shall reimburse the Seller on demand all such costs and expenses it may have incurred.

11 FORCE MAJEURE

The Seller shall not be under any liability to the Buyer in respect of any failure to perform or delay in performing any of its contractual obligations to the Buyer attributable to any cause of whatsoever nature beyond the Seller's reasonable control and no such failure or delay shall be deemed for any purposed to constitute a breach of contract.

12 INSOLVENCY OF THE BUYER

- 12.1 This Clause applies if:-
- 12.1.1 the Buyer makes any voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
- 12.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
- 12.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
- 12.1.4 the Seller reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

- 12.2 If this Clause applies then, 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 under the Contract without any liability to the Buyer, 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.

13 LIABILITY

- 13.1 Save as expressly provided in these Conditions or in any individual Contract, all terms, conditions and warranties implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.2 The Seller shall not be liable to the Buyer for any loss, damage, costs, expenses or other claims for compensation arising from any standard advice supplied by the Seller in connection with the Goods or Services.
- 13.3 Save as provided in Clause 13.4 below the Seller shall not be liable to the Buyer by reason of any representation (unless fraudulent), or any implied warranty, condition or other term, or any duty at common law, or under the express terms of the Contract, for any indirect, special or consequential loss or damage (whether for loss of profit or otherwise). Costs, expenses or other claims for compensation whatsoever (whether caused by the negligence of the Seller, its employees or agents or otherwise) which arise out of or in connection with the supply connection with the supply of the Goods and Services or their use or resale by the Buyer and the entire liability of the Seller under or connection with the Contract shall not exceed the price of the Goods or the services (either by way of replacement of the Goods or, at the Sellers direction by way of refund of the purchase price in whole or in part), except as expressly provided in these Conditions.
- 13.4 The exclusion of liability referred to in this Clause 13 does not apply so as to exclude or restrict the Seller's liability for:-
- 13.4.1 death or personal injury resulting from the negligence of the Seller, its servants or agents; or
- 13.4.2 breach of the Seller's implied undertaking as to title to the Goods contained in Section 12 of the Sale Goods Act 1979.

14 VARIATION IN SPECIFICATION

All information detailed on labels attached or affixed to the Seller's containers and packaging or any other collateral item relating to the Goods (as the case may be) are intended to be and may be construed only as of a generally informative nature and shall not be deemed to import any warranty as to the dimension or quality of the Goods or any of them.

15 VARIATION IN QUANTITY

The Seller reserves the right to deliver to the Buyer against any Order an excess or deficiency of up to ten per cent (10%) of the weight or volume ordered as appropriate (having regard to the quantity of Goods delivered and the price of the Goods or as otherwise indicated in the Contract) and the price to be paid by the Buyer shall reflect such variation.

16 SAMPLES

- 16.1 Except where the Goods are specifically ordered against same supplied by the Seller, any and all samples supplied by the Seller are supplied for information only.
- 16.2 Except where specifically agreed in writing by the Seller (and all cases subject to the imitation of liability in Clause 13) the provision of a sample by the Seller shall in no way be taken to imply any warranty or condition as to is satisfactory quality, fitness for purpose, suitability or other properties of the Goods.

17 CONTAINERS/PALLETS

- 17.1 This Clause shall only apply where containers or pallets belonging to the Seller are used in connection with the delivery of the Goods.
- 17.2 The value of all chargeable containers or pallets used in connection with the delivery of the Goods will be shown as a separate item on the Seller's sales invoice for the Goods and shall be paid in fully by the Buyer when payment for the Goods is due.
- 17.3 All such empty containers or pallets returned, at the Buyer's expense, to the Seller in good and complete condition within the months of receipt by the Buyer may be repurchased at the Seller's discretion at such rate as may be determined by the Seller from time to time.

18 INTELLECTUAL PROPERTY

The supply of any of the Goods by the Seller shall not give the Buyer any rights whatsoever in respect of any Intellectual Property owned, used or enjoyed by the Seller in connection with the Goods.

19 CLAIMS

The Buyer shall inspect the Goods as soon as practicable at the Point of Delivery and shall give to the Seller and the carrier in writing within 72 hours of delivery notice of any claim for any shortages or damage or loss to the Goods whilst in transit (and the delivery note must be endorsed accordingly), failing which the Goods shall be conclusively presumed to have been received and accepted by the Buyer.

20 CANCELLATION

The Seller shall be entitled without any liability to the Buyer whatsoever to withhold or suspend delivery of the Goods or performance of the Services of any part thereof if the Buyer's accounts with the Seller are outstanding to an extent which the Seller considers unreasonable or if the Seller considers that the Buyer will fail to make payment or will fail to perform any other obligation undertaken by it in terms of the Contract.

21 HEALTH AND SAFETY AT WORK

- 21.1 The Seller undertakes to comply with health and safety laws including, but not limited to provision of safety data sheets (where applicable) and other information to secure, so far as is reasonable, practicable, the health and safety of the users of the Goods.

- 21.2 The Buyer will comply with health and safety law, and agrees indemnify, and keep indemnified, the Seller against the Buyer failure to comply with health and safety law. In particular, the Buyer shall indemnify the Seller against any claims or proceedings resulting from any injury, loss or damage caused by a failure to use the Goods in accordance with the Seller's instructions (where such failure is on the part of the Buyer's employees, contractors or agents, or a third party to whom the Buyer has supplied the Goods).
- 21.3 The Buyer undertakes to ensure that all information provided made available by the Seller to the Buyer concerning the use, handling, processing, storage or transportation of the Goods (hereinafter 'Use of Goods'), including in particular information concerning any risks to health or safety to which Use of Goods may give rise and any conditions necessary to ensure that the Use of Goods will be without risks to health, shall be brought to the attention of all employees of the Buyer and others involved with the Use of Goods. The Buyer undertakes further to impose a simple requirement upon any third party to whom the goods are sold and supplied. The Buyer agrees to indemnify the Seller against any liability to which the Company may be subject by reason of the Buyer's breach of this condition and promptly to inform the Seller of any incident of which the Buyer becomes aware in which the Use of Goods has or may have given rise to risks to the health and safety of any person.

22 EXPORT SALES

- 22.1 In this Clause 'Incoterms' means Incoterms 1990 published by the International Chamber of Commerce or such other edition force at the date when the Contract is made. Unless the Contract otherwise requires, any term or expression which is defined and 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.
- 22.2 It is hereby agreed between the parties that the United Nations Convention on Contracts for the International Sales of Goods shall not apply to any Contract pursuant to these Conditions.
- 22.3 Where Goods are to be supplied for export from the United Kingdom the Contract shall be governed by Incoterms subject to the terms concerning payment delivery risk insurance and carriage of the Goods and other matters specified in the Seller's written quotation and the terminology of such written quotation shall be defined by reference to Incoterms 1990.
- 22.4 The Buyer shall be responsible for complying with any legislation or regulations governing the importation of Goods into the country of destination and for the payment of any duties on them.
- 22.5 Unless otherwise agreed in writing, the Goods shall be delivered from the air or sea port of shipment and the Seller shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 22.6 The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Seller's premises before shipment. The Seller shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment or in respect of any contamination or other damage during transit.

23 ASSIGNABILITY

No Contract is assignable without the prior written consent of the Seller save that the Buyer and the Seller may assign the benefit and burden undertaken by them to a subsidiary to their respective ultimate holding company on the condition that such subsidiary remains associated with the assigning party.

24 WAIVER

Any failure on the part of the Seller to take any action for the enforcement of a Contract in consequence of any breach of the Buyer shall not operate as a continuing waiver of the breach in question or prevent the Seller from subsequently enforcing their rights in respect of any continuing or like breach.

25 PROPER LAW

Every Contract to which these Conditions of Sale apply shall be construed and take effect in accordance with the laws of England and the parties shall accept the non-exclusive jurisdiction of the English Courts.

English Courts.