



## HALTERMANN CARLESS UK LIMITED

### TERMS AND CONDITIONS OF SALE

#### 1. Interpretation

1.1 In these terms and conditions of sale (“**Conditions**”) the following words have the following meanings:

**Buyer:** the person(s), firm or company who purchases the Product from the Company;

**Company:** Haltermann Carless UK Limited (company number 429315) whose registered office address is situated at Cedar Court, Guildford Road, Leatherhead, Surrey, KT22 9RX;

**Contract:** any contract between the Company and the Buyer for the sale of the Product, incorporating these Conditions;

**Delivery Point:** the place where delivery of the Product is to take place under Condition 6;

**Product:** any product agreed in the Contract to be supplied to the Buyer by the Company (including any part or parts of them).

1.2 In these Conditions references to any statute or statutory provision shall, unless the context otherwise requires, be construed as a reference to that statute or statutory provision as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

1.3 In these Conditions references to the masculine include the feminine and the neuter and to the singular include the plural and vice versa as the context admits or requires.

1.4 In these Conditions headings will not affect the construction of these Conditions.

#### 2. Application of Conditions

2.1 Subject to any variation under Condition 2.3 the Contract will be on these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Buyer purports to apply under any purchase order, confirmation of order, specification or other document or which are implied by trade, custom, practice or course of dealing).

2.2 No terms or conditions endorsed upon, delivered with or contained in the Buyer’s purchase order, confirmation of order, specification or other document will form part of the Contract.

2.3 These Conditions apply to all the Company’s sales and any variation to these Conditions and any representations about the Product shall have no effect unless expressly agreed in writing and signed by a director of the Company. Nothing in this Condition will exclude or limit the company’s liability for fraudulent misrepresentation.

2.4 Each order for the Product by the Buyer shall be deemed to be an offer by the Buyer to purchase the Product in accordance with these Conditions.

2.5 No order placed by the Buyer shall be deemed to be accepted by the Company until a written acknowledgement of order is issued by the Company or (if earlier) the Company delivers the Product to the Buyer.

2.6 Once the Company has accepted an order in accordance with Condition 2.5, it shall be legally binding on the Buyer and if the Buyer cancels its order for any reason, it shall remain liable in full for the price of the Product and shall indemnify the Company in respect of all losses (including loss of profit), costs, damages, charges and expenses

suffered or incurred by the Company as a result of such cancellation.

2.7 The Buyer is responsible for ensuring that the terms of its order and any applicable specification are complete and accurate and that the Product will meet its requirements.

2.8 Unless otherwise agreed, the quality of the goods is exclusively determined by the Company’s product specifications. Identified uses under the European Chemicals Regulation REACH relevant for the goods shall neither represent an agreement on the corresponding contractual quality of the goods nor the designated use under this Contract.

2.9 Any quotation is given on the basis that no Contract will come into existence until the Company despatches an acknowledgement of order to the Buyer. Any quotation will remain valid for the period specified in the quotation or a maximum of 30 days from the date of quotation provided that the Company has not previously withdrawn it.

#### 3. Description

3.1 The description of the Product shall be as set out in the Company’s quotation or acknowledgement of order (as applicable).

3.2 All drawings, descriptive matter, specifications and advertising issued by the Company and any descriptions or illustrations contained in the Company’s catalogues or brochures are issued or published for the sole purpose of giving an approximate idea of the Product described in them. They will not form part of this Contract.

#### 4. Price

4.1 Unless the Buyer and the Company have agreed in writing another price for the Product on or before the date of despatch of any order, the Product will be charged at the price ruling on the date of delivery or deemed delivery, irrespective of the date of order. Prices are subject to change without notice.

4.2 The price is exclusive of any applicable VAT, levy or other duty for which the Buyer is also liable together with all costs or charges in relation to loading, unloading carriage and insurance all of which amounts shall be paid for by the Buyer in addition to the price of the Product when payment is due for the Product.

#### 5. Payment

5.1 The Company may require the Buyer to pay cash on or before delivery: otherwise payment is to be made not later than the twentieth day of the month following the month of delivery or deemed delivery.

5.2 The Company reserves the right (without prejudice to the Buyer’s obligation to pay on the due date or any other rights of the Company and in addition thereto) to charge interest on any overdue sums on a daily basis from the date payment fell due to the date of actual payment (both dates inclusive) whether before or after Judgment at the annual rate of 3% above the prevailing base lending rate from time to time of Libor as published in “The Financial Times” every day.

5.3 Time for payment shall be of the essence and invoicing queries shall not change the due date of any payment.

5.4 No payment shall be deemed to have been received until the Company has received cleared funds.

5.5 All payments payable to the Company under the Contract shall become due immediately upon termination of this Contract despite any other provision.

5.6 The Buyer shall make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise including Bank charges unless the Buyer has a valid court order requiring an amount equal to such deduction to be paid by the Company to the Buyer.

## 6. Delivery

6.1 Unless otherwise agreed in writing by the Company, delivery of the Product shall take place:-

- (i) where the Company undertakes delivery of the Product, when unloaded from the Company's vehicle, ship or other transport at the station port or address specified by the Buyer when the order is placed.
- (ii) where the Buyer undertakes to collect the Product, when loaded onto the Buyer's vehicle or other transport at the address nominated by the Company.

6.2 The Buyer will take delivery of the Product within 24 hours of the Company giving it notice that the Product is ready for delivery where delivered by ship or, if delivered by any other means, within three days of the date that the Company gives notice that the Product is ready for delivery.

6.3 Unless otherwise agreed in writing any dates specified by the Company for delivery of the Product are intended to be an estimate and time for delivery shall not be made of the essence by notice. If no dates are so specified, delivery will be within a reasonable time.

6.4 Subject to the other provisions of these Conditions the Company will not be liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business, depletion of goodwill and like loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Product (even if caused by the Company's negligence).

6.5 If for any reason the Buyer will not accept delivery of any of the Product when they are ready for delivery, or the Company is unable to deliver the Product on time because the Buyer has not provided appropriate instructions, documents, licences or authorisations:

- (i) risk in the Product will pass to the Buyer (including for loss or damage caused by the Company's negligence);
- (ii) the Product will be deemed to have been delivered; and
- (iii) the Company may store the Product until delivery whereupon the Buyer will be liable for all related costs and expenses (including, without limitation, storage and insurance).

6.6 The Buyer will provide at its expense at the Delivery Point adequate and appropriate equipment and manual labour for loading and unloading of the Product.

6.7 If the Company delivers to the Buyer a quantity of Product of up to 5% more or less than the quantity accepted by the Company the Buyer shall not be entitled to object to or reject the Product or any of them by reason of the surplus or shortfall and shall pay for such Product at the *pro rata* Contract rate.

## 7. Packed Goods

7.1 Where deliveries of drum lots are made in the Company's returnable steel drums, they will be charged separately at the Company's prices for such drums ruling on the date of

despatch. The Buyer undertakes to make such drums available for collection by the Company. When such drums are received by the Company in good condition, the Buyer will be credited at the prices charged when dispatched. All drums contain full measure when delivered by the Company but owing to the volatile nature of the Product the Company cannot hold itself responsible for any shortage after the drums leaves the Company's hands.

7.2 Where the Product is delivered in the Company's returnable Intermediate Bulk Containers (IBCs) the IBCs must be made available for collection by the Company within one month of their date of delivery to the Buyer, failing which the Company shall charge a reasonable rent per day on the IBCs until returned. Any damage to the IBC will be charged to the Buyer based on actual costs of repair.

## 8. Non-Delivery

8.1 The quantity of any consignment of Product as recorded by the Company upon despatch from the Company's place of business shall be conclusive evidence of the quantity received by the Buyer on delivery unless the Buyer can provide conclusive evidence proving the contrary.

8.2 The Company shall not be liable for any non-delivery of Product (even if caused by the Company's negligence) unless written notice is given to the Company within 7 days of the date when the Product would in the ordinary course of events have been received.

8.3 Any liability of the Company for non-delivery of the Product shall be limited to replacing the Product within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Product.

8.4 Where the Product are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Company to deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

## 9. Title and Risk

9.1 The Product shall be at the Buyer's risk from the time of delivery or, if earlier when placed at the Buyer's disposal.

9.2 Ownership of the Product shall not pass to the Buyer until the Company has received in full (in cash or cleared funds) all sums due to it in respect of:

- (i) the Product; and
- (ii) all other sums which are or which become due to the Company from the Buyer on any account.

9.3 Until ownership of the Product has passed to the Buyer, the Buyer must:

- (i) hold the Product on a fiduciary basis as the Company's bailee;
- (ii) (where its storage facilities so permit) store the Product (at no cost to the Company) separately from all other product of the Buyer or any third party in such a way that they remain readily identifiable as the Company's property;
- (iii) not destroy, deface or obscure any identifying mark or packaging on or relating to the Product;
- (iv) maintain the Product in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company. On request the Buyer shall produce the policy of insurance to the Company; and

- (v) hold the proceeds of the insurance referred to in Condition 9.3(iv) on trust for the Company and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.
- 9.4 The Buyer's right to possession of the Product shall terminate immediately if:
- (i) the Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Buyer or notice of intention to appoint an administrator is given by the Buyer or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986), or a resolution is passed or a petition presented to any court for the winding up of the Buyer or for the granting of an administration order in respect of the Buyer, or any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
  - (ii) the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Company and the Buyer, or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or the Buyer ceases to trade;
  - (iii) the Buyer encumbers or in any way charges any of the Product; or
  - (iv) any event occurs, or proceeding is taken, with respect to the Buyer in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 9.4(i) to Condition 9.4(iii) (inclusive).
- 9.5 The Company shall be entitled to recover payment for the Product notwithstanding that ownership of any of the Product has not passed from the Company.
- 9.6 The Buyer grants the Company, its agents and employees an irrevocable licence at any time to enter any premises where the Product are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to enter with such transport as may be necessary to repossess and recover them.
- 9.7 Nothing in this clause shall confer any right on the Buyer to return the Product sold hereunder or refuse or delay payment therefore, unless otherwise agreed.
- 9.8 Title to any consignment stock or vendor managed inventory held at the Buyer's premises will remain at all times with the Company whether such stock of Products is held in the Company's storage facility on the Buyer's premises or in the storage facilities provided on site by the Buyer. The Company shall have the right at all reasonable times to enter the premises of the Buyer to remove any such stock held under the provisions of any arrangement entered into with the Buyer.

## 10. Buyer's Undertakings

- 10.1 The Buyer undertakes to:
- (i) accept responsibility for providing safe and sufficient facilities for the reception of the Product into storage and will indemnify the Company against any damages claims or costs arising out of a breach of this Condition.
  - (ii) acquaint itself with and to comply with all applicable requirements and restrictions imposed by law (including but not limited to the Health & Safety at Work Act 1974, (and regulations made thereunder) and the HMRC Tied Oil Regulations) or by governmental and other authorities or corporations relating to the possession, storage, use, import, export, or resale of the Products;
  - (iii) ensure that no Products are exported or imported in violation of the laws of any jurisdiction into or through which the Products are transported during the course of reaching the Delivery Point. Where necessary, the Buyer shall inform the Company at a reasonable time before delivery of any documents which it is necessary for the Company to provide in order to allow export of the Product in compliance with the laws of any relevant jurisdiction;
  - (iv) obtain, at its own cost, licences and other consents in relation to the Products as required by law from time to time (including but not limited to REACH, Export Controls, VAT legislation, Hydrocarbon Oil Duties Act and regulations made thereunder), and if required by the Company, the Buyer shall make those licences and consents available to the Company in sufficient time prior to the relevant shipment and in good time following delivery of the Product to provide to the Company or electronically file any documentation required (including but not limited to proof of export, excise accompanying documents).
- 10.2 The Buyer is responsible for and shall hold the Company harmless from any and all claims by fiscal/customs authorities in connection with any irregularity in respect of taxes and/or duties and/or levies, including but not limited to claims in connection with documents issued in the name of the Company in respect to the export, transit or import of the Product, irrespective of whether or not there is any fault or negligence on the part of the Buyer.

## 11. Warranties

- The Company warrants that:
- 11.1 Products supplied by the Company will at the time of delivery comply with the specification set out in the Company's relevant Product guide or quotation.
  - 11.2 As the Company has no control over the storage of the Product after delivery or over the method of application or use of the Product, any condition or warranty in place by Statute or otherwise in relation to the quality, appearance, aroma and constitution of Product or their fitness for any purpose is hereby excluded to the fullest extent permitted by law save as set out in these Conditions or otherwise expressly agreed in writing with the Buyer.
  - 11.3 The Company makes no representation or warranty as to the suitability or fitness for purpose of the Product unless expressly agreed in writing with the Buyer. All warranties which might otherwise be implied are excluded to the fullest extent permitted by law.
  - 11.4 The Company shall not be liable for a breach of the warranty in Condition 11.1 unless:



- (i) the Buyer gives written notice of the defect to the Company, and (if the defect is as a result of damage in transit) to the carrier, within three days of the time when the Buyer discovers or ought to have discovered the defect; and
  - (ii) the Company is given a reasonable opportunity after receiving the notice of examining such Product or appointing an independent inspector to undertake such examination and the Buyer (but only if asked to do so by the Company) returns such Product to the place specified by the Company. The costs of any examination shall be borne equally by the Company and the Buyer.
- 11.5 The Company shall not be liable for a breach of the warranty in Condition 11.1 if:
- (i) the Buyer makes any further use of such Product after giving such notice; or
  - (ii) the defect arises because the Buyer failed to follow the Company's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Product or (if there are none) good trade practice
- 11.6 Subject to Conditions 11.4 and 11.5, if the Product does not conform with the warranty in Condition 11.1 the Company shall at its option replace such Product (or the defective part) or refund the price of such Product at the *pro rata* Contract rate provided that, if the Company so requests, the Buyer shall, at the Company's expense, return the Product or the part of such Product which is defective to the Company.
- 11.7 If the Company complies with Condition 11.6 it shall have no further liability for a breach of the warranty in Condition 11.1 in respect of such Product.
- 11.8 Any Product replaced will belong to the Company.

## 12. Limitation of Liability

- 12.1 Subject to Conditions 12.2 and 12.3, the following provisions set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Buyer in respect of:
- (i) any breach of these Conditions; and
  - (ii) any representation, statement or tortious act or omission including negligence arising under or in connection with the Contract.
- 12.2 All warranties, conditions and other terms implied by statute or common law (save for the conditions implied by section 12 of the Sale of Goods Act 1979) are, to the fullest extent permitted by law, excluded from the Contract.
- 12.3 Nothing in these Conditions excludes or limits the liability of the Company for death or personal injury caused by the Company's negligence or fraudulent misrepresentation.
- 12.4 Subject to Conditions 12.2 and 12.3:
- (i) the Company's total liability in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this Contract shall be limited to invoice value of the delivery concerned; and
  - (ii) the Company shall not be liable to the Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the

Contract or the use or resale of the Product by the Buyer.

## 13. Assignment

- 13.1 The Buyer shall not be entitled to assign the Contract or any part of it without the prior written consent of the Company.
- 13.2 The Company may assign the Contract or any part of it to any person, firm or company.

## 14. Force Majeure

- 14.1 No liability shall result to either party from delay in performance or non-performance caused by circumstances beyond the control of the party affected.
- 14.2 If for any reason, supplies of the Product deliverable under the Contract or of the feedstock from which such Product is directly or indirectly derived from any of the Company's then existing sources of supply are curtailed or cut off, the Company shall have the option during such period of curtailment or cessation to apportion fairly among its customers including affiliated companies, and whether under contract or not, such Product as may be received in the ordinary course of business or manufactured at the Company's plant.
- 14.3 The Company shall not be obliged to purchase or otherwise obtain alternative supplies of the Product deliverable under the Contract, or the feedstock from which such Product directly or indirectly is derived, nor shall the Company be obliged to settle labour disputes, run down inventories below normal levels, adapt or vary its manufacturing plan except at the Company's sole discretion, or to take any steps other than in accordance with good business practice to make up inadequate supplies or to replace the supplies so curtailed or cut off. The Company shall not be obliged to make up deliveries omitted or curtailed under the Contract. Any such deficiencies in deliveries shall be cancelled with no liability to either party.

## 15. Communications

- 15.1 All communications between the parties and any notice required or permitted to be given by either party to the other under this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission:
- (i) (in case of communications to the Company) to its registered office or such changed address as shall be notified to the Buyer by the Company; or
  - (ii) (in the case of the communications to the Buyer) to the registered office of the addressee (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of this Contract or such other address as shall be notified to the Company by the Buyer.
- 15.2 Communications shall be deemed to have been received:
- (i) if sent by pre-paid first class post, 2 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
  - (ii) if delivered by hand, on the day of delivery;
  - (iii) if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission and otherwise on the next working day.

## 16. General

- 16.1 Each right or remedy of the Company under the Contract is without prejudice to any other right or remedy of the Company whether under the Contract or not.

- 16.2 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 16.3 Any waiver by the Company of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 16.4 No waiver by the Buyer of any breach of the Contract by the Company shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 16.5 The parties to this Contract do not intend that any term of this Contract will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.
- 16.6 The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, English law. The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims) except that either party may seek an interim injunction or urgent relief in any court of competent jurisdiction.