

# APOLLO CHEMICALS LIMITED, SANDY WAY, AMINGTON INDUSTRIAL ESTATE, TAMWORTH

## CONDITIONS OF SALE

1. These printed Conditions supersede any earlier set of Conditions appearing in the Sellers Catalogue or elsewhere and shall prevail over any other terms and conditions including any conditions of purchase of the Buyer and no servant agent or representative of the Seller has any authority to waive suspend vary and to omit or otherwise alter these terms except with the express written agreement of a Director of the Seller.
2. **Definitions**

Conditions of Sale shall apply to all orders given to and accepted by Apollo Chemicals Limited. In these conditions "the Seller" means Apollo Chemicals Limited, "the Buyer" means the person, firm or company purchasing the Goods. "the Goods" means the goods or materials which shall be the subject of the contract between the Seller and the Buyer.
3. **Price of the Goods**
  - 3.1 The Goods will be charged at the price ruling at the day of despatch and will be subject to Value Added Tax or any Government duty tax applicable.
  - 3.2 Prices quoted or charged include delivery during normal working hours to any place within the United Kingdom specified by the Buyer except that special delivery at the Buyer's request by expedited or out of normal working hours deliveries will be charged additionally at cost.
  - 3.3 The Seller reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of Goods to reflect any increase in the cost to the Seller which is due to any factor beyond the control of the Seller (such as, without limitation, any foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of labour, materials or other costs of manufacture), any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer, or any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate information or instructions.
4. **Terms of Payment**
  - 4.1 Payment is due not later than the 28th day of the month following the date of the Seller's invoice to the Buyer or otherwise as agreed in writing between the Buyer and the Seller.
  - 4.2 If the Buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to the Seller, the Seller shall be entitled to:
    - 4.2.1 cancel the contract or suspend any further deliveries to the Buyer;
    - 4.2.2 appropriate any payment made by the Buyer to such of the Goods or the goods supplied under any other contract between the Buyer and the Seller as the Seller may think fit (notwithstanding any purported appropriation by the Buyer)
5. **Delivery**
  - 5.1 Delivery of the Goods shall be made by the Buyer collecting the Goods at the Seller's premises at any time after the Seller has notified the Buyer that the Goods are ready for collection or, if some other place for delivery is agreed by the Seller, by the Seller delivering the Goods to that place.
  - 5.2 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. The Goods may be delivered by the Seller in advance of the quoted delivery date upon giving reasonable notice to the Buyer.
  - 5.3 Where delivery of the Goods is to be made by the Seller in bulk, the Seller reserves the right to deliver up to 5 per cent more or 5 per cent less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be the quantity ordered.
  - 5.4 Where the Goods are to be delivered in instalments, each delivery shall constitute a separate contract and failure by the Seller 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.
  - 5.5 If the Seller fails to deliver the Goods for any reason other than any cause beyond the Seller's reasonable control or the Buyer's fault, and the Seller is accordingly liable to the Buyer, the Seller's liability shall be limited to the excess (if any) of the cost to the Buyer (in the cheapest available market) of similar goods to replace those not delivered over the price of the Goods.
  - 5.6 A good delivery will be assumed unless:
    - (a) a qualified signature on the consignment of delivery document is received;
    - (b) any damage or short delivery is notified in writing within 7 days of delivery;
    - (c) non delivery of a whole consignment is notified in writing within 21 days of the invoice date.
6. **Risk and Property**
  - 6.1 Risk of damage to or loss of the Goods shall pass to the Buyer:
    - 6.1.1 in the case of goods to be delivered at the Seller's premises, at the time when the Seller notifies the Buyer that the Goods are available for collection; or
    - 6.1.2 in the case of Goods to be delivered otherwise than at the Seller's premises, at the time of delivery, or if the Buyer wrongfully fails to take delivery of the Goods at the time when the Seller has tendered delivery of the Goods.
  - 6.2 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 is then due.
  - 6.3 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 properly stored, protected and insured and identified as the Seller's property. Until that time the Buyer shall be entitled to resell or use the Goods in the ordinary course of its business, but shall account to the Seller for the proceeds of sale or otherwise of the Goods, whether tangible or intangible, including insurance proceeds, and shall keep all such proceeds separate from any moneys or property of the Buyer and third parties and, in the case of tangible proceeds, properly stored, protected and insured.
- 6.4 Until such time as the property in the Goods passes to the Buyer (and provided the Goods are still in 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.
- 6.5 The Buyer shall not be entitled to pledge or in any way change 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.
7. **Warranties and Liability**
  - 7.1 The Seller warrants that the Goods are manufactured with all reasonable care and skill and where applicable comply with the standard specifications set out in the Seller's published literature in relation to the Goods current at the date hereof and made available to the Buyer and that the Goods are of merchantable quality. Save as aforesaid all other conditions as to quality or description (statutory or otherwise) are excepted insofar as such exclusion is not prevented by law. The Buyer shall forthwith after delivery of the Goods notify the Seller of such defects in the Goods which are reasonably apparent on delivery to enable the complaint to be investigated before the remainder of the consignment is used or returned.
  - 7.2 The application use and processing of the Goods is the absolute responsibility of the Buyer. Any technical and other advice, information and data provided by the Seller, whether verbally, in writing or by way of trials or test, is given without warranty and the Buyer shall be deemed to have carried out its own tests to ensure the suitability of the Goods for their intended purposes and applications. Accordingly, the Seller gives no warranty as to the fitness of the Goods for any particular purpose and any implied warranty or condition (statutory or otherwise) is excluded except insofar as such exclusion is prevented by law.
  - 7.3 Any claim by the Buyer which is based on any defect in the quality or conditions of the Goods or their failure to correspond with specification shall (whether or not delivery is refused by the Buyer) be notified to the Seller within 7 days from the date of delivery or (where the defect or failure was not apparent on reasonable inspection) within a reasonable time after discovery of the defect or failure. If the delivery is not refused, and the Buyer does not notify the Seller accordingly, 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 Contract.
  - 7.4 Where any valid claim in respect of any of the Goods which is based on any defect in the quality or conditions of the Goods or their failure to meet specification is notified to the Seller in accordance with these Conditions, the Seller shall be entitled to replace the Goods (or the part in question) free of charge or, at the Seller's sole discretion, refund to the Buyer the price of the Goods (or a proportionate part of the price), but the Seller shall have no further liability to the Buyer.
  - 7.5 Except in respect of death or personal injury caused by the Seller's negligence, 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 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 agents or otherwise) which 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 in Conditions.
8. **Force Majeure**

This contract is subject to cancellation by the Seller or to such variation as may be reasonably necessary by reason of inability to secure labour, materials, transport or supplies or by reason of strike, lockout, trade dispute, weather conditions, hostilities, legislation, Act of God or any cause whatsoever beyond the control of the Seller.
9. **Insolvency of Buyer**
  - 9.1 This clause applies if:
    - 9.1.1 the Buyer makes any voluntary arrangement with its creditors or becomes subject to any administration order or (being an individual or firm) becomes bankrupt or (being a company) goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or
    - 9.1.2 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or
    - 9.1.3 the Buyer ceases, or threatens to cease, to carry on business; or
    - 9.1.4 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.
  - 9.2 If the 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.
10. **General**
  - 10.1 Any notice required or permitted to be given by either party to the other under these Conditions shall be in Writing addressed to that 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 provision to the party giving the notice.
  - 10.2 No waiver by the Seller of any breach of the Contract by the Buyer shall be considered as a waiver of any subsequent breach of the same or any other provision.
  - 10.3 The Seller reserves the right to sub-contract such processes as are deemed necessary and such processes may not be covered by the Seller's B.S.I. scope of registration.
  - 10.4 If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.
  - 10.5 Any dispute arising under or in connection with these Conditions or the sale of the Goods shall be referred to arbitration by a single arbitrator appointed by agreement or in default nominated on the application by either party by the President for the time being of the Law Society.
  - 10.6 The Contract shall be governed by the laws of England.