



Amserve (Pty) Ltd
QUALITY MANUAL

AMSERVE CHEMICALS (PTY) LTD.
Conditions of Sale

1. Definitions

- a) In these conditions (unless the context otherwise requires):
- i. "Buyer" means the person, firm or company with whom the contract is made;
 - ii. "Seller" means Amserve Chemicals (Pty) Ltd. and also (where the context so permits) its assigns and any sub-contractor for the said company;
 - iii. "Sellers Premises" means the premises mentioned in the Sellers quotation or other contractual document in respect of the goods or if not so mentioned means the warehouse of delivery.
 - iv. "Contract" means the contract between the Buyer and the Seller for the sale and purchase of the goods;
 - v. "Goods" means the goods (or any instalment or part of them to be supplied pursuant to the Contract and includes packaging where supplied by the Seller.
- b) Words in the singular shall include the plural and vice versa, references to any gender shall include the others and references to legal persons shall include natural persons and vice versa.
- c) The headings in these conditions are for convenience only, and are not to be taken into account for the purpose of interpreting the Contract.

2. General

- a) These conditions shall apply to every Contract to the exclusion of any other terms and conditions contained or referred to in any order, letter, for of contract or other communication sent by the Buyer to the Seller and the provisions of these conditions shall prevail unless expressly varied in writing and signed by an authorised signatory on the Sellers behalf.
- b) Any concession made or latitude allowed by the Seller to the Buyer shall not affect the strict rights of the Seller under the Contract.
- c) If in any particular case any of these conditions shall be or be held to be invalid or shall not apply to the Contract the other conditions shall continue in full force and effect.

3. Prices

- a) Unless otherwise agreed by the Seller in writing, the price charged by the Seller (the Price) will be the price ruling at the date when the Goods or the instalment of the Goods (as the case may be) are dispatched.
- b) All prices quoted are nett unless otherwise stated.


4. Payments

- a) Unless otherwise stated, payment shall be made within 30 days from date of statement.
- b) If the Goods are dispatched in instalments the Seller shall be entitled to invoice each instalment as and when dispatch thereof has been made and payment shall be due in respect of each instalment whereof dispatch has been made notwithstanding non-delivery of other instalments or other default on the Sellers part.
- c) If any payment is not made on due date, then the Seller may, without prejudice to any other rights it may have, charge interest on the amount due at the rate of 2% per month.

5. Delivery

- a) Unless otherwise agreed, the Goods shall be delivered to the buyer EX. The Sellers premises.

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- b) In the absence of written advice in accordance with 7(a) () ii), the Goods shall be deemed to have been delivered to and accepted by the Buyer, complete and in a satisfactory condition.
- c) If the Seller, at the Buyer's request, agreed to engage any carrier(s), including the South African Transport Services, to transport the Goods for the Buyer, then –
 - i. the Seller is authorised to engage the carrier(s) on the Buyer's behalf, on such terms and conditions as the Seller deems fit;
 - ii. the Buyer shall indemnify the Seller against all demands and claims which may be made against the Seller by any carrier so engaged, and all liability which the Seller may incur arising out of the transportation of the Goods;
- d) if the Buyer fails to require delivery of the Goods when delivery falls due, the Seller shall be considered to have tendered, and the Buyer to have refused to accept such delivery;
- e) The Seller's obligation to deliver shall in all cases be subject to the availability to the seller of the materials and supplies which it requires for the manufacture (where applicable) and supply of the Goods.
- f) Where the Seller has undertaken to effect delivery by its own vehicles at the Buyer's place of business, offloading shall be effected by the Buyers own employees at the sole risk of the Buyer, who shall be responsible for all damage of whatever nature caused as a result of or during such offloading, provided however, that if the Buyer required offloading to be effected or assisted by the Seller's employees, such offloading shall nevertheless be at the sole risk of the Buyer who shall be responsible for all damages of whatever nature caused as a result of or during such offloading.
- g) The Seller does not guarantee delivery on any specified date, but will endeavour to give delivery on the dates stated in the Contract of Sale.

6. Ownership and Risk

- a) Notwithstanding delivery of any Goods, ownership shall not pass until their purchase price has been paid in full.
- b) This risk shall pass to the Buyer on delivery.

7. Exclusions

- a) The Seller shall be exempted from and not be liable for :
 - i. any indirect or consequential damages of any nature, or any loss of profit or special damages of any nature, whether in the contemplation of the parties or not, which the Buyer may suffer as a result of any breach by the Seller of its obligations hereunder.
 - ii. Any claim for any alleged shortage in delivery or damage to the Goods or failure of the Goods to comply with the Contract unless written notice of the claim is received by the Seller within 10 (ten) days after receipt of the Goods by the Buyer.
- b) Subject to the warranty in 8 the Seller does not give any warranty or guarantee to made any representation whatever in respect of the goods or their fitness for any particular purpose, whether known to the Seller or not, and shall not be liable for any latent or other defect in the Goods.
- c) Any recommendation or suggestion relating to the use of the Goods made by the Seller, either in technical literature or in response to a specific enquiry is given in good faith but it is for the Buyer to satisfy himself of the suitability of the Goods for his particular purpose and he shall be deemed to have done so.

8. Warranty

- a) The Seller warrants to the Buyer that the Goods supplied are in accordance with any specifications specified in the contract, or if there is no such specification, to be within the normal limits of industrial quality.

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- b) The Seller's liability under this warranty shall be limited to replacing any goods shown to be defective or, at the Seller's option, reimbursement of the price received by the Seller for the Goods.
- c) The Seller shall not be liable in terms of (b) to replace any Goods in a consignment unless it receives immediate written notice from the Buyer to enable the complaint to be investigated before the remainder of the consignment is used or returned.

9. Force Majeure

- a) The Buyer shall not have any claim of any nature whatever against the Seller for any failure by the Seller to carry out any of its obligations under the Contract as a result of force Majeure.
- b) The Seller shall be entitled to cancel or delay deliveries, or to reduce the amount delivered, if it is prevented from or hindered in or delayed in manufacturing or delivering by normal routes, or means of delivery Goods of the description covered by the Contract through Force Majeure.
- c) For the purpose of (a) and (b) Force Majeure shall include, without being limited to, strikes, lockouts, accidents, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal sources or routes of supply, shortage or unavailability of labour, any default or delay of subcontractors, riots, political or civil disturbances, the elements, and any act of any state or Government or any other authority, or any cause beyond the Seller's reasonable control.

10. Packages

- a) Without prejudice to the generality of the word, "packages" shall include drums, bags, slings or pallets.
- b) Slings, pallets and drums are the property of the Seller and should be retained for collection unless otherwise agreed.

11. Quantity

Minimum quantities purchased by the Buyer will normally be full truck lots (FTL) or full container lots (FCL) unless otherwise agreed in writing.

12. Bulk Product deliveries / Marginal Weights

- a) The Seller shall be entitled to deliver a quantity of Goods which when measured by weight or volume exceeds or is less than the quantity ordered by 10% or less. The Buyer will pay the actual weight or volume delivered at the Price.
- b) The Seller is entitled to a 1.5% variation in weight of Goods to that stated as being supplied by the Seller to the Buyer.

13. Cancellation and Suspension

- a) The Seller may cancel the Contract or any uncompleted part of it, if the Buyer –
 - i. commits a breach of any of the terms or conditions of the Contract; or
 - ii. being an individual, dies or is provisionally or finally sequestrated, or surrenders his estate; or
 - iii. being a partnership, the partnership is terminated; or
 - iv. being a company, is placed under a provisional or final order of liquidation or judicial management; or
 - v. compromises or attempts to compromise generally with any of the Buyer's creditors.

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14. Negotiable Instruments

Any promissory note, bill of exchange or other negotiable instrument received by the Seller from the Buyer shall not be a notation of the debt for which it is given, and the Buyer waives presentment notice of dishonour or protest where applicable.

15. Cession

The Buyer may not cede any of his rights under the Contract without the Seller's written consent.

16. Proper Law

The validity of the Contract, its interpretation, the respective rights and obligations of the parties and all other matters arising in any way out of it or its performance or expiration or earlier termination for any reason, shall be determined in accordance with the laws of the Republic of South Africa.

17. Legal Proceedings

- a) The Buyer consents to the jurisdiction of the Magistrates Court in any proceedings which may be instituted by the Seller against the Buyer, notwithstanding that the amount in issue is beyond the jurisdiction of that Court.
- b) In any proceedings instituted by the Seller against the Buyer, the Seller shall be entitled to recover costs calculated as between attorney and client collection commission and tracing charges from the Buyer.
- c) At the option of the Seller, the Seller shall be entitled but not obliged to refer any dispute or difference which arises between the Seller and the Buyer under this Contract to arbitration in accordance with the provisions of the Arbitration Act, No 42 of 1965.

18. Variation

No alteration or variation of the Contract shall be of any force or effect unless it is recorded in writing and signed by or on behalf of the Seller.

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