

# GENERAL TERMS AND CONDITIONS OF SALE I/2012

## I. Conclusion of Contract

1. The GENERAL TERMS AND CONDITIONS OF SALE which are designed for the exclusive application in business connections between Mitsui Chemicals Europe GmbH (hereinafter referred to as the "SELLER") and its customer (hereinafter referred to as "BUYER") serve as a contractual basis for the parties hereto (hereinafter commonly referred to as the "PARTIES") and shall apply to all transactions between the PARTIES, provided, no other written agreement is concluded. Any deviating or supplemental general terms and conditions or provisions of the BUYER shall be opposed and will only be effective after the SELLER's written consent.
2. Data contained in the SELLER's offer or in other documents of the SELLER only constitute non-binding information and approximate values. All agreements on the content of the contract are defined in the SELLER's order confirmation and are binding, unless the BUYER objects in writing without delay. Collateral agreements require the SELLER's written confirmation. The SELLER is entitled to deviate from the descriptions provided by him if so necessitated by production considerations or by improvements, experience gained or technical advances without the BUYER's authorisation, provided that no additional costs are charged to the BUYER.

## II. Prices, payments and delay

1. Payment is due in full no later than thirty (30) days after the date of shipment unless not otherwise agreed in writing.
2. Incidental expenses, such as bank-charges incurred in remittance are for BUYER's account. If the BUYER exceeds the terms of payment, the SELLER shall have the right to charge interests on arrears at the statutory interest rate. In the case of outstanding payments not caused by SELLER's own actions or negligent, the SELLER shall have the right – independent of other claims for damages – to defer contractual obligations on his own part until the outstanding payments are effected. The place of payment shall be at SELLER's registered office. The price set forth on the invoice denotes the currency of payment.
3. If SELLER's return shall be reduced by any change in rates of exchange between the currency unit stated in the price on the invoice and the currency unit of payment due to any governmental action, SELLER at its sole discretion may elect to either require BUYER to compensate SELLER for such reduction in return, which compensation BUYER hereby agrees to pay, or to terminate this contract.
4. If payment is to be made by letter of credit ("l/c") and unless otherwise specified on the invoice, BUYER shall immediately establish a confirmed-irrevocable, without recourse and unrestricted l/c through a prime bank satisfactory to SELLER, which letter shall be satisfactory to SELLER in form and substance. The l/c shall refer to this contract by its number- be available for SELLER'S draft or drafts at sight and authorise reimbursement to SELLER for such sums if any as may be advanced by SELLER for customs invoices, inspection fees and other expenditures made by SELLER for the account of BUYER. The l/credit shall also provide for partial availments against partial deliveries and shall be maintained for a period of not less than thirty (30) days after the latest date allowed for the shipment. Unless confirmed by a final court ruling or expressly acknowledged by SELLER, payments may not be withheld by BUYER with respect to any disputed counterclaims against SELLER and BUYER's right of set off shall be excluded. Delivery shall be subject to quantitative variation to the extent customarily recognised in the trade of the PRODUCTS. The relevant l/c shall be worded accordingly.

## III. Delivery/Transfer of Risk

1. PRODUCTS shall be packed and marked by SELLER in the manners customary for the respective merchandise, special arrangements being subject to extra charges. BUYER shall comply with SELLER's instructions and all legal requirements if he affixes its trade name or trademarks to the PRODUCTS, relabels or repackages the PRODUCTS reprocesses products containing or involving SELLER's PRODUCTS.
2. PRODUCTS shall be shipped from any port of the country of shipment by vessel of any flag, with or without transshipment and divided shipment shall be allowed. The relevant l/c shall be worded accordingly. Each instalment shall be treated as a separate contract. The date of the bill of landing shall be construed as the date of shipment. SELLER shall not be liable for delay in shipment attributable to compliance with BUYER'S special instructions regarding the shipment.
3. Customs invoices, certificates of origin or other requirements shall be prepared by SELLER only at advance instructions. If BUYER fails to timely obtain import licenses or any other necessary authorisations, SELLER has the right to postpone delivery or to rescind this contract wholly or partially without any liability to BUYER. BUYER shall be liable for any losses or expenses suffered or incurred by SELLER as a result thereof.
4. Increase in freight- insurance premiums or surcharge due to war, warlike conditions, port congestion or other emergency or contingency unforeseen or not existent at the time of concluding the contract shall be for BUYER'S account.
5. Risk of damage to or loss of PRODUCTS shall pass to BUYER in the case of PRODUCTS to be delivered at SELLER's premises at that time when SELLER notifies BUYER that PRODUCTS are available for collection. In the case of PRODUCTS to be delivered otherwise than at the SELLER's premises the

same risk pass to BUYER at the time of delivery or- if BUYER wrongfully fails to take delivery of PRODUCTS the time when SELLER has tendered delivery of PRODUCTS.

6. The INCOTERMS in force on the time of the conclusion of the sales agreement are applicable and are considered to form part of these GENERAL TERMS AND CONDITIONS. In case of inconsistency between these GENERAL TERMS AND CONDITIONS and the INCOTERMS, these GENERAL TERMS AND CONDITIONS shall prevail.

## IV. Retention of Title

1. SELLER retains title to all PRODUCTS until SELLER has received full payment of the price of the PRODUCT including any additional due costs and expenses. To the extent BUYER is in default SELLER has authority to retake, sell or otherwise deal with or dispose of all or any part of the PRODUCTS in which title remains vested in SELLER. If SELLER retakes the PRODUCTS this is not a withdrawal from the contract unless expressly declared in writing. In this case SELLER is entitled to the commercialisation and shall credit the net profit of the commercialisation - deducting reasonable costs and expenses thereof - against BUYER's liabilities.
2. The BUYER may not sell or pledge the PRODUCTS, or transfer ownership as a security without SELLER's prior written consent. If the BUYER sells the PRODUCT, title to all future claims against the BUYER's customers in connection with such sale, together with all subsidiary rights – including any receivables – will hereby be assigned to the SELLER as security without the need for any separate declaration to this effect. In case the PRODUCTS are sold together with other items without a separate price being agreed for the PRODUCTS, the BUYER hereby assigns to the SELLER the portion of the total price that corresponds to the amount invoiced by the SELLER for the PRODUCTS. The BUYER shall immediately notify the SELLER in the event of seizure, attachment or other orders for disposal by third parties. Filing for the commencement of insolvency or composition proceedings by the BUYER shall entitle the SELLER to cancel the contract and demand immediate return of the PRODUCTS.
3. a) The BUYER shall be allowed to process the PRODUCTS, or to mix or combine them with other items. Processing shall be performed for the SELLER. The BUYER shall store the resulting new items for the SELLER with the diligence of a prudent businessman. The new items shall be deemed to be a product under Retention of Title.  
b) The SELLER and the BUYER herewith agree that if the PRODUCTS are mixed or combined with other items that do not belong to the SELLER, the SELLER shall receive co-ownership of the new items based on the proportionate value of the PRODUCT in the mixed or combined items in relation to the other components at the time of mixing or combination. Insofar the new items shall be deemed to be under Retention of Title.  
c) If the BUYER combines the PRODUCT with properties or movables, it shall, without need for any further declaration, also assign its claims as compensation for such combination, together with all subsidiary rights, to the SELLER up to the proportionate value of the PRODUCT included in the new items in relation to the other components.
4. The SELLER shall undertake to realise the security that he holds at the BUYER's request insofar as the realisable value thereof exceeds the total sum of all claims against the BUYER to which the SELLER is entitled by more than 20%. The SELLER shall select the security to be released.
5. In case the SELLER cancels the contract, he shall have the right to demand reasonable compensation for permitting the BUYER to use the reserved property for a certain period.
6. Until the property in the PRODUCTS passes to the BUYER, BUYER act as SELLER's fiduciary agent and shall keep the PRODUCTS properly stored, protected and insured.

## V. Notification of defects

1. If BUYER considers the PRODUCTS to be unsatisfactory for any reason he must notify SELLER within ten (10) working-days of the date of receipt. Failure by BUYER to timely give said notice shall constitute a waiver by BUYER of all claims with respect to said PRODUCTS. If requested by SELLER, BUYER shall promptly return to SELLER by the method designated by SELLER all unconsumed PRODUCTS alleged by BUYER to be other than warranted and SELLER will pay freight thereon.
2. Hidden defects must be reported in writing immediately upon discovery. The BUYER shall prove that a defect is a hidden.

## VI. Warranties/Damages

1. SELLER makes no warranties, express or implied except as requested by applicable law, including any warranty of merchantability or fitness for a particular purpose or use or warranties in connection with the conception, production or sale. § 444 German Civil Code shall not apply to the business relationship between the PARTIES.
2. SELLER expressly disclaims any express or implied warranty against patent infringement. The sale of the PRODUCTS does not imply the absence of patents or constitute a license under any existing or pending patents. The BUYER shall assess the legal situation with regards to patents and other intellectual property rights in the country in which the PRODUCTS will be used. The SELLER shall not be liable for any claims or damages arising from the infringement of a patent or another intellectual property right nor does such

infringement constitute a reason to withdraw from the contract. Should a third party assert a claim against the SELLER as the indirect infringer of the patent or intellectual property right due to the illegal use of the PRODUCT by the BUYER, the BUYER shall hold harmless and release the SELLER from these claims. This does not include claims which arise due to intent or gross negligence of the SELLER or other claims arising from mandatory law.

3. To the extent permitted under applicable law, BUYER's exclusive remedy with respect to any claim, whether in contract, in tort, under statute, under warranty or otherwise shall be limited solely to the refund of the purchase price or replacement of all PRODUCTS shown to be other than as warranted. SELLER's liability for losses which do not affect the PRODUCT (e.g. indirect, incidental, consequential losses, damages caused by delay) shall be excluded. To the extent the foregoing limitation is not permissible under applicable law, the applicable legal limitation of liability under statute or otherwise if there shall be one, shall apply.
4. BUYER shall limit its liability to its customers and third parties with respect to resold or reprocessed PRODUCTS in the foregoing manner. To the extent BUYER is unable to limit its liability in the foregoing manner, BUYER accepts to indemnify and hold SELLER harmless from any third party claims in excess of the purchase price of the PRODUCTS. To the extent permitted by applicable law liability for personal injury and property damage resulting from tile use by third parties of PRODUCTS shall be the sole responsibility of BUYER and BUYER shall have appropriate insurance coverage for such liability.
5. BUYER shall give SELLER prompt notice of every third party complaint, claim or suit known to BUYER concerning the PRODUCTS, keep SELLER fully informed of the status of each and give SELLER reasonable access to its records pertaining to each such complaint, claim or suit. SELLER shall have the right to intervene in any litigation arising from such claims or suit. BUYER undertakes to let itself be summoned to the court or the arbitral tribunal on SELLER'S request, should any claim or suit be lodged against SELLER. It is understood and agreed that the foregoing obligations of BUYER confer no obligation on SELLER to defend BUYER, nor any right to BUYER to seek indemnification from SELLER with respect to any such complain, claim or suit.
6. Any technical or scientific support provided by the SELLER in whatever form is given to the best of his knowledge, but shall be considered non-binding information, also in reference to any and all proprietary rights of third parties, and shall not release the BUYER for checking the suitability of the goods delivered by the SELLER for the intended processes and purposes. Application, use and processing of the goods are not under the SELLER's control and are therefore the exclusive responsibility of the BUYER.
7. BUYER hereby represents that it is a professional specialised in the sale and distribution of the PRODUCTS, the processing of the PRODUCTS and further manufacturing of related products and that BUYER has the same knowledge and understanding of the PRODUCTS as does SELLER. BUYER hereby agrees that it shall in no event bring any action or claim against SELLER or seek any indemnification from SELLER with respect to any action or claim brought against BUYER by any consumer, purchaser or other third party in relation to the PRODUCTS, except to the extent that SELLER has breached a warranty obligation as specifically provided herein.

#### VII. Force Majeure

If SELLER's performance of all or part of the contract is interrupted or SELLER ability to supply or service affected directly or indirectly by any act of God or by sanctions or other restriction or order of any government or agencies thereof, or by war warlike conditions, strike, breakdown at the factory, accidents, or by any other causes or circumstances beyond the control of SELLER, shipment of the involved PRODUCTS may be delayed for a period necessary for restoration from such disturbances; provided, however, that either party shall have the right without

liability to cancel the involved portion of the contract by immediate notice in writing to the other party if such delay in shipment exceeds thirty (30) days.

#### VIII. Period of Limitation/Defaults

1. To the extent permitted by applicable law on any claim against SELLER, BUYER must initiate legal action within twelve (12) months after the date on which the claim arose or the date on which BUYER received knowledge of the facts giving rise to such claim, whichever is later or such claim shall be barred notwithstanding any statutory period of limitation. The statutory periods apply in case of wilful intent or gross negligence as well as to claims under the Products Liability Act. They also apply to defects in a building structure and to goods that were used in the usual manner for a building structure and caused the defect in the building structure.
2. If BUYER fails to fulfil his obligations or becomes insolvent, SELLER shall have the option of suspending performance or cancelling the contract, reserving the rightly claim against BUYER for expenses, charges, losses and market differences caused thereby and SELLER being entitled to dispose of the involved PRODUCTS regardless of the trademark-design patents etc. thereon. In the case of such a cancellation, all amounts payable hereunder shall immediately fall due.

#### IX. Confidentiality

1. All documents, drawings, etc. handed over by the SELLER to the BUYER in connection with the delivery item, as well as special instructions by the SELLER remain the property of the SELLER; the BUYER is not permitted to use these materials for other purposes, or to duplicate them or make them available to third parties. The SELLER shall retain the intellectual property rights to all of the drawings and documents handed over to the BUYER.
2. The BUYER must treat as trade secrets the quotation and all kind of information whatsoever which has been disclosed to him by the SELLER or of which he has somehow obtained knowledge and handle these confidentially. The BUYER is not entitled to disclose the information to third parties (including subcontractors) without the prior written consent of the SELLER. The BUYER shall be liable for all damage caused to the SELLER as the result of the breach of any of these obligations. The BUYER must submit to the SELLER all necessary drawings and documents required for technical agreements on the delivery item.

#### X. Miscellaneous

1. This agreement is subject to German law under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG). Place of jurisdiction shall be Düsseldorf. Furthermore the SELLER shall have the right to assert his claims at the BUYER's general place of jurisdiction.
2. The terms of this agreement may only be modified by written instrument executed by the Party against whom such modification is sought to be enforced.
3. SELLER's waiver of any term or condition set forth herein shall not preclude SELLER from seeking to enforce that term or condition on any other occasion and shall not constitute a waiver by SELLER of any other term or condition herein.
4. In the event that any provision contained herein shall be held to be illegal or invalid under the laws of any jurisdiction that shall in no way impair the effectiveness of any other provisions under the laws of any other jurisdiction.
5. No person employed by or affiliated with SELLER is authorised to assume any liability on behalf of SELLER other than the liabilities expressly provided for herein.

These General Terms and Conditions of Sale are effective from April 1<sup>st</sup> 2012.

**Mitsui Chemicals Europe GmbH**