

INEOS CHLORVINYLS BELGIUM NV – Terms and Conditions of Sale for Spot Bulk Shipments of Liquids or Gases

1 DEFINITIONS

1.1 In these Conditions the following words and expressions shall have the following meanings:

"Affiliate" means any person that directly or indirectly controls, or is controlled by, or is under the common control with, the Seller at any time; and for this purpose control over any person shall mean the power to direct the management or policies of that person;

"Business Day" means any day (other than a Saturday or Sunday) on which clearing banks are open for business in Belgium for the transaction of normal banking business;

"Buyer" means the buyer of the Goods;

"Conditions" means these terms and conditions of sale for Spot Bulk shipments of liquids or gases;

"Contract" means a legally binding contract between the Seller and the Buyer for the sale and purchase of Goods ordered under a Purchase Order and accepted by the Seller in accordance with Clause 2.5 of these Conditions;

"Delivery" shall be as specified by the relevant Incoterm applicable to the Contract save that, for the purposes of these Conditions, delivery shall take place at the Delivery Point, and **"Deliver"** and **"Delivered"** shall be construed accordingly;

"Delivery Point" means the point where Delivery takes place and where the inlet flanges of the Vessel's loading lines connect with the outlet flanges of the terminal's loading lines;

"Delivery Date" means the delivery date agreed between the Parties or if no delivery date is agreed, then within a reasonable time from acceptance of the Purchase Order by the Seller in accordance with Clause 2.5;

"Force Majeure Event" means any event affecting the performance of any provision of the Contract arising from or attributable to acts, events, omissions or accidents which are beyond the reasonable control of a Party including, but without limitation, any abnormally inclement weather, flood, lightning, storm, fire, explosion, earthquake, subsidence, structural damage, epidemic or other natural physical disaster, unavailability or shortage of raw materials, failure or shortage of power supplies, traffic, road accident, delay of a third party carrier, breakdown of plant and/or machinery, war, military operations, riot, crowd disorder, strike, labour dispute, terrorist action, civil commotion and any legislation, regulation, ruling or omissions (including failure to grant any necessary permissions) of any relevant government, court or authority;

"Goods" means the goods detailed in the Purchase Order as accepted by the Seller pursuant to Clause 2.5;

"Incoterms" means Incoterms 2000 including any amendments or revisions made from time to time thereto;

"Inspection Certificate" means the certificate issued by the Surveyor(s) upon testing the Goods on or around the time of Delivery;

"Party" and **"Parties"** means the Seller or the Buyer or both the Seller and the Buyer (as is applicable);

"Price" means the price of the Goods on the date of despatch;

"Purchase Order" means the Buyer's written or oral purchase order;

"Quantity Required" means the quantity of Goods to be Delivered by the Seller to the Buyer as set out in a Purchase Order accepted by the Seller under Clause 2.5 or otherwise agreed in writing between the Parties;

"REACH" means the Registration Evaluation Authorisation and Restriction of Chemicals Regulation 1907/2006 (as amended);

"REACH Compliance" means in relation to Goods, compliance with the requirements of REACH and "REACH Compliant" shall be construed accordingly;

"Sales Contract Front Sheet" means the Sales Contract Front Sheet for Spot Bulk Shipments of Liquids or Gases, which fully incorporates these Conditions;

"Seller" means **INEOS ChlorVinyls Belgium NV** (Company Number 0415.505.042) whose registered office is at 3980 Tessenderlo, Heilig Hartlaan 21 (Belgium);

"Specification" means the specification of the Goods as identified within the Sales Contract Front Sheet;

"Surveyor(s)" means any first class surveyor(s), including but not limited to SGS and/or Caleb Brett, appointed by the Seller to undertake sampling and analysis of the Goods on or around the time of Delivery, and to provide an Inspection Certificate;

"Vessel" shall mean a ship which is used for carriage of the Goods.

1.2 Any reference in these Conditions to:-

(a) a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time;

(b) a Clause is to a clause in these Conditions; and

(c) a person includes an individual, a firm, a corporation, an unincorporated association, a government, a state, an agency of government or state, and an association, partnership and joint venture (whether or not having a separate legal personality);

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

1.4 Where the context dictates, the singular shall include the plural and vice versa and any gender includes the other gender.

2 BASIS OF SALE

2.1 Any quotation (whether written or oral) is given on the basis that it is an invitation to treat only and

no Contract will come into existence until the occurrence of one of the events set out in Clause 2.5.

- 2.2 Unless otherwise agreed in writing any quotation is valid only for a period of thirty (30) days from its date of issue provided that the Seller has not previously withdrawn it by written or oral notice to the Buyer and shall be subject to the availability of the Goods.
- 2.3 Each Purchase Order constitutes a separate offer by the Buyer to purchase the Goods subject to these Conditions.
- 2.4 Each Purchase Order shall contain:-
 - (a) the Goods required;
 - (b) the Specification;
 - (c) the quantity of Goods it requires; and
 - (d) the Delivery Date (such date not being binding on the Seller and being subject to Clause 4.1) .
- 2.5 The Purchase Order shall be deemed to be accepted on the occurrence of the earlier of:
 - (a) the issue by the Seller of a completed Sales Contract Front Sheet;
 - (b) notification by the Seller that the Goods are ready for Delivery; or
 - (c) Delivery of the Goods (or any part of the Goods); and such occurrence shall create a Contract.
- 2.6 Nothing in these Conditions shall oblige the Seller to accept a Purchase Order from the Buyer.
- 2.7 These Conditions shall apply to the Contract to the exclusion of all other terms and conditions including, but without limitation, any under which a Purchase Order has been issued.
- 2.8 In the event of any queries, inaccuracies, typographical, clerical or other error or omission in any sales literature, quotation, price list, acknowledgment of Purchase Order, or Sales Contract Front Sheet, the Seller shall contact the Buyer and such document shall be subject to correction without any liability on the part of the Seller.
- 2.9 Any Purchase Order which has been accepted by the Seller pursuant to Clause 2.5 may only be cancelled, postponed or varied by the Buyer with the prior consent of the Seller.
- 2.10 The Buyer represents, warrants and undertakes to the Seller that it shall promptly provide to the Seller such information as may reasonably be required from time to time in order to obtain and maintain REACH Compliance in respect of the Goods and it shall comply with its obligations under REACH.

3 SPECIFICATIONS, WARRANTIES AND REPRESENTATIONS

- 3.1 The Seller warrants that:-
 - (a) the Goods sold to the Buyer shall comply with the Specification (unless agreed otherwise by the Parties in writing) upon Delivery and the Inspection Certificate shall be final and binding on the parties as to compliance of the Goods with the Specification (save for any fraud or manifest error); and
 - (b) it shall use reasonable endeavours to obtain and maintain REACH Compliance in respect of the Goods or procure the same save where it is the Buyer's responsibility pursuant to REACH to

obtain and/or procure REACH Compliance and the non-compliance is not caused by any act or omission of the Buyer.

- 3.2 Any suggestion or representation concerning any possible use of the Goods made by the Seller in any sales or marketing literature or in any response to a specific enquiry is given in good faith, but it is entirely for the Buyer (and its customers) to satisfy themselves fully as to the suitability of the Goods for any particular purpose. No suggestion or representation relating to such possible use shall form part of the Contract.
- 3.3 The Buyer shall, within 5 Business Days of Delivery of the Goods, notify the Seller in writing of any defect by reason of which the Buyer alleges that the Goods Delivered are not in accordance with the Specification (whether identified within the Inspection Certificate or otherwise).
- 3.4 If the Buyer fails to give notice under Clause 3.3 then the Goods shall be deemed conclusively to be in all respects in accordance with the Specification and accepted by the Buyer.
- 3.5 If within a period of 15 Business Days from the date of Delivery of the Goods any of the Delivered Goods are proved to the reasonable satisfaction of the Seller not to comply with the Specification due to defects in materials, workmanship or composition (other than a composition specified by the Buyer) the Seller at its option will:-
 - (a) replace such Goods free of charge;
 - (b) refund the price of such Goods; or
 - (c) agree a reduced fee for such Goods.
- 3.6 The remedies set out within Section 3 of these Conditions shall be the sole and exclusive remedy of the Buyer in respect of non-conformance with the Specification and in lieu of all rights and remedies the Buyer may have.
- 3.7 The Seller's obligation under Clause 3.5 will not apply where:-
 - (a) the Goods have been improperly altered in any way whatsoever, or have been subject to misuse;
 - (b) the Goods have been improperly used;
 - (c) the Goods have been mixed incorrectly with other products or mixed with incompatible products;
 - (d) any instructions as to storage of the Goods have not been complied with in all respects; or
 - (e) the Buyer has failed to notify the Seller in accordance with Clause 3.3.
- 3.8 Any Goods that have been replaced will belong to the Seller. Any replacement Goods issued by the Seller will be eligible for a replacement or refund under the terms specified in Clause 3.5.
- 3.9 Except as otherwise provided in these Conditions, all warranties, conditions and other terms implied by statute or common law including without limitation any warranty as to REACH Compliance of the Goods (except for the conditions implied by section 12 of the Sale of Goods Act 1979 and section 2 Sale and Supply of Goods and Services Act 1982) are, to the fullest extent permitted by law, excluded from the Contract.

4 DELIVERY

- 4.1 The Seller will use reasonable endeavours to Deliver the Goods in each of the Buyer's Purchase Orders it accepts by the Delivery Date, but the timing of delivery of the Goods will not be of the essence in the Contract.
- 4.2 If, despite using reasonable endeavours, the Seller is unable for any reason to fulfil any Delivery of the Goods by the Delivery Date, the Seller will be deemed not to be in breach of the Contract, nor will the Seller have any liability to the Buyer howsoever caused (including, but without limitation, as a result of negligence) for any delay in Delivery or performance.
- 4.3 Delivery of the Goods shall be deemed to be made in accordance with the relevant Incoterm specified as applying to this Contract.
- 4.4 If the Buyer refuses or fails to take possession of any of the Goods at the time stated for Delivery (otherwise than by reason of any Force Majeure Event or by reason of the Seller's fault) then, without prejudice to any other right or remedy available to the Seller, the Seller will be entitled to:-
- (a) store the Goods at any location, including without limitation at the Buyer's premises, until actual Delivery and charge the Buyer for the cost of storage, transport any related insurance and a handling fee; and/or
 - (b) sell the Goods at the best achievable price at the time in all the circumstances, and after deducting all storage, insurance, transport and selling expenses, the Seller may invoice the Buyer for the difference between the actual price (less the deductions) obtained by the Seller and the Price and the Buyer shall pay such sum immediately.
- 4.5 The Seller may deliver to the Buyer an excess or deficiency of up to 10% of the Quantity Required and:-
- (a) the Buyer shall pay for the actual weight delivered; and
 - (b) the Seller shall not be in breach of the Contract.

5 LIMITATION OF LIABILITY

- 5.1 The Seller does not attempt to exclude any liability:-
- (a) for personal injury or death resulting from the Seller's negligence;
 - (b) for its fraudulent misrepresentation; or
 - (c) for any matter for which the Seller may not exclude or to attempt to exclude its liability under applicable law.
- 5.2 The Seller shall not be liable to the Buyer whether in contract, tort (including, without limitation, negligence) misrepresentation or otherwise howsoever arising for any loss of profit, loss of anticipated profit, loss of business, loss of contract, overhead recovery, anticipated savings, loss of data, loss of production, depletion of goodwill, product recall, nor for any special, indirect or consequential loss or damage, or otherwise for any costs, expenses or claims for consequential compensation whatsoever.
- 5.3 Subject to Clauses 5.1 and 18.3 the Seller's total aggregate liability, under the Contract shall be

limited to the Price paid or payable by the Buyer to the Seller under the Contract.

6 PRICES AND PAYMENT

- 6.1 The Price is exclusive of all taxes and duties including, but without limitation, value added tax, which, if applicable, shall be payable by the Buyer in addition to any additional Delivery costs as detailed in any quotation issued by the Seller to the Buyer.
- 6.2 The Buyer shall pay the Price (including value added tax or any other applicable tax or duty together with any costs specified in Clause 6.1) by the date specified in the Contract.
- 6.3 Each invoice or request for payment remaining unpaid on its due date shall automatically and without notice be increased with the interest rate applied by the European Central Bank according to its most recent main refinancing operation before the first calendar day of the semester, increased by 7 percentage points, each month of being due and a fixed rate of 10% of the amount due, with a minimum of € 75. Failure to pay any invoice makes all other invoices immediately due.
- 6.4 No payment will be deemed to have been received until the Seller has received the Price in full in cleared funds.
- 6.5 Notwithstanding any other provision of these Conditions, all sums outstanding under the Contract will become due immediately on termination of the Contract.
- 6.6 The Buyer will make all payments due under the Contract without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.
- 6.7 Without prejudice to Clause 6.6, if the Buyer fails, or the Seller reasonably believes that the Buyer will fail, to pay the Price when due the Seller may demand payment of all sums due, treat the Contract as repudiated by the Buyer and/or suspend all future performance of the Contract until all overdue sums have been paid.
- 6.8 The Seller shall be entitled to set off and retain any and all sums due to the Buyer against any contingent or actual liabilities of the Buyer to the Seller.
- 6.9 The Seller reserves the right to increase the Price if any extra cost is incurred by the Seller after quoting the Price as a result of the inaccuracy or incompleteness of any instructions issued by the Buyer, or as a result of any failure to supply any information, drawings or specification required to enable the Seller to proceed with the Contract.

7 RISK AND PROPERTY

- 7.1 Risk of damage to or loss of the Goods shall pass to the Buyer in accordance with the relevant Incoterm specified as applying to this Contract save that the place of Delivery under the relevant Incoterm shall be construed as taking place at the Delivery Point as defined in these Terms and Conditions of Sale.
- 7.2 Notwithstanding Delivery and the passing of risk in the Goods, or any other provision of these Conditions, ownership of the Goods shall not pass to the Buyer until the Seller has received in cash or cleared funds payment in full of the Price.

7.3 Until ownership of the Goods has passed to the Buyer pursuant to Clause 7.2, the Buyer will:-

- (a) hold the Goods on a fiduciary basis as trustee of the Seller;
- (b) keep the Goods free from any charge, lien or other encumbrance;
- (c) not destroy, deface or obscure any identifying mark on the Goods or their packaging;
- (d) maintain the Goods in a satisfactory condition;
- (e) insure the Goods for the Price in full on behalf of the Seller against all usual risks to the reasonable satisfaction of the Seller; and
- (f) hold all proceeds of the insurance policy referred to in Clause 7.3(e) if any claim is made on the policy on trust for the Seller and not mix it with any other money or pay the proceeds into any overdrawn bank account.

7.4 Notwithstanding the provisions of Clause 7.3, the Buyer may resell, use or otherwise dispose of the Goods before ownership has passed to it only if any such sale, use or disposition will be effected in the ordinary course of the Buyer's business and will be a sale, use or disposition of the Seller's property on the Buyer's own behalf and the Buyer will deal as principal. The Seller shall, by reason of the relationship between the Buyer (as trustee) and of the Seller (as beneficiary) be and remain legally entitled to the proceeds of sale and the Buyer shall pay such proceeds of sale into a separate account or, otherwise, shall ensure that all of the proceeds of the sale are kept by or on behalf of the Buyer in a separate and identifiable form and not paid into an overdrawn bank account. Upon receipt of the proceeds of sale, the Buyer shall discharge its debt to the Seller and shall not use or deal with the proceeds of sale in any way whatsoever until such debt has been discharged.

7.5 Until ownership in the Goods has passed pursuant to Clause 7.2, the Seller may recover the Goods at any time, and the Buyer grants to the Seller, its agents, employees and sub-contractors an irrevocable licence at any time to enter any premises where the Goods are or may be stored. In the case of the Goods being stored on premises owned by a third party the Buyer shall procure such a right for the Seller.

7.6 The Buyer's right to possession of the Goods shall cease on the occurrence of any of the events set out in Clause 9 which would permit the Seller to terminate this Contract. In such circumstances, the Seller may upon notice enter any premises occupied by the Buyer where the Goods are stored and repossess the Goods and the Buyer shall procure a right for the Seller to enter any premises not occupied or owned by the Buyer.

8 EVENTS BEYOND THE CONTROL OF THE PARTIES

8.1 If either Party is prevented or delayed in the performance of any of its obligations by a Force Majeure Event then the Party so prevented or delayed will be excused from the performance of its obligations from the date of the occurrence of such Force Majeure Event for so long as such

Force Majeure Event continues and shall not be deemed to be in breach of these Conditions or the Contract or otherwise liable to the other Party in any manner whatsoever.

8.2 On the occurrence of any Force Majeure Event, the Parties shall enter into bona fide discussions with a view to alleviating its effects and the Party prevented from performance by it shall use reasonable diligence to remove the cause of the Force Majeure Event (if capable of removal) and to enable its obligations hereunder to be performed. If any Force Majeure Event prevails for a continuous period in excess of 1 month, each Party may give written notice to the other Party to terminate the Contract forthwith provided that the Parties have not previously agreed a course of action to deal with such Force Majeure Event. If such agreed course of action fails, each Party may give written notice to the other Party to terminate the Contract forthwith provided the Force Majeure Event has already prevailed for a period of 1 month.

8.3 If at any time the Seller claims the existence of a Force Majeure Event in respect of its obligations under these Conditions or the Contract with regard to the supply of the Goods, the Seller shall be entitled to allocate its product resources as in its reasonable discretion shall decide and the Buyer shall be entitled to obtain from any other person such quantity of the Goods as the Seller is unable to supply.

9 BUYER'S DEFAULT AND TERMINATION OF THE CONTRACT

9.1 Either Party shall be entitled to terminate the Contract immediately upon the occurrence of any of the following:

- (a) the other Party being in material breach of any term of these Conditions and such breach not being capable of remedy;
- (b) the other Party being in material breach of any term of these Conditions and failing to remedy such breach within 28 days of receipt of written notice specifying the breach and requiring it to be remedied;
- (c) if the other Party ceases her activities, is no longer solvent, in a position of debt settlement, finds itself in state of judicial composition (gerechtelijk akkoord) legal settlement or bankruptcy, or such applications or requests therefore have been submitted, or if it is being declared bankrupt, a judicial composition is being granted or when it goes into liquidation; or
- (d) the other Party suffering the equivalent of any similar or analogous event in (c) (above) in any jurisdiction.

9.2 Without prejudice to any of its other rights or remedies, the Seller shall have the right to terminate the Contract without any liability to the Buyer if the Seller receives written notice from any competent authority, or in its reasonable opinion decides, that any of the Goods are not or will not become REACH Compliant.

10 CONFIDENTIALITY

Each Party hereby undertakes not at any time to divulge any of the terms of the Contract or use

any information in relation to the other Party's business or any other information received from the other Party in relation to the Contract of a confidential or proprietary nature other than for the purposes expressly envisaged by these Conditions provided that the Seller can divulge such information to any party to whom it assigns or transfers all or part of this Contract.

11 HEALTH AND SAFETY

Goods supplied by the Seller to its own specification or design are designed to be safe and without risk to health provided they are used strictly in accordance with any instructions or information issued by the Seller as to their use and are also used with any necessary safety precautions. If the Buyer is unclear as to the correct use of the Goods it should immediately contact the Seller for clarification. It is the responsibility of the Buyer to meet all safety standards in the application, use and sale of the Goods.

12 COSTS AND EXPENSES

Each Party shall be responsible for all the costs and expenses incurred by it in connection with and incidental to the preparation and completion of each Contract.

13 RELATIONSHIP OF PARTIES

Nothing in these Conditions or any document referred to in either document or any arrangement contemplated by the Parties shall be construed as creating a partnership between the Parties for any purpose and neither Party shall have the power or authority to bind the other Party or impose any obligations on it for the benefit of any third party.

14 AMENDMENTS AND VARIATIONS

No variation or amendments to the Contract or these Conditions shall be binding unless agreed in writing by an authorised representative of the Seller.

15 WAIVERS

No delay in exercising or failure to exercise any of the rights of either Party arising from or in connection with the Contract or these Conditions shall operate as a waiver or release of that right. Any such waiver or release must be specifically granted in writing signed by the Party granting it.

16 ASSIGNMENT

16.1 The Seller shall be entitled to perform any of the obligations undertaken by it and to exercise any of the rights granted to it under the Contract or these Conditions through any Affiliate and any act or omission of such Affiliate shall for the purposes of the Contract be deemed to be an act or omission of the Seller.

16.2 The Seller shall be entitled to carry out its obligations under the Contract through any agents or sub-contractors appointed by it in its absolute discretion for that purpose.

16.3 The Seller may at any time assign or transfer (in whole or in part) any of its rights and/or obligations under the Contract or these Conditions, including, without limitation, pursuant to any receivables purchase arrangements or similar transactions which the Seller may from

time to time enter into. The Buyer may not assign, sub-contract, sub-license or otherwise dispose of any of its rights and/or obligations arising from the Contract or these Conditions without the prior written consent of the Seller (such consent not to be unreasonably withheld or delayed).

16.4 If required to do so to give legal effect to any permitted assignment pursuant to the provisions of Clause 16.3, the Parties shall enter into a novation agreement and shall use all reasonable endeavours to procure that the assignee or transferee enters into such novation agreement.

17 SEVERABILITY

If any term, clause, condition or part of these Conditions is found by any court, tribunal, administrative body or authority of competent jurisdiction to be illegal, invalid or unenforceable then that provision shall, to the extent required, be severed from these Conditions and shall be ineffective without, as far as is possible, modifying any other provision or part of these Conditions and this shall not affect any other provisions of the Contract which shall remain in full force and effect.

18 ENTIRE AGREEMENT

18.1 These Conditions and the acknowledgement of Purchase Orders (including but not limited to any completed Sales Contract Front Sheet) represent the entire agreement between the Parties relating to the sale and purchase of Goods and supersede all previous agreements, arrangements and understandings between the Parties relating to the sale and purchase of the Goods.

18.2 Each Party acknowledges that in entering into the Contract it places no reliance on any representation, warranty or other statement relating to the subject matter of the Contract, other than as expressly set out in these Conditions and any acknowledgement of the applicable Purchase Order.

18.3 Neither Party shall have any liability or remedy in respect of any representation warranty or other statement being false, inaccurate and/or incomplete unless it was made fraudulently or is contained in these Conditions. Nothing in these Conditions shall exclude or limit the liability of either Party for a fraudulent misrepresentation.

18.4 Each Party agrees that its only remedy for breach of the Contract shall be for breach of contract.

19 NOTICES

19.1 Notices under these Conditions may be served by personal delivery, by first class post or by facsimile.

19.2 Notices shall be deemed to be served

- (a) on delivery when delivered personally; or
- (b) on receipt of a printout confirming due transmission when transmitted by facsimile to the facsimile number notified by the other Party; or
- (c) two (2) days after mailing if sent by mail, provided the postage is properly paid and such notice is correctly addressed to the respective Party at its registered office, or such other address as shall have been notified to the other Party in writing.

20 GOVERNING LAW AND COMPETENT COURTS

These Conditions and any agreements between Seller and Buyer are governed by Belgian law. All claims or disputes which arise out of or are related thereto are subject to the exclusive jurisdiction of the courts of Hasselt. The United Nations Convention on Contracts for the International Sale of Goods does not apply.