

## CONDITIONS OF SALE – SYNTHITE LIMITED

### 1. DEFINITIONS AND INTERPRETATIONS

1.1 In these conditions, unless the context otherwise requires:

“**Synthite**” means Synthite Limited, or any of its businesses.

“**Buyer**” means the person, firm or company whose Order for the Goods is accepted by Synthite

“**Contract**” means the Order and Synthite’s acceptance of the Order forming the agreement relating to the sale and purchase of Goods and/or Services.

“**Goods**” means the chemicals or other goods (including any instalment of them) to be supplied by Synthite.

“**Incoterms**” means the terms laid down by the International Chamber of Commerce as in force at the date when any Contract is made.

“**Order**” means an order placed with Synthite for the purchase of the Goods.

“**Services**” means any services provided by Synthite whether in connection with the Goods or otherwise.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 A reference to one gender includes a reference to the other gender.

1.3 Headings in these conditions are for ease of reference only and will not affect interpretation.

### 2. BASIS OF THE SALE

2.1 Subject to any variation under condition 2.3, the Contract shall 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).

2.2 No terms or conditions endorsed on, delivered with or contained in the Buyer's purchase order, confirmation of order, specification or other document shall form part of the Contract simply as a result of such document being referred to in the Contract.

2.3 These conditions apply to all Synthite's sales and any variation to these conditions and any representations about the Goods and/or Services provided shall have no effect unless expressly agreed in writing and signed by a Commercial Manager of Synthite. The Buyer acknowledges that it has not relied on any statement, promise or representation made or given by or on behalf of Synthite which is not set out in the Contract. Nothing in this condition shall exclude or limit Synthite's liability for fraudulent misrepresentation.

### 3. QUOTATIONS, ORDERS AND SPECIFICATIONS

3.1 Quotations do not constitute an offer to contract and no contract will result until the Buyer has placed an Order which has been accepted by Synthite in accordance with Clause 3.2.

3.2 An Order submitted by the Buyer will be deemed to be accepted by Synthite unless the Buyer is notified to the contrary verbally or in writing within a reasonable timeframe after the Order is submitted.

3.3 The Order must set out the description of the Goods and/or Services required, the quantity being ordered, any changes required by the Buyer to Synthite's product data sheets (which must be agreed by Synthite in accordance with clause 3.4), the delivery address, any special delivery instructions, Buyer's Order number and such other information as Synthite may reasonably require to perform the Contract. The Buyer must be responsible to Synthite for ensuring the accuracy of any Order.

3.4 Subject to Clause 3.5 the properties of the Goods shall be as shown on Synthite's typical product data sheets, which may not be appropriate for or reflect the Buyer's intended application or usage of the Goods. It is the Buyer's sole responsibility to ensure that the Goods are appropriate for the Buyer's application and/or usage (including carrying out its own tests for this purpose). Any changes to Synthite's typical product data sheets must be agreed in writing by a Commercial Manager of Synthite.

3.5 Synthite reserves the right, without prior notice, to make any changes in the properties and/or specification of the Goods which are required to conform with any relevant laws or which do not materially affect their quality or performance.

3.6 If the Goods are to be manufactured or any process is to be applied to the Goods or any packaging is to be given to the Goods by Synthite in accordance with any specification/product data sheets or amendments to product data sheets, materials, packaging or designs submitted by or requested by the Buyer, then the Buyer by entering into a Contract

hereby licences Synthite to use the specification/product data sheets or amendments to product data sheets, materials, packaging and designs for the purpose of manufacturing and selling the Goods. The Buyer will indemnify and keep indemnified Synthite against all loss, liability, damages, costs and expenses awarded against or incurred by Synthite in connection with or paid or agreed to be paid by Synthite in settlement of any claim for royalties or infringement of any industrial or intellectual property rights or other rights of any other person which results from such use or from any other claims arising from such use.

#### 4. CANCELLATION BY THE BUYER

The Buyer may only cancel an Order prior to the delivery of Goods with the agreement in writing of a Commercial Manager of Synthite and on terms that the Buyer indemnifies in full against all loss (including loss of profits), liability, charges, damages, costs and expenses incurred by Synthite as a result of such cancellation.

#### 5. PRICES

5.1 Subject to Clause 5.2, the price of the Goods and/or Services will be the price agreed with the Buyer at the time of acceptance of the Order. Where prices are quoted by Synthite they are valid for 30 days only unless expressly stated otherwise or until earlier acceptance by Synthite of an Order based on such prices, after which time they may be altered by Synthite without giving notice to the Buyer.

5.2 Synthite reserves the right, by giving notice to the Buyer at any time before delivery, to increase the price of the Goods to reflect any increase in the cost to Synthite which is due to any factor beyond the reasonable control of Synthite including (without limitation), any foreign exchange fluctuation, currency regulation, alteration of duties, significant increases in the costs of labour or raw materials or other costs of manufacture, any change in delivery dates, quantities or specifications for the Goods requested by the Buyer or any delay in the manufacture or dispatch of the Goods which is requested by the Buyer or failure of the Buyer to give Synthite adequate information or instructions.

5.3 Unless otherwise advised by Synthite, all prices quoted for Goods are inclusive of charges for transport and packaging but exclusive of any applicable value added tax, which the Buyer shall be additionally liable to pay.

5.4 The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods where such cost is not included in the price quoted or agreed.

## 6. PAYMENT

6.1 The Buyer will pay the price of the Goods and/or Services in full without deduction of any actual or alleged set-off or counter-claim within thirty days of the date of invoice or within such other timeframe as is agreed with the Buyer. The time of payment will be of the essence of the Contract.

6.2 If the Buyer fails to pay any sum due to Synthite on the due date then, without prejudice to any other rights, Synthite will be entitled to:-

6.2.1 exercise its statutory right to claim interest and compensation for debt recovery costs under any late payment legislation (including The Late Payment of Commercial Debts (Interest) Act 1998, as amended and supplemented by The Late Payment of Commercial Debts Regulations 2002) from the Buyer if Synthite is not paid in accordance with agreed credit terms; or

6.2.2 suspend or terminate any Contract with the Buyer or suspend any further deliveries to the Buyer; or

6.2.3 appropriate any payment made by the Buyer to such of the Goods (or other Goods supplied under any Contract) as Synthite may think fit.

## 7. DELIVERY

7.1 Unless otherwise agreed by Synthite, Synthite will deliver the Goods to the delivery address shown on the Order.

7.2 Synthite will use all reasonable endeavours to ensure that delivery dates are agreed with the Buyer and met but time for delivery will not be of the essence of the Contract and Synthite will not be liable for any direct or indirect loss or damage or consequential loss (all three of which terms include, without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Synthite's negligence), nor shall any delay entitle the Buyer to terminate or rescind the

Contract unless such delay exceeds 180 days. The Goods may be delivered by Synthite in advance of the delivery date upon giving reasonable notice to the Buyer.

7.3 The Buyer shall take delivery of the Goods notwithstanding that the quantity so delivered shall be either greater or less than the quantity purchased (due principally to economic batch productions having to be made by Synthite) provided that:-

7.3.1 such discrepancy in quantity shall not exceed 10%;

7.3.2 the amount payable under clause 5 shall be adjusted pro rata to the discrepancy.

7.4 If the Buyer fails to give Synthite adequate delivery instructions or fails to take delivery of the Goods notwithstanding any previous notification by Synthite, Synthite will be entitled to:-

7.4.1 store the Goods until actual delivery and render an invoice to the Buyer for the full amount of the price plus any additional expenses incurred by Synthite in handling, storing, insuring and financing the Goods; or

7.4.2 mitigate its loss by selling or disposing of the Goods (where possible) and recovering any shortfall in the sale price (agreed with the Buyer) from the Buyer.

7.5 Where Synthite delivers the Goods, the Buyer must inspect the goods on delivery, then unless otherwise advised in delivery documentation, all claims for damage or partial loss of Goods in transit must be submitted in writing to both the carrier and Synthite within three days of delivery or as stated in the delivery documentation if a shorter period and, in the case of non-delivery of the whole consignment, claims must be submitted in writing to both the carrier and Synthite within seven days of the expected delivery date. In the absence of claims within this time limit the Goods shall be deemed to have been properly delivered.

7.6 The Buyer is responsible for providing adequate labour and facilities at the delivery points for unloading Goods ordered by the Buyer and shall keep Synthite indemnified against all claims however arising from such unloading operations.

## 8. RISK AND TITLE TO GOODS

8.1 Risk of damage to or loss of any Goods or part or instalment of the Goods will pass to the Buyer:-

8.1.1 if delivery is arranged by Synthite under Clause 7.1, on the Goods being delivered at the delivery address shown on the Order or notified to Synthite or, in the event that that Buyer fails to take delivery at such address, at the point at which delivery tendered at such address; or

8.1.2 if the Buyer is to collect the Goods, on the Goods leaving Synthite premises or, in the event that such items are not collected by the Buyer or the Buyer's carrier on the agreed delivery date, at the point at which delivery was tendered by Synthite.

8.2 The Buyer will be responsible for insuring the Goods in the joint names of the Buyer and Synthite against all commercial risks of loss or damage (including damage by fire and water) as is reasonably available in the insurance market to their full value from the time risk passes. On request the Buyer shall produce evidence of insurance satisfactory to Synthite.

8.3 Notwithstanding delivery and passing of risk, title to any Goods will not pass to the Buyer and will remain vested in Synthite until payment in full and in cleared funds of all sums payable by the Buyer to Synthite under the Contract and all other sums then due and payable by the Buyer to Synthite.

8.4 Until ownership of the Goods has passed to the Buyer, the Buyer shall:

8.4.1 hold the Goods on a fiduciary basis as Synthite's bailee;

8.4.2 store the Goods (at no cost to Synthite) separately from all other goods of the Buyer or any third party in such a way that they remain readily identifiable as Synthite's property;

8.4.3 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and

8.4.4 maintain the Goods in satisfactory condition and keep them insured on Synthite's behalf for their full price against all risks to the reasonable satisfaction of Synthite. On request the Buyer shall produce evidence of insurance satisfactory to Synthite.

- 8.5 The Buyer may resell the Goods before ownership has passed to it solely on the following conditions:
- 8.5.1 any sale shall be effected in the ordinary course of the Buyer's business at full market value; and
  - 8.5.2 any such sale shall be a sale of Synthite's property on the Buyer's own behalf and the Buyer shall deal as principal when making such a sale.
- 8.6 The Buyer's right to possession of the Goods shall terminate immediately if:
- 8.6.1 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
  - 8.6.2 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 or perform any of his/its obligations under the Contract or any other contract between the Synthite 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; or
  - 8.6.3 the Buyer encumbers or in any way charges any of the Goods.
- 8.7 Synthite shall be entitled to recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed from Synthite.
- 8.8 The Buyer grants Synthite, its agents and employees an irrevocable licence at any time to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 8.9 Where Synthite is unable to determine whether any Goods are the goods in respect of which the Buyer's right to possession has terminated, the Buyer shall be deemed to have

sold all goods of the kind sold by Synthite to the Buyer in the order in which they were invoiced to the Buyer.

- 8.10 On termination of the Contract, howsoever caused, Synthite's (but not the Buyer's) rights contained in this condition 8 shall remain in effect.

## 9. BUYER OBLIGATIONS

- 9.1 The Buyer undertakes at all times to comply in the storage, use and sale of the Goods with relevant laws and recommended health and safety guidelines in force at any time and with any requirements of Synthite from time to time and not to sell or use any Goods after the end of the usable life of the Goods.

- 9.2 The Buyer acknowledges that irrespective of whether the Buyer's packaging or labels are to be applied to the Goods that Synthite reserves the right to apply its own identification/coding to Goods in such a way as to ensure full traceability. The Buyer undertakes to maintain a system and complete records for tracing the Goods, which it purchases from Synthite and shall make them available to Synthite upon reasonable request, to enable Synthite to investigate any claim in respect of the Goods.

## 10. WARRANTIES AND LIMITATION LIABILITY

- 10.1 Subject to Clauses 10.2 and 10.3 below, the Goods supplied by Synthite are warranted as being of satisfactory quality on delivery. Due to the nature of the Goods and the fact that they may be incorporated with other goods or have other processes applied to them by the Buyer or may be subject to conditions which Synthite cannot reflect in its own laboratory, Synthite cannot include further express warranties in these Conditions. In particular, Synthite cannot warrant the Goods as being fit for a particular purpose.

- 10.2 Synthite will not accept any claim in respect of a breach of warranty under sub-Clause 10.1 unless:

10.2.1 the Buyer has notified Synthite of any alleged defect in the quality or condition of the Goods in writing immediately upon delivery; and

10.2.2 the Buyer has provided sufficient detail of the alleged defect and the relevant Goods and, if requested by Synthite, a sample of the defective Goods to enable Synthite to investigate and deal with the matter fully.



10.3 Synthite will be under no liability in respect of any defect in the Goods arising from any specification/product data sheets or amendments to Synthite typical product data sheets, packaging, designs or materials supplied by or requested by the Buyer or arising from any negligence of the Buyer, misuse or alteration of the Goods, abnormal storage conditions or failure to follow any instructions of Synthite.

10.4 Where any valid claim is made in respect of any breach of the warranty in Clause 10.1 and notified to Synthite in accordance with Clause 10.2 then, subject to clauses 10.2 and 10.3, Synthite will, at its sole discretion and within a reasonable time after receiving such notice, replace the defective part of the goods or, where this is not possible, refund to the Buyer the amount paid of the defective Goods or part of the Goods. Where the Goods are delivered in bulk or by instalments, Synthite will only be liable to replace or refund the part of the bulk or instalment(s) which is defective.

## 11. LIMITATIONS

11.1 Synthite cannot and does not exclude or limit its liability for death or personal injury arising out of the negligent act or omission of Synthite or its employees.

11.2 Save as expressly provided in these Conditions and subject to Clause 11.1 all conditions, warranties and representations, express or implied by statute, common law or otherwise in relation to the Goods and in relation to any supply to be made by Synthite are excluded to the fullest extent permitted by law.

11.3 Save as provided in Clause 11.1, and notwithstanding anything else in these conditions, Synthite shall not be liable to the Buyer for any "other loss or damage" this includes but is not limited to loss or profit, loss of revenue, loss of use loss of contract, loss of production, loss of business, loss of business opportunity, other economic loss, the costs of recalling, removing, altering, or treating any goods or any claim for indirect or consequential loss whatsoever or arising from the alleged negligence of Synthite, or its employees, agents or otherwise.

11.4 Synthite shall not be responsible for any loss of or damage to property except loss of or damage to tangible property caused by the negligence of Synthite or any of its employees. Synthite's liability for loss of or damage to tangible property shall in no event exceed the individual Order value.

## 12. INDEMNITY

12.1 The Buyer shall indemnify and keep indemnified Synthite against all claims, liability, damages, loss, injury, costs or expenses arising directly or indirectly from the sale or use of the Goods by the Buyer or its customers.

12.2 Without limitation to the indemnities provided under clause 12.1 hereof, the Buyer shall effect and maintain comprehensive insurance protection in respect of those liabilities, comprising as a minimum (1) not less than employers' liability insurance with a limit of indemnity of not less than £10m, (2) public/products liability insurance to a standard typically available in the insurance market with a limit of indemnity of not less than £5m and including an indemnity to Principals clause.

## 13. EXPORT TERMS

13.1 Where Goods are supplied by Synthite for export from the United Kingdom, Synthite will state the basis of the supply by reference to terms defined in the Incoterms.

13.2 Subject to any terms which Synthite may state as applying by reference to the Incoterms and subject to any special terms agreed in writing between the Buyer and Synthite, the provisions of these conditions shall apply to the sale of Goods by Synthite for export.

13.3 The Buyer shall be responsible for complying with any relevant laws governing the importation of the Goods into any country and for the payment of any duties, taxes or levies on the Goods not included in the agreed delivery terms.

## 14. TERMINATION/ CANCELLATION BY SYNTHITE

14.1 Synthite shall be entitled to terminate any Contract immediately on notice in writing (irrespective of whether the Goods have been delivered) if:

14.1.1 the Buyer commits any material or persistent breach of any terms of the Contract; or

14.1.2 the Buyer commits any minor breach which, if it is capable of remedy, it fails to remedy within 30 days of being required in writing to do so; or

- 14.1.3 if the Buyer ceases to trade, disposes of the whole or a substantial part of its assets, makes or proposes to make any voluntary arrangement or compromise with its creditors or becomes subject to an administration order or (being an individual) has a bankruptcy order made against it or (being a company) goes into liquidation or has a resolution passed to wind up the Company or becomes insolvent within the meaning of any system of law having jurisdiction over it; or
  - 14.1.4 if the Buyer has a receiver or administrative receiver appointed over the whole or any part of its assets; or
  - 14.1.5 if Synthite reasonably apprehends that any of the events set out in Clauses 14.1.3 or 14.1.4 is about to occur in relation to the Buyer and notifies the Buyer accordingly.
- 14.2 Synthite shall be entitled to cancel an Order/terminate any Contract on giving reasonable notice if it is unable to fulfill the Order due to any circumstance beyond its reasonable control including, without limitation, any of the difficulties listed under Clause 10.8.
- 14.3 On termination, without prejudice to any other right or remedy available to Synthite shall be entitled to:-
- 14.3.1 cancel any Contract or suspend any further deliveries under any Contract without any liability to the Buyer;
  - 14.3.2 demand immediate payment for any Goods which have been delivered but not paid for notwithstanding any previous Contract or arrangement to the contrary;
  - 14.3.3 resell/ repackage/ use any Goods which were ordered by or made up for the Buyer or specifically ordered by Synthite to meet the Buyer's ongoing orders.
- 14.4 Termination of the Contract shall be without prejudice to the rights or obligations of the parties arising prior to termination.
15. FORCE MAJEURE

15.1 If we are unable to perform our obligations to you (or only able to perform them only at unreasonable cost) because of circumstances beyond our control, we may cancel or suspend any of our obligations to you, without liability.

15.2 Examples of those circumstances include act of God, strikes, lockouts, or other industrial action, civil commotion, riot, invasion, war, (whether declared or not), or threat of or preparation for war, fire, explosion, storm, flood, earthquake, subsidence, epidemic, or other natural, physical disaster, accident, lack or failure of transportation facilities, the acts, decrees, legislation, regulations, orders or restrictions of any Government; and shortage of supply of materials or equipment or failure of equipment.

## 16. GENERAL

16.1 Any notice to be given by the Buyer under Clauses 7.5 or 10.2 or any claim to be made by the Buyer must be in writing and served on Synthite (at the address shown in the Order) either personally or by courier or fax or e-mail. Any other notice to be given under the Contract must be in writing and be served on the recipient by personal delivery, first class post, fax or e-mail at the address showing in the Order or any other address notified in writing by the recipient from time to time and referring to the Contract. Notice delivered shall be deemed to have been served if served personally, at the time of delivery, if sent by courier, on the day of delivery, if sent by first class post in the United Kingdom, two working days after the day of posting. If sent by post outside the United Kingdom, seven working days after the day of posting and if sent by fax or e-mail, at the time of transmission. A working day is any working day excluding Saturdays, Sundays and Bank Holidays.

16.2 Synthite is entitled to assign its rights and obligations under the Contract or to sub-contract the performance of its duties without the Buyer's written consent. The rights granted to the Buyer in the Contract are personal to the Buyer and shall not be assigned without Synthite's written consent.

16.3 These conditions, when read in conjunction with an Order contain the entire agreement of the parties in relation to any Contract arising out of that Order and no other terms or conditions, representations, promises or understandings form any part of that contract.

16.4 The waiver of forbearance or failure of either party in insisting in any one or more instances on the performance of any provisions of the Contract shall not be construed as a

waiver or relinquishment of that party's rights in respect of any continued default or any future non-performance of that or any other provision.

16.5 These Conditions and any Contract to which they apply shall be interpreted and construed under English Law and the parties hereby agree to submit to the non-exclusive jurisdiction of the English Courts.

16.6 If any return of these Conditions or any Contract to which they apply are held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term of provision shall to the extent be deemed not to form part of the Contract but the enforceability of the remainder of the Contract shall not be affected.