

# General Terms and Conditions of Sale and Delivery of BYK Additives Limited

(August 2018)

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions:

**Business Day:** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

**Confidential Information:** means any information of a confidential nature concerning the business, affairs, customers, clients or suppliers of us or of any member of our group, including but not limited to the Materials and any information relating to our operations, processes, plans, product information, know-how, designs, trade secrets, software, market opportunities and customers. For the purposes of this definition, **group** means us, any of our subsidiaries or holding companies from time to time, and any subsidiary from time to time of any of our holding companies.

**Contract:** the contract between us and the Customer for the sale and purchase of the Goods in accordance with these Terms and Conditions.

**Force Majeure Event:** an event or circumstance beyond a party's reasonable control, including strikes, total or partial failure or delay of suppliers, lockouts, actions of authorities, scarcity of energy and raw materials, transportation difficulties, any hindrances to operations and any other hindrances which are beyond our reasonable control.

**Goods:** means the Goods (or any part of them) set out in an Order.

**Intellectual Property Rights:** means patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.

**Materials:** means materials, equipment, documents, product samples, illustrations, drawings, data, cost estimates and other property of ours that we provide to the Customer.

**Order:** the Customer's order for the Goods.

**Order Confirmation:** our acceptance of the Order in writing.

**Specification:** a specification for the Goods, including any related documents, that is agreed in writing by the Customer and us, and/or the description of the Goods' properties in our technical data sheet.

**Warranty Period:** means the length of warranty period relating to each type of Goods that we notify to you in writing or in any Specification, if no such warranty period is notified to you then the warranty period shall be 12 months.

### 1.2 Interpretation:

1.2.1 a reference to a statute or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.

1.2.2 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.2.3 a reference to **writing** or **written** includes faxes and emails.

## 2. GENERAL

2.1 These general terms and conditions of sale and delivery of BYK Additives Limited, a company registered in England and Wales with company number 04050418 ("**us**", "**our**", "**we**") (hereinafter called "**Terms and Conditions**") apply to the person or legal entity exercising their commercial or independent professional activity when purchasing the Goods from us (hereinafter "**Customer**").

2.2 In the event that our Terms and Conditions are introduced into a transaction with the Customer, then our Terms and Conditions shall also apply to all future transactions with the Customer unless otherwise agreed to in writing.

2.3 Our Terms and Conditions shall apply to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Customer shall not interpret our silence regarding any terms and conditions which the Customer seeks to impose as acceptance or agreement of them.

## 3. OFFERS AND ORDERS

3.1 Our offers are subject to change and are non-binding unless expressly stated otherwise. Our offers are merely an invitation for the Customer to submit an offer through an Order.

- 3.2 All Orders shall be deemed to be an offer by the Customer to purchase Goods, subject to our Terms and Conditions. A Contract is only formed - even in ongoing business transactions - when we confirm acceptance of the Order in writing or when we deliver the Goods. Our Order Confirmation shall determine the conditions of the Contract.

#### **4. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY**

- 4.1 All Intellectual Property Rights subsisting in the Goods or any Materials are and shall remain our exclusive property.
- 4.2 The Customer undertakes that it shall not at any time, disclose to any person any Confidential Information, except as permitted by Section 4.3.
- 4.3 The Customer may disclose any Confidential Information:
- 4.3.1 to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Customer's rights or carrying out its obligations under or in connection with these Terms and Conditions. The Customer shall ensure that its employees, officers, representatives or advisers to whom it discloses the Confidential Information comply with this Section 4; and
- 4.3.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 4.4 The Customer shall not use any Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with these Terms and Conditions.

#### **5. DELIVERIES, SHIPPING AND FORCE MAJEURE**

- 5.1 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence.
- 5.2 We will deliver the Goods to the location set out in the Order, or such other location as is agreed between the parties in writing.
- 5.3 We shall not be liable for any delay in delivery of the Goods that is caused by the Customer's failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.4 In the event of a Force Majeure Event, we are entitled to delay delivery for the period of the hindrance or withdraw from the Contract in whole or in part in relation to the non-performed part (without further liability to the Customer) provided that we have informed the Customer. In the event we and the Customer have agreed to a delivery date or delivery deadline and this is not met due to a Force Majeure Event, the Customer may, after the expiry of a subsequent further reasonable deadline, withdraw from the Contract with respect to the non-performed part of such Contract, if it would be objectively unreasonable for the Customer to continue to be bound by the Contract. In such a case, Customer shall have no other rights.
- 5.5 In the event of a Force Majeure Event and/or any failure of the Customer as set out in Section 5.3 we are entitled – notwithstanding the rights set out in Section 5.3 and 5.4 – to make partial deliveries of the Goods, split the available quantity of Goods among our customers, including affiliated companies, at our sole discretion or choose to completely postpone or cancel delivery. We shall notify the Customer in writing accordingly. We will complete the delayed delivery of Goods once the Force Majeure Event and/or any failure of the Customer as set out in Section 5.3 has ended. The Customer's rights pursuant to Section 5.4 shall remain unaffected.
- 5.6 If we fail to deliver the Goods, our liability shall be limited to the costs and expenses incurred by the Customer in obtaining replacement goods of similar description and quality in the cheapest market available, less the price of the Goods. We shall have no liability for any failure to deliver the Goods to the extent that such failure is caused by a Force Majeure Event or the Customer's failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the Goods.
- 5.7 We may deliver the Goods by instalments, which shall be invoiced and paid for separately. Any delay in delivery or defect in an instalment shall not entitle the Customer to cancel any other instalment.
- 5.8 If we deliver up to and including 5% more or less than the quantity of Goods ordered the Customer may not reject them, but on receipt of notice from the Customer that the wrong quantity of Goods was delivered, a pro rata adjustment shall be made to the Order invoice.
- 5.9 We shall not be considered to be in default of untimely or incomplete delivery when the Customer is in default of performing obligations he has towards us, even if resulting from other contracts.
- 5.10 Unless agreed otherwise, any loading and dispatching takes place on an uninsured basis at the Customer's risk at ex works Widnes, UK.
- 5.11 We shall determine the means of transportation and the transportation route. We shall, however, take into consideration the Customer's preferences about means and route of transportation. Any additional costs resulting therefrom, including an agreed free freight delivery, shall be borne by the Customer.

#### **6. PRICES AND PAYMENT CONDITIONS**

- 6.1 The price of the Goods shall be the price set out in the Order Confirmation and shall be exclusive of value-added tax. The value-added tax shall be charged separately in the invoice at the applicable rate of the pertinent tax regulations.

- 6.2 Unless agreed otherwise, the prices shall be quoted per kg/net, pursuant to INCOTERM clause stated in the Order Confirmation, duty unpaid, for delivery in the agreed non-returnable packaging or in bulk.
- 6.3 We may, by giving notice to the Customer at any time up to 60 days before delivery, increase the price of the Goods to reflect any increase in the cost of the Goods that is due to:
- 6.3.1 any factor beyond our control (including foreign exchange fluctuations, increases in taxes and/or duties, and/or increases in labour, wages or salary or social security costs, materials, energy costs, costs for environmental protection and other manufacturing costs);
- 6.3.2 any request by the Customer to change the delivery date(s), quantities or types of Goods ordered, the Specification, alternative packaging of the Goods including non-returnable pails and canisters, and/or transport of the Goods by express or airfreight or any other method; or
- 6.3.3 any delay caused by any instructions of the Customer or failure of the Customer to give us adequate or accurate information or instructions.
- 6.4 Unless otherwise agreed, invoiced amounts are due for payment to our nominated bank account within 30 days of the date of invoice without any deductions in the currency stated on the invoice.
- 6.5 In case of payment default, we are entitled to claim interest in the amount of 9 per cent above the base interest rate of the Bank of England from the date payment is due. We reserve the right to assert additional damages.
- 6.6 In case of Goods being exported or imported, any costs relating to the transfer or payment of funds or currency conversion costs shall be borne by the Customer.
- 6.7 We shall be entitled to make any acceptance of an Order and/or performance of delivery conditional on the provision of a security deposit or prepayment for the Goods in part or in full by the Customer. We may also demand payment concurrently with the delivery of the Goods.
- 6.8 The Customer shall pay all amounts due relating to the Goods and these Terms and Conditions in full without any set-off, counterclaim, deduction or withholding (except for any deduction or withholding required by law). We may at any time, without limiting any other rights or remedies we may have, set off any amount owing to us by the Customer against any amount payable by us to the Customer.

## **7. RETENTION OF TITLE**

- 7.1 The risk in the Goods shall pass to the Customer on completion of delivery.
- 7.2 Title to the Goods shall not pass to the Customer until the earlier of:
- 7.2.1 us receiving payment in full (in cash or cleared funds) for the Goods and any other goods that we have supplied to the Customer in respect of which payment has become due, in which case title to the Goods shall pass at the time of payment of all such sums; and
- 7.2.2 the Customer reselling the Goods, in which case title to the Goods shall pass to the Customer at the time specified in Section 7.4.
- 7.3 Until title to the Goods has passed to the Customer, the Customer shall:
- 7.3.1 store the Goods separately from all other goods held by the Customer so that they remain readily identifiable as our property;
- 7.3.2 not pledge or grant any security over the Goods;
- 7.3.3 not remove, deface or obscure any identifying mark or packaging on or relating to the Goods;
- 7.3.4 maintain the Goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;
- 7.3.5 notify us immediately if it becomes subject to any of the events listed in Section 10.1; and
- 7.3.6 give us such information relating to the Goods as we may require from time to time.
- 7.4 Subject to Section 7.5, the Customer may resell or use the Goods in the ordinary course of its business (but not otherwise) before we receive payment for the Goods. However, if the Customer resells the Goods before that time:
- 7.4.1 it does so as principal and not as our agent; and
- 7.4.2 title to the Goods shall pass from us to the Customer immediately before the time at which resale by the Customer occurs.
- 7.5 If before title to the Goods passes to the Customer the Customer becomes subject to any of the events listed in Section 10.1, then, without limiting any other right or remedy the Supplier may have:
- 7.5.1 the Customer's right to resell the Goods or use them in the ordinary course of its business ceases immediately; and

7.5.2 we may at any time:

7.5.2.1 require the Customer to deliver up all Goods in its possession that have not been resold, or irrevocably incorporated into another product; and

7.5.2.2 if the Customer fails to deliver up Goods promptly following a request to do so under 7.5.2.1 above, enter any premises of the Customer or of any third party where the Goods are stored in order to recover them.

## **8. WARRANTY, NOTIFICATION OF DEFECT, PROPRIETARY RIGHTS**

8.1 Any samples, drawings, descriptive matter or advertising produced by us and any descriptions or illustrations contained in our catalogues or brochures are produced for the sole purpose of giving an approximate idea of the Goods referred to in them. They shall not form part of our Contract with you nor have any contractual force.

8.2 Information on product quality and shelf life including other product information shall only constitute a warranty if we explicitly state it to be such.

8.3 Our technical advice - whether verbal, in writing and/or tests - is based on current knowledge. It is the Customer's responsibility to examine the quality and test the Goods as to their fitness for a particular purpose.

8.4 We give no warranty that the Goods do not infringe the Intellectual Property Rights of any third party where such Goods are made to a Specification provided by the Customer.

8.5 We warrant that on delivery, and throughout the Warranty Period, the Goods shall:

8.5.1 conform with the Specification; and

8.5.2 be free from material defects in design, material and workmanship; and

8.5.3 be fit for any purpose held out by us.

8.6 Subject to Section 8.7, if:

8.6.1 the Customer gives notice in writing to us during the Warranty Period and in accordance with Section 8.8 below that some or all of the Goods do not comply with the warranty set out in Section 8.5;

8.6.2 we is given a reasonable opportunity of examining such Goods; and

8.6.3 the Customer (if asked to do so by us) returns such Goods to our place of business at the Customer's cost, we shall, at our option, repair or replace the defective Goods, or refund the price of the defective Goods in full.

8.7 We shall not be liable for the Goods' failure to comply with the warranty set out in Section 8.5 in any of the following events:

8.7.1 the Customer makes any further use of such Goods after giving notice in accordance with Section 8.6;

8.7.2 the defect arises because the Customer failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the Goods or good trade practice regarding the same;

8.7.3 the defect arises as a result of us following any drawing, design or Specification supplied by the Customer;

8.7.4 the Customer alters or repairs such Goods without our written consent;

8.7.5 the defect arises as a result of fair wear and tear, wilful damage, negligence, or abnormal storage or working conditions; or

8.7.6 the Goods differ from the Specification as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

8.8 The Customer shall immediately inspect the Goods upon delivery for any defects regarding their quantity and quality, and shall notify us of any defects without delay, but no later than within 14 days of delivery, otherwise the Goods will be deemed to have been accepted. The Customer shall notify us of any latent defects not detectable by such an inspection within a reasonable period of their discovery, but no later than within 14 days of their discovery. The Customer shall file any complaints in writing specifying the order, batch, invoice and shipping numbers.

8.9 All complaints regarding defects shall always contain reasonably detailed description of the defect(s).

8.10 Any notice of defect under Section 8.8 must be in writing. Any notice of defect not complying with the formalities set out in Section 8.8 shall exclude any right of the Customer to make a claim based on defects.

8.11 In case of any defect which is recognisable on delivery, the Customer must leave the respective Goods in the transport container, so we can verify the complaint, unless we expressly waive the right to such by way of written declaration and the Customer ensures the separate storage of the respective Goods.

- 8.12 Except as provided in Section 9, we shall have no liability to the Customer in respect of the Goods' failure to comply with the warranty set out in Section 8.5.
- 8.13 The terms implied by sections 13 to 15 of the Sale of Goods Act 1979 are, to the fullest extent permitted by law, excluded from these Terms and Conditions and shall not apply to the Goods.
- 8.14 These Terms and Conditions shall apply to any repaired or replacement Goods supplied by us.

## **9. LIABILITY, EXCLUSION AND LIMITATION OF LIABILITY**

- 9.1 Nothing in these Terms and Conditions shall limit or exclude the Supplier's liability for:
- 9.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- 9.1.2 fraud or fraudulent misrepresentation;
- 9.1.3 breach of the terms implied by section 12 of the Sale of Goods Act 1979; or
- 9.1.4 any matter in respect of which it would be unlawful for the Supplier to exclude or restrict liability.
- 9.2 Without prejudice to Section 9.1, we shall not under any circumstances whatever be liable to the Customer, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- 9.2.1 loss of profit;
- 9.2.2 loss of goodwill;
- 9.2.3 loss of business;
- 9.2.4 loss of business opportunity;
- 9.2.5 loss of anticipated saving;
- 9.2.6 loss or corruption of data or information; or
- 9.2.7 special, indirect or consequential damage,  
suffered by the Customer that arises under or in connection with the Contract.
- 9.3 Without prejudice to Section 9.1 or Section 9.2, our total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall in all circumstances be limited to the higher of £ 500.000 or 100% of the price of the Contract.

## **10. TERMINATION**

- 10.1 Without limiting its other rights or remedies, we may terminate any Contract with immediate effect by giving written notice to the Customer if:
- 10.1.1 the Customer commits a material breach of any term of these Terms and Conditions and (if such a breach is remediable) fails to remedy that breach within 7 days of being notified in writing to do so;
- 10.1.2 the Customer takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction;
- 10.1.3 the Customer suspends, threatens to suspend, ceases or threatens to cease to carry on all or a substantial part of its business; or
- 10.1.4 the Customer's financial position deteriorates to such an extent that in our opinion the Customer's capability to adequately fulfil its obligations under such contract for the purchase of Goods has been placed in jeopardy.
- 10.2 Without limiting its other rights or remedies, we may suspend provision of the Goods under the Contract or any other contract between the Customer and us if the Customer becomes subject to any of the events listed in Section 10.1.1 to Section 10.1.4, or if we reasonably believe that the Customer is about to become subject to any of them, or if the Customer fails to pay any amount due to us under the Contract or any other contract on the due date for payment.
- 10.3 Without limiting its other rights or remedies, we may terminate the Contract with immediate effect by giving written notice to the Customer if the Customer fails to pay any amount due under the Contract on the due date for payment.
- 10.4 On termination of the Contract for any reason the Customer shall immediately pay to us all of our outstanding unpaid invoices and interest and, in respect of Goods ordered but for which no invoice has been submitted, we shall submit an invoice, which shall be payable by the Customer immediately on receipt;

10.5 Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract that existed at or before the date of termination.

10.6 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

## 11. PERSONAL DATA

We save and process all personal data disclosed by the Customer in accordance with applicable laws and regulations to the extent required for the contractual relationship.

## 12. COMPLIANCE

Legal compliance and ethically correct behavior are part of our core values. We therefore expect our Customers to abide by all applicable national and international laws and regulations as well as the UN Global Compact Initiative and Responsible Care Global Charter during our mutual business relationship. This specifically applies to laws and regulations on work environment and employee protection, human rights, prohibition of child labour and slave labour, criminal corruption and the granting of bribes of all kind, anti-trust and competition law as well as environmental protection laws.

## 13. EXPORT CONTROLS

The Customer is responsible for obtaining, at its own cost, such import and export licences and other consents in relation to the Goods as are required from time to time and, if required by us, the Customer shall make those licences and consents available to us prior to the relevant shipment.

## 14. GENERAL

### 14.1 Notices

14.1.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, sent by pre-paid first class post or other next working day delivery service, commercial courier, or fax or email.

14.1.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Section 14.1.1; if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax or email, one Business Day after transmission.

14.1.3 The provisions of this Section 15.1 shall not apply to the service of any proceedings or other documents in any legal action.

### 14.2 Entire Agreement

14.2.1 The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

14.2.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this agreement. Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this agreement.

14.3 **Variation.** No variation of the Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

14.4 **Waiver.** No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

14.5 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## 15. JURISDICTION AND GOVERNING LAW

15.1 The Contract, these Terms and Conditions, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with them or their subject matter or formation, shall be governed by and construed in accordance with the law of England without regard to its conflict-of-law provisions.

15.2 Each party irrevocably agrees that the courts of England shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Contract, these Terms and Conditions, or their subject matter or formation. We have the right, however, to file a lawsuit at the Customer's general place of jurisdiction.

- 15.3 The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 15.4 If an Order or our Order Confirmation contains an INCOTERM clause, the respective applicable version of the latest INCOTERMS shall apply unless otherwise stated in our respective Order Confirmation.