

Purchase Order Terms and Conditions

1. General

A. These terms and conditions, together with the purchase order applicable to these terms and conditions (collectively, the "Order") constitute the complete and final agreement of Buyer and Seller as to the purchase and sale of goods, material, services and/or labor (collectively, the "Goods") and may not be added to, modified, superseded or altered by Seller's acknowledgement, a course of dealing, or in any other way except by written agreement or modification to this Order signed by Buyer's authorized representative, notwithstanding any terms and conditions which may now, or in the future, appear on Seller's invoices, quotations, acknowledgment or other forms, which are objected to and disallowed, and notwithstanding any acceptance of shipment, payment or other similar act of Buyer.

B. Any shipment, delivery or other tender of performance of Seller of the Order or failure to deliver written objection to the Order within two days of Seller's receipt thereof shall be taken as Seller's assent to and acceptance of these terms and conditions.

2. Performance

A. Buyer shall have the right at any time to change this Order including, but not limited to, the following terms: quantity, specifications, delivery, packaging or means of shipments. Seller's receipt of Buyer's notice of change without response received by Buyer within 2 days or shipment or other performance reflecting the change, whichever occurs first, shall be Seller's acceptance of the change without any price or other adjustment to this Order. Seller shall make no change in the Goods, whether by change in or departure from specifications, design, manufacture, process, machinery, dies and molds, standard or method, or by change in material or composition, whether any such change is at the initiative of Seller or its supplier, without Buyer's prior written consent.

B. Time and quantity are of the essence of this Order. Unless otherwise specified, the delivery of the Goods shall be on DDP basis Incoterms at Buyer's designated place of delivery or designation.

C. Seller will pack, mail, label and ship all Goods (i) in full compliance with applicable laws and regulations and (ii) in an appropriate and suitable manner selected by Seller which will ensure the lowest transportation cost for the Buyer, if any, in the absence of specific instructions contained herein. Buyer's count of the Goods will be final as to all shipments not accompanied by packing list. Seller will inform Buyer immediately of any occurrence which will, or is expected to, result in any delivery of any time or any quantity not specified in this Order and also of corrective measures which Seller has taken to minimize the effect of such occurrence.

D. Seller may not assign this Order or payment of any sums due hereunder.

E. Seller will maintain appropriate occurrence based liability, general third party liability, product liability, insurance and Worker's Compensation insurance covering all employees and will provide certification of such coverage as may be requested by Buyer (Buyer's failure so to request shall not be a waiver of this requirement).

F. In the event that any claims, demands or lawsuits are made or brought against Buyer relating to the Goods or relating to the trade names, trademarks, copyrights or patents ("Intellectual Property Rights") and/or are based upon unfair competition by reason of sale or use of Seller's Goods by Buyer, Seller shall hold Buyer free and harmless, defend all actions against Buyer, pay all cost of any lawsuit, including any attorney's fees, and indemnify and hold harmless Buyer for any costs incurred by Buyer in connection therewith.

3. Seller's Warranties

A. Seller warrants that the Goods, including materials and work furnished hereunder shall be of the highest grade and quality and shall meet specifications, models, drawings, or standards agreed upon or samples submitted or approved by Buyer.

B. Seller warrants that the Goods will comply with all applicable laws, regulations, rules, ordinances, or orders, whether foreign, domestic, state or federal, and agency, association or order standards (collectively, the "Laws") and will be in compliance with all standards and agreements incorporated and made a part of this Order. Payment by Buyer shall not constitute an acceptance or waiver of any rights of Buyer hereunder.

C. In the event that any Goods purchased hereunder are not in compliance with any Laws or not in compliance with any agreement or standard incorporated herein now existing or hereafter enacted or amended or are otherwise defective hereunder, Buyer, in its sole option, may (without limitation of additional remedies) return the defective Goods to Seller, who will refund and return to Buyer its cost plus freight to Buyer's warehouse or facility and freight for return to Seller to (at Buyer's option), repair, correct or replace the defective Goods at Seller's cost and expense.

D. Seller warrants that with respect to the Goods delivered hereunder that: (i) title shall be good, merchantable, and rightful and the Goods free of any security interest, lien or encumbrance; (ii) Goods will be new, free from defects in material and workmanship and fit for the purpose for which they are purchased; and (iii) the Goods, the process by which the Goods are made and Buyer's use of the Goods will not infringe on any Intellectual Property Rights. This express warranty shall not be deemed waived by reason of either or both the receipt of the materials and payment therefore by Buyer. The foregoing is in addition to any and all other express or implied warranties applicable to the Goods purchased hereunder.

4. Price, Taxes, Transportation, Payment

A. All Prices shall be F.O.B. place of delivery (destination), unless otherwise specified herein, inclusive of applicable taxes, excise, duties, quotation fees or any other governmental impositions on or related to the production, sale or transportation of the Goods, except as only otherwise specified herein in compliance with any ceiling or other limitation of price established by any governmental authority, and subject to increase only with prior written consent of Buyer. Buyer and Seller will cooperate upon request in obtaining and furnishing such certificates or other evidence of inapplicability of or exemption from any sales, excise or other taxes to which either of the parties may be entitled.

B. Unless otherwise specified herein the price of the Goods shall be payable within NET 60 (or equivalent) from the date of invoice provided by Seller. Any payment made by Buyer does not affect its rights or remedies if the Goods are determined, in Buyer's sole opinion, to be defective.

5. Force Majeure

Either Buyer or Seller, by giving prompt notice to the other party, may suspend performance during the occurrence of an excusable delay, which shall mean and include any delay not occasioned by the fault or negligence of the delayed party and which results from the acts of God or public enemy, restrictions, prohibitions, priorities or allocations imposed by governmental authority, embargoes, floods, fires, typhoons, earthquakes, epidemics, unusually severe weather, delays of similar nature or governmental causes, and strikes or labor disputes (of or involving the delayed party's employees only). Excusable delays do not include shortage of labor, lack of or inability to obtain raw materials, fuel or supplies or any other industrial disturbance. Nothing contained in this paragraph shall limit Buyer's rights hereunder in any way, except that in the event of Seller's excusable delay Seller shall not be liable for Buyer's incidental or consequential damages resulting from that delay.

6. Buyer's Property, Patents, Trade Secrets, Know How

Unless otherwise specified in separate written agreement between Buyer and Seller, all tools, equipment, dies and jigs, drawings, specifications and other material of every description furnished

to Seller or paid for by Buyer shall be and remain the sole property of Buyer, shall be plainly marked and/or otherwise clearly identified by Seller as "Property of Italmatch Chemicals Group" shall be stored separate and apart from Seller's property shall be treated as confidential and used so as to prevent disclosure inconsistent herewith, shall not be used except pursuant to this Order shall be subject to Buyer's immediate possession on demand and, in any event, shall be returned to Buyer simultaneously with final shipment or termination under this Order.

7. Indemnity

Seller shall indemnify and hold Buyer and its subsidiaries, affiliated companies, customers, agents and vendors free and harmless, respond to and defend all claims, demands, threats, proceedings, liens or lawsuits made or brought or brought against Buyer or its subsidiaries, affiliated companies, customers, agents and vendors relating to the Goods, including but not limited to: (i) any actual or alleged violation of Laws, (ii) any actual or alleged infringement of Intellectual Property Rights, (iii) injury, death or property damage resulting, in whole or in part, from any negligent act or omission on the part of the Seller or which may result from the installation, operation or use of the Goods furnished hereunder, (iv) a defect in the manufacture or design of the Goods supplied hereunder, or (v) any breach or alleged breach by Seller of any representation, warranty, or other provision of these terms and conditions. Seller shall further indemnify and hold Buyer, its subsidiaries, affiliated companies, customers, agents and vendors harmless from any and all expenses, losses, claims, royalties, profits, and damages, including court costs and attorneys' fees, resulting from the bringing of such suits or proceedings or the threat thereof and from any settlement, decree or judgment therein. Buyer reserves the right to control any such suit or proceeding.

8. Termination

A. Buyer may at any time terminate this Order in whole or in part by written notice, whereupon Seller shall terminate work pursuant to the terms of such notice and without any further liability of Buyer or Seller.

B. If Goods ordered hereunder are made specifically for Buyer and cannot be sold to other purchasers, upon termination by Buyer, Seller shall promptly advise Buyer of the quantities of applicable work and material on hand or purchased prior to termination and the most favorable disposition that Seller can make thereof. Seller will comply with Buyer's instructions regarding disposition of such work and material. All claims by Seller based on such termination must be asserted, in writing and in full, within 60 days from the date of notification of the termination or order price of finished work and the cost to Seller, excluding profit or losses, of work in process and raw material, less however (1) the agreed value of any items used or sold by Seller with Buyer's consent and (2) the reasonable value or cost (whichever is higher) of any defective, damaged or destroyed work or material and any items sold or used by Seller without Buyer's consent. Buyer will make no payments for finished work, work in process or raw materials fabricated or procured by Seller unnecessarily in advance or in excess of Buyer's delivery requirements. The payment provided for in this clause shall constitute Buyer's only liability in the event this Order is terminated as provided herein. The foregoing provisions of this section shall not apply to any termination by Buyer for default of Seller or under the following provisions of this section.

C. To the extent this Order covers items normally carried in inventory by Seller (as distinguished from items specifically made to Buyer's specifications), Buyer shall not have liability for any termination of this Order, in whole or in part, prior to actual shipment or for any termination, except that, within 10 days after receipt of Goods by Buyer, its liability shall be limited to returning said Goods and reimbursing Seller for direct cost of handling and transportation.

9. Inspection and Test

A. Seller will submit to Buyer all production, functional and quality control test reports and offer data as may be requested by Buyer from time to time concerning the Goods in order that Buyer can ensure quality control. Seller grants to Buyer and Buyer's customer the right to enter Seller's premises during any reasonable business hours to make such inspection and examination as Buyer may deem appropriate and agrees to fully cooperate with Buyer in effecting such an inspection.

B. All Goods ordered may be subject to final inspection and test by Buyer after receipt irrespective of the day of payment and any items which are not fully satisfactory to Buyer may be rejected by notice to Seller. Said rejected items are to be replaced with applicable items within the latest reasonable time after notice of rejection or at the option of Buyer exercised by written notice the quantity of Goods may be reduced by the number of rejected items. Seller warrants that the Goods delivered to Buyer shall conform to the specifications of such Good for its entire shelf-life.

10. Cover; Delivery

In case of default by Seller, Buyer may obtain Goods from other sources and hold Seller responsible for any damages occasioned thereby. The dates of delivery and quantities specified herein are of the essence for this order and delivery must be effected within the specified time period. If deliveries are not made on time and in the quantities specified, Buyer reserves the right to cancel and to purchase the Goods elsewhere and hold Seller accountable therefore. Seller shall cooperate with Buyer in respect to all customs formalities applicable to the import or export of the materials, shall be responsible for determining proper import or export classifications, and shall provide Buyer documentation to Buyer's satisfaction for such classifications.

11. Assignment; Code of Ethics

Seller may not assign this purchase order or any of Seller's obligations hereunder without Buyer's written consent. Buyer is bound by the Code of Ethics found at www.Italmatch.com, which such terms are incorporated into this Order by reference. The values and principles contained in the Code of Ethics are binding without exception on Buyer and all those who directly or indirectly, permanently or temporarily establish business relationships with the Buyer are expected to comply with such ethical standards. Non-compliance with the Code of Ethics by Seller, or any third party Seller is engaged with in developing the Goods, is deemed as a breach of this Order and Buyer, at its sole options, has the right to terminate the agreement, effectively immediately, without any notice and/or claim for any damages occurred.

12. Governing Law and Venue

This Order between Buyer and Seller shall be construed, and the respective rights and duties of Buyer and Seller shall be determined, according to the laws of the State of Delaware, without giving effect to its principles of conflicts of laws. Buyer and Seller hereby agree that any action arising out of or in any way related to this Order and/or any related contract, will be brought solely in any state or federal court located in New Castle County, Delaware. Both parties hereby submit to the exclusive jurisdiction and venue of any such court. THE PARTIES FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF THIS AGREEMENT.