

# MACDERMID PLC

## TERMS & CONDITIONS RELATING TO SALE OF GOODS AND PROVISION OF SERVICES

### 1. DEFINITIONS

In these conditions:-

- a) "We", "us" and "our" and related expressions mean MacDermid Plc and (where the context admits or requires) the employees, agents and sub-contractors of MacDermid Plc.  
"you" and "your" and related expressions mean the person with whom we contract for the provisions of the Goods or the Services.  
"Goods" means the product(s) (if any) described on or by reference to the face of this document and/or to be supplied by us in accordance with these conditions.  
"Services" means the services (if any) described on or by reference to the face of this document and/or to be provided by us including where appropriate the manufacture, delivery, installation, commissioning and maintenance of the Goods and the giving of advice in connection with the Goods or as to the requirement for Goods and including also the testing and analysis of samples and the provision of general technical advice together with in all cases the provision of all necessary labour, materials, plants and temporary works and including also the collection from the Site of Spent Etchant.  
"Contract" means the contract for the provision by us to or for you of the Goods or Services.  
"Site" means any location (other than our premises) specified on or by reference to the face of this document where services are to be provided to which Goods are to be delivered.  
"Intellectual Property" means any patent, utility model, author's certificate, registered or unregistered trade mark, copyright, registered or unregistered design or similar rights.  
"Act of Insolvency" means the passing of a resolution or the presentation of a petition for winding up or for the making of an administration order, the appointment of a receiver and/or manager or an administrator or administrative receiver over the whole or any part of an undertaking and its assets, the making of any composition with or the calling of any meeting with creditors and/or the levying of execution on any assets or the presentation of a petition in respect of bankruptcy order or an application for an interim order in connection with any proposals for a voluntary arrangement.  
"Spent Etchant" means cuprammonium chloride solution (CUSOL – 140R) produced from copper etching operations using copper etchant supplied by us.
- b) Words in the singular incorporate the plural and vice-versa and any reference to a person includes a reference to a company, partnership or other business entity as well as to a natural person.
- c) Clause headings are for convenience only and shall not affect the meaning or interpretation of these conditions.

### 2. FORMATION OF CONTRACT

- a) Any quotation written or oral, submitted by us shall be an invitation to treat and not an offer. The placing of any order, written or oral, whether or not any quotation has been submitted by us, shall constitute an offer by you. You are responsible for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by you. Any offer by you and any subsequent acceptance by us shall be on the basis that these conditions shall be incorporated in the Contract to the exclusion of any terms or conditions brought forward by or on your behalf. Any offer by you is not accepted unless and until confirmed by our authorised representative, either in writing or by the commencement of performance.
- b) No variation of or addition to these conditions, whether written or oral, shall have effect unless reduced to writing and signed by one of our directors.
- c) You acknowledge that there are no representations (express or implied) outside these conditions which have induced you to enter into the Contract.
- d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of order, invoice, or other document or information issued by us shall be subject to subsequent correction without any

### 3. THE GOODS

- a) All descriptive information given by us relating to the Goods (including without, limitation specifications, technical data sheets and particulars of performance) is, whilst given in good faith, for guidance only and does not constitute a binding representation as to the method of use or function of Goods. We reserve the right to alter the specification of Goods at any time without reference to you. Stated weights or volumes of Goods are nominal only.
- b) It shall be your responsibility to ensure that the Goods are suitable for your intended purpose as to which we give no warranty even if aware of your intended purpose. We shall have no liability in respect of any defect arising from any drawing, design, specification, formula or manufacturing instructions supplied by you for our use. The Goods shall be conclusively deemed to have been accepted by you 24 hours following delivery or, if earlier, on use by you.
- c) If there is a defect in Goods due to either faulty materials or faulty manufacture and you bring it to our attention within a reasonable period, then our maximum liability will be at our option either to repair or replace the Goods or to reimburse the purchase price of the Goods Provided that:-

- i) you allow us to inspect the Goods (which shall if required by us be returned by you at your expense to our premises for inspection); and
- ii) the defect is not due in whole or in part to the normal ageing of the Goods or to the mixing of the Goods with any substance without our consent or to the use of the Goods in a manner not specifically approved by us.

#### 4. THE SERVICES

- a) Where the Contract involves the delivery by us of Goods to the Site or the provision of Services on the Site you will provide us in good time with all the information and instruction we shall reasonably need regarding the Site and the condition under which we will be required to deliver the Goods or provide the Services. Any quotation we may have given for delivery of the Goods or provision of the Services will be valid only if all such relevant information has been given by us. You will ensure that a suitably authorised employee or agent having appropriate seniority and knowledge, is available at the Site at all times during delivery of the Goods or provision of the Services in order to provide additional information and instructions, if needed, and that all necessary facilities (such as running water and electricity are freely available to us at the Site. You will ensure that all relevant licences, permits and consents (whether statutory, municipal or otherwise) are obtained.
- b) If you are paying us specifically to provide the Services then we will carry out the Services with reasonable skill and care at such time and place and in such manner as may be provided in the Contract provided that time shall not be of the essence.
- c) If we are providing the Services free of charge then, whilst we will at all times act in good faith, we do not give any warranty as to the quality competence or accuracy of our Services and if you choose to rely on our Services you do so at your own risk.
- d) Where the Services consist in whole or in part of the giving of advice then we shall have no liability to you or any third party if you fail to act in accordance with our advice nor shall we have any responsibility for ensuring that our advice is implemented unless specifically agreed in the Contract. We shall not be liable to you (and you shall indemnify us against all liability to any third party) for any advice we give which is defective directly or indirectly as a result of your having given us inaccurate or incomplete instructions or information.
- e) The signature of you, your employee or agent on any certificate of completion, final report or other documentation stating the Services have been provided shall be conclusive evidence that the Services have been provided to your complete satisfaction and in accordance with the Contract. But it will not necessarily be the only conclusive evidence.
- f) In the event that we do not carry out any Services strictly in accordance with the Contract that we may at our option either perform some or all of the Services again or refund some or all of the price payable by you for the Services but in no circumstances shall our liability exceed the price paid by you for the Services.

#### 5. LIMITATION OF LIABILITY

- a) We shall not be liable to you (other than to the extent set out in conditions 3 and 4 above) or to any third party for any injury, loss or damage of any kind whatsoever arising in connection with the Contract whether direct or indirect, including without limitation any injury, loss or damage arising out of or incidental to:-
  - i) our negligence (except to the extent that death or personal injury results); and/or
  - ii) our performance of or failure to perform any of our obligations under the Contract or otherwise; and/or
  - iii) any defect in the Goods
- b) All conditions, warranties, representations, statements, liabilities and any other terms whatsoever implied by common law, statute or otherwise are hereby excluded to the extent allowed by law and we shall have no obligation to you whether in tort or in contract or otherwise except as expressly stated in these conditions.
- c) You will indemnify us in full against all liability (including and liability under the Consumer Protection Act 1987) which may occur as a result of any claim made by any third party (including without limitation any employee or agent of yours or of any subsequent user of the Goods) arising directly or indirectly out of the performance or non-performance of the Contract or otherwise in connection with the provision of the Goods of the Services.

#### 6. DELIVERY AND RISK

- a) Delivery of the Goods shall be to such UK mainland destination as may be agreed, by such method of delivery as we shall in our discretion consider appropriate. Unless otherwise agreed, our price excludes the cost of delivery. Unloading facilities including any special equipment shall be provided by you at your expense.
- b) Any time or date quoted by us for delivery of all or any of the Goods is an estimate only and time shall not be of the essence. We may deliver the Goods in advance of any quoted delivery date if we can give you reasonable notice.
- c) If you fail to take delivery of or to collect the Goods at the time stated for delivery or collection, or if you fail to provide sufficient information or appropriate facilities to enable us to effect delivery of the Goods then you shall (and if you fail to, we may) forthwith arrange for the Goods to be stored at your own risk and expense, failing which may sell the Goods to a third party and recover from you any loss sustained as a result.
- d) Any short delivery or damage to Goods in transit must be notified to us within 24 hours of delivery or, (in the case of non-delivery) within 3 working days of the expected date of delivery.

- e) If we do fail to delivery the Goods in circumstances amounting to breach of contract by us then our liability for such non-delivery shall be limited to the excess (if any) of the cost to you (in the cheapest available market) of equivalent goods, to replace Goods not delivered, over the price of the Goods.
- f) The risk of loss of or damage to Goods shall pass to you upon delivery or collection, or (where you fail to accept delivery or to collect as appropriate) on the first date of storage whether arranged by you or by us.
- g) The Goods and the Spent Etchant are or may from time to time be subject to regulatory or insurance restrictions on their transportation. Accordingly you will obtain our prior permission to end agreement of any arrangements for the return by you, of Goods or Spent Etchant and you will comply with our procedures for the collection by us of Spent Etchant.

## **7. PRICE AND PAYMENT**

- a) The price for the provision of the Goods or the Services shall be as set out in the Contract.
- b) If the Goods are Ammoniacal Copper Etchant then as part of the Contract we will collect from the Site all Spent Etchant. In this case the price for the Goods includes the cost of collection by us of all Spent Etchant, but is conditional upon and subject to your co-operating in the collection by us of all Spent Etchant, which you must make available to us at the Site, correctly packaged and labelled and in the original returnable containers.
- c) Unless otherwise agreed payment shall be made in full on or before the 20<sup>th</sup> day of the month following the invoice date. Interest at the yearly rate of 4% over the base rate will be charged on all monies outstanding after this time until the actual date of payment. If payment of any cash discounts are offered in any quotation or elsewhere, then these will not be allowed unless payment of your outstanding balance falls within our credit terms.
- d) All payments under the Contract are exclusive of any value added tax which may be payable, and for which you will be liable in addition.
- e) Any returnable packaging supplied can only be accepted for return/credit providing it:-
  - i) is empty and clean (but not required to be chemically laundered);
  - ii) has not been used to hold any other material such as waste;
  - iii) is in good condition, complete with cap, and not damaged;
  - iv) is returned within 4 months of supply to facilitate effective rotation.

## **8. TITLE**

- a) Notwithstanding that the risk in the Goods may have passed to you, property in and title to the Goods shall remain in us and shall not pass to you until full payment for such Goods has been made to us.
- b) You shall store Goods for which you have not paid us in full, in such a way as to be clearly identifiable as our property, ensuring that they are properly protected from damage or deterioration during storage.
- c) Subject to (d) below you shall be free to use the Goods in your own manufacturing processes and/or sell the Goods in the ordinary course of your business although you have no authority to enter into any contract for sale on our behalf and any such contract shall be concluded in your name.
- d) The power of manufacture and/or sale given to you in (c) above shall cease automatically on the occurrence of either of the following events:-
  - i) if any sums due from you to us under the Contract are not paid in full when due and we send you a notice revoking your power of manufacture and sale; or
  - ii) if you commit any Act of Insolvency.
- e) Upon determination of your power of manufacture and/or sale, then we may, if we so elect, take back all Goods for which full payment has not been received by us, and which have neither been incorporated by you in your own manufacturing process nor sold to a third party, and for the purpose of repossessing such Goods, and any documents of title in respect thereof, you hereby grant to us and anyone authorised by us, an irrevocable right and license to enter any premises belonging to you or under your control where the Goods or any part of them are located, with or without notice. This right and license will continue to subsist following the termination of the Contract and is without prejudice to any other rights which we may have.

## **9. INTELLECTUAL PROPERTY AND CONFIDENTIALITY**

- a) You will indemnify us against all claims, costs and expenses resulting either from any infringement of any Intellectual Property rights or from any claim in respect of any breach of confidence, passing off, unfair competition or their equivalents in any part of the world where such an infringement or claim is due to our having manufactured or adapted Goods in accordance with specifications supplied by you or to our having provided Services in accordance with a detailed specification supplied by you.
- b) You will keep strictly confidential and not use or disclose to any third party any information regarding our current or future products or business activities of plans which come into your possession during the course of the Contract. This obligation of confidentiality does not apply to information which was already known to you at the time of

disclosure (as evidenced by written records) or which is already in the public domain or which subsequently comes into the public domain other than via you.

## 10. TERMINATION

- a) Without prejudice to our other rights and remedies we may by notice to you terminate the Contract in whole or in part:-
  - i) if any sum owing by you to us on any account whatsoever is unpaid after the due date for payment; or
  - ii) if you refuse to take delivery of or to collect any of the Goods in accordance with the terms of the Contract; or
  - iii) if you commit or threaten to commit any Act of Insolvency or if we reasonably apprehend that you are about to do so; or
  - iv) if you breach the terms of the Contract or of any other contract with us.
- b) Without prejudice to our other rights and remedies we may, if any of the termination events set out in a) above occur, suspend the performance of our obligations under the Contract.
- c) Any failure to exercise or delay in exercising any of our rights under the Contract shall not operate as a waiver thereof nor shall any single or partial exercise of any such right preclude any other or future exercise thereof. Any actual waiver by us of any breach by you of an obligation under the Contract shall not affect our rights in the event of any further additional breach or breaches.

## 11. EVENTS FOLLOWING TERMINATION

- a) If the Contract is terminated by us under condition 10 above then:-
  - i) the full price for all Goods delivered and not yet paid for shall be immediately due and payable, notwithstanding that the normal terms of payment as set out in condition 7b) above may not have been exceeded;
  - ii) the full price agreed for any Services shall be immediately due and payable notwithstanding that we have not provided such Services in full or at all; and
  - iii) at our discretion we may either sell to you or dispose of elsewhere Goods in the course of manufacture or manufactured and not yet delivered, or delivered and not yet paid for provided that if we elect to dispose of such Goods elsewhere you will be liable to pay to us any loss incurred by us as a result thereof.
- b) Immediately upon the termination of the Contract for whatever reason you will return to us all documents, technical data and equipment loaned by us to you for the purposes of or in connection with the Contract.

## 12. FORCE MAJEURE

- a) Neither party shall be liable to the other for any failure to perform or delay in performing any of its obligations hereunder where such delay or failure arises wholly or in part by reason of any factor beyond its direct control including without limitation shortage of raw materials, components or services, fire, flood or other act of God, war or civil insurrection, rules and regulations of any territory, strike, lock out or other industrial dispute or any other event of force majeure.
- b) If either party seeks to rely on an event of force majeure it shall forthwith notify the other and shall, immediately such event of force majeure ceases to apply, forthwith perform all outstanding obligations under the contract.

## 13. MISCELLANEOUS

- a) You may not withhold or delay payment of any amounts due to us under the Contract or exercise any right of set off in respect of any sum or sums owing or alleged to be owing by us under the Contract or under any other arrangement between us.
- b) The Contract is personal to you and may not be assigned in whole or in part to any third party without our prior written consent.
- c) The Contract does not constitute a partnership between you and us, nor are you our agent for any purpose. You are not entitled to pledge our credit or to make any commitment on our behalf or in our name.
- d) Each obligation contained in these conditions is a separate obligation, and shall be severally enforceable as such, notwithstanding the non-enforceability of any other such obligation.
- e) Any notice required to be given under the Contract shall be in writing addressed to the registered office address of the other for the time being or such other address as may be notified for that purpose and shall be deemed served on the next business day following posting if sent by first class pre-paid post or on the same day if sent by facsimile or delivered by hand (unless such day is not a business day or such notice is sent or delivered after 4.30 p.m. in either of which cases the notice shall be deemed served on the next business day).
- f) The Contract shall be governed by and construed in accordance with English law and the parties shall submit to the non-exclusive jurisdiction of the English courts.