

## **General Terms and Conditions of Sale of Armacell UK Limited**

### **Section 1 General Provisions, Scope**

(1) These General Terms and Conditions of Sale (“**GTC**”) shall apply to all our business relations with our customers (“**Purchasers**”). The GTC shall only apply if the Purchaser is an entrepreneur, a legal person under public law or a special fund under public law.

(2) The GTC shall in particular apply to contracts on the sale and/or delivery of movables (“**goods**”) independent of whether we produce the goods ourselves or purchase them from suppliers. Unless otherwise agreed the GTC shall apply as a framework agreement to similar future contracts without a need to refer to them in each individual case. The GTC shall apply as amended at the date of the Purchaser’s order.

(3) Our GTC shall apply exclusively. Any deviating, conflicting or supplementary General Terms and Conditions by the Purchaser shall only be incorporated into the contract if and in as far as we have explicitly approved their validity. This requirement of approval shall apply in any case, even if, for example, we effect delivery to the Purchaser without reservation being aware of his GTC.

(4) Any individual agreements made with the Purchaser in individual cases (including collateral agreements, supplements and amendments) shall in any case prevail over these GTC. Unless any evidence to the contrary is provided, a written contract or our written confirmation shall be authoritative for the contents of such agreements.

(5) Any legally relevant statements and notifications to be given to us by the Purchaser after the conclusion of the contract (e.g. setting of deadlines, notices of defect, declaration of rescission or reduction) shall only be effective in writing.

(6) Any references to the application of legal provisions are only made for clarification purposes. Even without such a clarification the legal provisions shall apply unless they are directly amended or explicitly excluded in these GTC.

### **Section 2 Conclusion of contract**

(1) Our offers are non-binding and without engagement. This shall also apply if we have provided the Purchaser with catalogues, technical documentation (e.g. computations, calculations), other product descriptions or documents - also in electronic form.

(2) The Purchaser’s order of the goods shall be deemed a binding offer of contract. Unless otherwise stipulated in the order, we shall be entitled to accept this offer of contract within 2 (two) weeks after we have received it.

(3) The acceptance may be declared in writing (e.g. by order confirmation) or by delivery of the goods to the Purchaser.

### **Section 3 Term of delivery and default in delivery**

(1) The term of delivery shall be agreed individually or shall be stated by us in the order confirmation. The time of delivery is not of the essence.

(2) Should we not be able to keep binding terms of delivery for reasons beyond our control (non-availability of the work or service) we shall inform the Purchaser immediately and at the same time state the new expected time of delivery. Should the goods or service not be available either within the new time of delivery we shall be entitled to rescind the contract completely or in part; we shall refund any payment already made by the Purchaser without delay. In particular, the untimely delivery to us by our supplier shall be deemed a case of non-availability of the goods or service within this meaning, if we have concluded a congruent covering transaction, it is neither our nor our supplier’s fault and we are not obliged to procure the goods in the individual case.

(3) The occurrence of our default in delivery shall be subject to the legal provisions.

(4) The Purchaser’s rights pursuant to Section 9 of these GTC and our legal rights, in particular in case of the exclusion of the obligation to perform (e.g. due to the impossibility or unreasonableness of the performance and/or supplementary performance), shall remain unaffected.

(4) We shall have no liability for any failure to deliver the goods to the extent that such failure is caused by the Purchaser’s failure to provide us with adequate delivery instructions or any other instructions that are relevant to the supply of the goods.

### **Section 4 Delivery, passing of risk, acceptance, default in acceptance**

(1) The goods shall be delivered ex-stock, which shall also be the place of performance for delivery and any possible supplementary performance. Upon the Purchaser’s demand and at his cost the goods shall be dispatched to a different place of destination (sale by delivery to a place other than the place of performance). Unless agreed otherwise, we shall be entitled to determine the mode of dispatch (in particular carrier, dispatch route, packaging) ourselves.

(2) The risk of accidental loss and accidental deterioration of the goods shall pass to the Purchaser at the latest upon their delivery. In case of sale by delivery to a place other than the place of performance, the risk of accidental loss and accidental deterioration of the goods as well as the risk of delay shall however already pass upon the delivery of the goods to the forwarder, carrier or other persons or institutions commissioned with carrying out the dispatch.

(3) Should, exceptionally, any claims be made against us arising from transport damages or losses the Purchaser may only assert these if, before payment of the freight, he has duly initiated the entry of a damage and/or loss note on the freight

documents and freight invoices and the drawing up of a record and if he notified us or the transport companies of such damages or losses within a preclusive period of 5 (five) days after receipt of the goods at the place of destination and the goods including the packaging are kept for us for inspection. If the goods have not been received a notification within a preclusive period of 5 (five) days after receipt of the advice of readiness for dispatch is required.

(4) If the Purchaser is in default of acceptance, fails to provide assistance or if collection or delivery (in accordance with this section 4) is delayed for other reasons attributable to the Purchaser, delay of the goods shall be deemed to have been completed at 9:00am on the third business day after the day on which we notified the Purchaser that the goods were ready, and we shall be entitled to demand compensation for damages arising therefrom, including any additional expenses (e.g. warehousing costs). In this case we charge a lump-sum compensation fee for each working day of late delivery to the amount of 0.1 % of the order total, however not exceeding 5% of the order total, as a contractual penalty.

Proof of higher damages and our legal claims (in particular reimbursement of additional expenses, adequate compensation, termination) shall remain unaffected; however the lump-sum shall be offset against further monetary claims.

#### **Section 5 Prices and payment terms**

(1) Unless otherwise agreed in individual cases, our current prices valid at the time of the conclusion of the contract shall be ex-stock, plus statutory value added tax.

(2) In case of sale by delivery to a place other than the place of performance (Section 4, para. 1) the Purchaser shall bear the transport costs ex-stock and the costs for transport insurance if desired by him.

(3) The purchase price is due and payable at the last day of the following month of our invoice. Time for payment is of the essence. The purchase price is due and payable at the last day of the following month of the invoice and delivery, placing the goods at disposal or acceptance of the goods. However, we shall be entitled at any time, also within a current business relationship, to perform a delivery as a whole or in part only against advance payment. We shall declare such a reservation at the latest in the order confirmation.

(4) Once the above payment term expires the Purchaser shall be in default. During the default interest shall be charged on the purchase price at the currently valid statutory default interest rate. We reserve the right to assert further claims for damages caused by default.

(5) The Purchaser only has a right to claim a set-off or right of retention except for any deduction or withholding required by law). (6) Should it become obvious after the conclusion of the contract (e.g. by a petition for opening insolvency proceedings) that our

claim of the purchase price is jeopardized due to the Purchaser's inability to pay, we shall be entitled to refuse performance pursuant to the statutory provisions and – if applicable after specifying a reasonable period – to withdraw from the contract.

(7) Prices are subject to change with reasonable notice to take account of any variation in the Supplier's costs. The goods will be invoiced at the price ruling on the date the goods are ready for collection or despatch. For any order requiring delivery to a single place specified where the net value is less than £200.00, a charge of £22.50 will be added to cover administrative charges. VAT will be added as a separate item of account. Quantity terms current from time to time are available on request.

#### **Section 6 Reservation of Title**

(1) Title to the goods shall not pass to the Purchaser until the earlier of:

(a) we receive payment in full (in cash or cleared funds) for the goods and any other goods that we have supplied to the Purchaser in which case title to the goods shall pass at the time of payment of all such sums;

(b) the Purchaser resells the goods, in which case title to the goods shall pass to the Purchaser at the time specified in section 6(3)

(2) Until title to the goods has passed to the Purchaser, the Purchaser shall:

(a) store the goods separately from all other goods held by the Purchaser so that they remain readily identifiable as our property;

(b) not remove, deface or obscure any identifying mark or packaging on or relating to the goods;

(c) maintain the goods in satisfactory condition and keep them insured against all risks for their full price from the date of delivery;

(d) notify us immediately if the Purchaser is entering administration, provisional liquidation or any composition or arrangement with his creditors (other than in relation to a solvent restructuring);

(e) give us such information relating to the goods as we may require from time to time.

(3) Subject to section 6(4), the Purchaser may resell or use the goods in the ordinary course of business (but not otherwise) before we receive payment for the goods. However, if the Purchaser resells the goods before that time:

(a) it does so as principal and not as our agent; and

(b) title to the goods shall pass to the Purchaser immediately before the time at which resale by the Purchaser occurs.

(4) If before title to the goods passes to the Purchaser and the Purchaser becomes subject to any of the events listed in section 6 paragraph (2), then, without limiting any other right or remedy we may have:

(a) the Purchaser's right to resell the goods or use them in the ordinary course of business ceases immediately; and

(b) we may at any time:

(i) require the Purchaser to deliver up all goods in Purchaser's possession that have not been resold or irrevocably incorporated into another product; and  
(ii) if the Purchaser fails to do so promptly, enter any premises of the Purchaser or of any third party where the goods are stored in order to recover them.

#### **Section 7 Cancellation and returning by Purchaser**

(1) The Purchaser may cancel an order without reason prior to dispatch of the goods. If the Purchaser cancels an order without reason, we shall be entitled, notwithstanding other and further rights, to demand 15 % of the order amount as compensation. The Purchaser shall expressly be free to prove that we have incurred no loss or a loss much lower than the lump sum charged. (2) Goods supplied in accordance with the contract cannot be returned without our prior written authority and only unopened cartons and materials will be considered. Unless otherwise agreed in writing, the Purchaser will be liable to pay a re-handling charge.

#### **Section 8 Purchaser's claims based on defects**

(1) The goods shall conform in all material respects with any applicable specification. Where the goods do not comply, this shall be determined a defect.

(2) The Purchaser's claims based on obvious defects require that he has fulfilled the legal requirements of immediately examining the goods and giving notice of a defect in accordance with this paragraph 2. If during the examination or later a defect becomes obvious we must be notified immediately in writing stating the exact details of the defect. The notification shall be deemed as immediate if it is sent within two weeks. Independent of this duty of examination and notification, the Purchaser must notify us in writing of obvious defects (including wrong and short delivery) within two weeks of delivery. If the Purchaser becomes aware during use of the goods that they have a latent defect (a defect that is not an obvious defect), the Purchaser shall notify us in writing as soon as he becomes reasonably aware or ought to have become reasonably aware and no later than two weeks from discovering the latent defect, providing exact details of the defect. If the Purchaser fails to give proper notification of a defect we shall not be liable for the defects we have not been notified of.

(5) If delivered goods have a defect we shall first be allowed to choose whether we provide supplementary performance by rectifying the defect (rectification of defects) or deliver goods free of defects (delivery of substitute goods). Our right to refuse supplementary performance if the legal provisions are fulfilled shall remain unaffected.

(6) We shall be entitled to make the owed supplementary performance dependent on whether the Purchaser has paid the purchase price due. However, the Purchaser shall be entitled to withhold

part of the purchase price in adequate relation to the defect.

(7) The Purchaser shall grant us the necessary time and opportunity to carry out the supplementary performance owed, in particular he shall hand the rejected goods over to us for examination purposes. In the case of delivery of substitute goods the Purchaser shall return the defective object in accordance with the legal provisions. The supplementary performance does neither include the disassembly of the defective object nor its reassembly if we were originally not obliged to assemble it.

(8) The expenses for the purposes of examination and supplementary performance, in particular transport, road, work and material costs (not: disassembly and assembly cost) shall be borne by us if there is an actual defect. Otherwise, we may demand from the Purchaser to reimburse the costs incurred for an unjustified request for rectification of a defect (in particular examination and transport costs) unless the lack of defect could not be recognized by the Purchaser.

(9) If the supplementary performance has failed or an adequate time limit for the supplementary performance to be set by the Purchaser has expired without success or is not required to be set pursuant to the legal provisions the Purchaser may revoke the purchase contract or reduce the purchase price. However, he shall not have a right of revocation in the case of a minor defect.

(10) We shall not be liable for the goods' failure to comply with the quality standards set out in these GTC in any of the following events:

(a) the Purchaser makes any further use of such goods after giving notice of defects in accordance with section 8 of the GTC;

(b) the defect arises because the Purchaser failed to follow our oral or written instructions as to the storage, commissioning, installation, use and maintenance of the goods or (if there are none) good trade practice regarding the same;

(c) the Purchaser alters or repairs such goods without our written consent;

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

(e) the goods differ from their description as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

(11) 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 the contract.

(12) These conditions shall also apply to any repaired or replacement goods.

(13) Also in the case of defects the Purchaser may only assert claims for damages or for reimbursement of futile expenses pursuant to Section 9 below and any further claims are excluded.

## **Section 9 Other liability**

(1) Nothing in these GTC shall limit or exclude our liability for:

(a) death or personal injury caused by negligence, or the negligence of our employees, agents or subcontractors (as applicable);

(b) fraud or fraudulent misrepresentation; and

(c) any matter in respect of which it would be unlawful for us to exclude or restrict liability.

(2) The Purchaser may only revoke or terminate the contract due to a violation of an obligation which is not a defect if we are responsible for the violation of the obligation.

(3) Subject to section 9(1):

(a) we shall under no circumstances whatsoever be liable to the Purchaser whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any loss of profit, or any indirect or consequential loss arising under or in connection with the contract; and

(b) our total liability to the Purchaser in respect of all other losses arising under or in connection with the contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 100% of the price of the goods under the relevant order.

## **Section 10 Statutory limitation**

(1) The claims from material defects and defects in title shall become statute-barred one year after delivery. If an acceptance has been agreed the statutory limitation shall start with the acceptance.

(2) However, if the goods are a building or a thing that has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building (building material), the claim shall become statute-barred five years after delivery.

## **Section 11 Rebates**

(1) Any rebates, including (without limitation) rebates by means of a discount on the price of the goods ("**Rebate**") must be agreed in writing and be subject to these GTC. Details of agreed Rebate will be issued by us within the current Purchasers' terms file, including discount amount, product ranges applicable and payout frequency (pending basis of agreed sales period).

(2) We will calculate the Rebate payable to the Purchaser and we will use our reasonable endeavours to provide a credit note to the Purchaser for such sum within 4 weeks of the end of the agreed sales period, i.e. monthly, quarterly, annually.

(3) In the event that the Purchaser does not comply with the terms of section 12 paragraphs (1) or defaults on payments of due account, the Purchaser shall not be entitled to a Rebate payment from us unless we agree in writing.

## **Section 12 Tactical Support Agreements**

(1) In circumstances where the Purchaser is tendering for a large project or account which would require us to supply it with a significant amount of the goods, we may enter into a tactical support agreement whereby we agree in writing to a specific project price provided that the Purchaser (i) is successful with its tender; and (ii) demonstrates to us satisfaction (in our absolute discretion) that the goods will be the used solely for the purpose of that specified project ("**TSA**").

(2) In the event that we have agreed a TSA with the Purchaser, we will provide the Purchaser with a unique 'TSA reference' shown on the TSA agreement along with agreed discount levels and product ranges applicable. The Purchaser must quote the TSA reference on the purchase order, at the time of order, to claim the discount we will apply the discount to the order.

(3) In the event that the Purchaser does not comply with the terms of sections 13, paragraphs (1) and (2) or defaults on payments of due account, the Purchaser shall not be entitled to TSA claims from us unless we agree in writing.

## **Section 13 Choice of law and place of jurisdiction**

(1) These GTC and the contractual relationship between us and the Purchaser shall be governed by the laws of England and Wales.

(2) Each party irrevocably agrees that the courts of England and Wales 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 or its subject matter or formation.

**Version: June 2017**