

## **RESIMAC AMERICAS INC - TERMS & CONDITIONS OF SALE**

### **1. GENERAL**

- (a) "Seller" as used herein means Resimac Americas, Inc.
- (b) "Agreement" means an agreement between the Seller and the Buyer for the sale by the Seller to the Buyer of the chemical products of any description
- (c) The word "product" used herein shall mean a product or products of any mixture or combination agreed in any Agreement, to be supplied to the Buyer and shall include any containers in which the same are supplied unless otherwise agreed.
- (d) All orders are accepted on the understanding that these Conditions of Sale apply. No variation of these Conditions of Sales shall be binding on the Seller unless agreed in writing and signed by a Director of the Seller.
- (e) "Working Day" is understood to be the days of the week from Monday to Friday unless declared a public holiday or Bank Holiday by the United States of America (USA) government.
- (f) All matters concerning an agreement under these Conditions of Sale shall be decided according to the Laws of the USA.

### **2. PRICE VARIATION**

Any price quoted in any agreement is the Seller's price ruling at the date thereof and includes any variance in the price by notice in writing to the Buyer and the varied price shall apply to such of the products as is delivered after service of such notice. If the Buyer considers such variations unreasonable, he may by notice in writing to the Seller served upon the Seller within One Working Day of service upon the Buyer of the Seller's notice cancel the Agreement and thereupon neither party shall be under further liability thereunder, other than any accrued at the date of service by the Buyer of notice on the Seller as aforesaid.

### **3. DELIVERY OR SHIPMENT**

- (a) The delivery dates given in any Agreement are given in good faith but are estimates only and no liability whatsoever can be accepted by the Seller for delays in delivery howsoever caused and the Buyer shall not be entitled to refuse to accept the product by reason of any delay in delivery unless specifically agreed with the seller.
- (b) Each delivery made under any Agreement shall be considered to be a separate contract.
- (c) The Buyer shall treat any delivery, which the Seller procures to be made on its behalf, as a delivery.
- (d) The Seller reserves the right to make deliveries in instalments.

### **4. PASSING OF PROPERTY AND RISK**

- (a) Title in the product shall pass, on payment being received by the Seller, in full into his bank account, for the whole of any delivery.
- (b) Risk in the product passes to the Buyer on delivery.
- (c) Delivery occurs:-
  - (i) In the case of product collected from the Seller, when the drums or other containers are loaded onto the collecting vehicle or when the product has passed the delivery line of the Seller's premises. In the case of product delivered to an address in the United States of America or other location, where the drums or other containers have to be removed from the transporting vehicle at such address or where the product has passed out of the flexible hose or delivery line of the tanker, or
  - (ii) In the case of product delivered F.O.B or C.I.F when the drums or other containers have passed over the ship's rail or
- (d) Where it is agreed that the product shall be collected by the Buyer notwithstanding that the Agreement provides that the Seller shall deliver, delivery of the products so collected shall occur as provided in paragraph (c) (i) above.
- (e) In the case of deliveries made from tankers or storage installations the amount shown by the meters or dip sticks or other measuring or weighing equipment used by the Seller or carriers as the case may be, to have been delivered shall be conclusively deemed to be the quantity delivered.

### **5. TERMS OF PAYMENT**

- (a) Unless otherwise agreed in writing payment shall be due 30 days from the date of invoice.
- (b) Notwithstanding condition 5(a), the Seller may, at any time, require the Buyer to make payment in advance of delivery or to advance adequate security for the payment of all amounts due or becoming due.

(c) Without prejudice to the right of the Seller to payment in accordance with the terms of payment specified in 5 (a) the Seller shall at its discretion have the right to charge interest at the rate of 2% per month or part of a month on any amount more than twenty days overdue. Such interest to accrue on a daily basis after as well as before any judgement.

## **6. SELLER'S WARRANTY**

(a) The Seller warrants that the product delivered to the Buyer will comply with specification or description given in any Agreement. In the absence of such specification or description the product shall be of normal industrial quality.

(b) Save as provided in this condition, no representation, warranty condition of term, expressed or implied, statutory or otherwise as to the quality of the product, its fitness for any purpose or compliance with any sample or description or in any other respect shall apply to any Agreement or to any delivery made thereunder.

(c) The Seller shall not be responsible for any injury loss or damage, howsoever caused, arising directly or indirectly from the storage, application, or use of the product. Any representation, advice or recommendation given by the Seller, its servants or agents as to the mode of storing, applying or using the product is given without liability on the part of the Seller its servants or agents.

(d) The Seller's liability for all direct loss or damage resulting to the Buyer from defective product or from any other cause whatsoever shall be limited to the purchase price of the product, unless the Seller shall have replaced such defective product with product confirming in all respects with the Agreement, in which even the seller shall be under no further liability to the Buyer.

(e) No representation, warranty or indemnity is implied that the product does not infringe any letters patent, trademarks, registered designs or other industrial property rights.

(f) If any statutory provisions shall avoid or make unenforceable any of the provisions of the forgoing paragraphs 6 (a) (c) (d) and (e), such paragraphs shall be deemed to apply with the exclusion of such of the provisions thereof which shall be void or unforeseeable.

(g) Notwithstanding anything to the contrary in the Contract the Seller does not seek to exclude liability for

(i) Seller's negligence in manufacture or supply of Goods delivered to the buyer which negligence causes death or personal injury.

(ii) Any breach on the part of the Seller under the consumer protection Act 1987.

## **7. TERMINATION OF THE AGREEMENT**

If at any time during the Term of any Agreement,

(i) Any sum of money due thereunder from the Buyer to the Seller shall have been due and unpaid for 21 days,

(ii) The Buyer shall be in breach of any other terms thereof or of these conditions.

(iii) The Buyer is unable to meet his obligations as they fall due, or is insolvent or (being an individual) shall have committed any act of bankruptcy or (being a company) shall enter into liquidation (other than a voluntary liquidation for the purpose of reconstruction or amalgamation in terms previously approved in writing by the Seller) or shall have had a receiver appointed or execution levied over any of its assets. The Seller may, without prejudice to any other right or remedy that it may have:

(i) Repossess the product and

(ii) Terminate the Agreement forthwith.

(iii) Suspend further deliveries under the Agreement. Should the Seller suspend deliveries, he may at any subsequent time, terminate the Agreement. Should the Seller waive or delay his right to suspend deliveries he shall not be stopped from suspending later deliveries or from terminating the Agreement. No Agreement may be cancelled or suspended without the Seller's written consent. Any consent so given shall be given only on the express conditions that the Seller be compensated against any loss incurred wholly or in part by that cancellation or suspension.

## **8. FORCE MAJEURE**

(a) The Seller shall in no circumstances be liable for any loss caused by or resulting from inability to deliver, or delay in delivery arising from any circumstance beyond its control including in particular but without limiting the generality of the foregoing, force majeure, Act of God or the country's enemies, fire, flood, ice, frost, withdrawal of labour, breakdown of machinery, loss or detention of vessels or other means of transport, inability to arrange transport by the Seller's normal methods, delay in loading or discharging goods, inability to obtain supplies of goods or raw materials, or restrictions on the use or supply of fuel or power.

(b) In the event inability to deliver or delay in delivery by reason of any of the above mentioned

causes, the Seller may suspend delivery, and at its options the Seller may (whether or not it has already suspended deliveries) by notice in writing to the Buyer cancel the Agreement in whole or as to any unfulfilled part.

#### **9. PACKAGING AND MARKING**

Whilst it is intended that the packages shall bear a description of the product contained therein, the Buyer must ensure at the time of delivery that the packages are so marked. Unless otherwise agreed in writing with the Seller all packages and other containers are nonreturnable. Packages and containers specified as returnable remain the property of the Seller and shall not be used for any other purpose than storage of the product supplied. The packages and the containers must be returned to the Seller in good condition, as soon as possible, carriage paid to an address indicated by the Seller.

#### **10. BUYER'S OBLIGATIONS**

(a) In every case it shall be the responsibility of the Buyer to ensure that in the case of delivery from a tanker or installation, the storage tank or other receptacles into which delivery is to be made shall be suitable and of sufficient capacity for the delivery and they do not already contain any other specification to that tendered by the Seller. The Buyer shall hold the Seller indemnified against the consequences of any failure on part of the Buyer so to ensure.

(b) It is the condition precedent to liability on any claim relating to the specifications or quality of the product that such claim is made in writing within 3 days of the delivery concerned.

(c) While the seller will use his best endeavours to comply with any instructions the Buyer may give as to the markings to be placed on the packages, the Seller accepts no responsibility for any failure and the Buyer shall indemnify the Seller against all the consequences to the Seller of complying with the Buyer's instructions in respect of so packing and marking the products.

(d) If the product is delivered in a damaged state, or in the event of loss, shortage, nondelivery, or delay the Buyer is required to notify the Seller and the Carriers (if any) within 3 days of delivery giving full details of the alleged damage, loss, shortage, non delivery, damages or delay. Such notification is required to protect the Seller against third parties and this condition does not confer any additional rights on the Buyer.

(e) If the Buyer shall fail to give such notice as is required in conditions 10 (b) and 10 (d) then the product shall be deemed in all respects to be in accordance with the Agreement and the Buyer shall be deemed to have accepted the product.

(f) The product in respect of which the Buyer makes any claim shall be preserved intact as delivered. The Seller or its agents shall have the right to attend the Buyer's premises to investigate the complaint. Any breach of this condition shall preclude the Buyer from making any claim against the Seller in respect of any defect in the product and from refusing to accept the product.

#### **11. SELLER'S MARKS**

The Buyer shall not, in selling its product, in promoting the sale thereof, make any reference to the Seller, or to any of the Seller's trademarks or brand names without the Seller's written consent.

#### **12. ASSIGNMENT**

This Agreement shall not be assigned or transferred by the Buyer directly or indirectly except with the prior written consent of the Seller.

#### **13. NOTICES**

Any notice required to be given under any Agreement or these conditions shall be given in writing, (including fax transmission), and sent or delivered to the party for whom it is intended at the address stated in the Agreement or to such other address in the United States of America as that party may in writing substitute. Such notice shall if posted be deemed to have been served 24 hours after the posting by first class post in a properly addressed pre-paid envelope or if sent by fax at the time of transmission.

#### **14. ARBITRATION**

Any dispute arising out of or in connection with any Agreement is to be settled in the state of Florida by two Arbitrators accustomed to the trade (one to be named by each party) and an umpire to be chosen by the Arbitrators in accordance with the Arbitration Act 1950, or any statutory modifications or re- enactment thereof for the time being in force and in accordance with the Law of Florida.

**15. HEALTH AND SAFETY**

All goods are sold on the basis that the Buyer will take notice of the care and handling recommendation as supplied by the Seller or manufacturer of the goods, or failing such recommendations, follow the highest standards of care adopted by the trade in respect of such goods. If the Buyer is not already in possession of literature or information in connection with the safe use of the product at work then contact should be made with the Seller

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