

MIDEL & MIVOLT FLUIDS LTD

Terms & Conditions of Sale



1. Definitions

- 1.1 "the Order" means the Order of the Customer which has been acknowledged by the Supplier.
- 1.2 "the Contract" means the contract for the sale and purchase of the Goods as set out in the Conditions and the Order.
- 1.3 "the Conditions" means these standard terms and conditions of supply.

2. Basis of Purchase

- 2.1 The Order constitutes an offer by the Customer to purchase Goods (as specified in the Order) from MIDEL & MIVOLT Fluids Ltd ("the Supplier") and the Supplier's acknowledgement of that Order constitutes acceptance of the offer. The Order shall not be binding upon the Supplier until it has received the Order, making amendments where necessary and has formally acknowledged the Order by the submission of the Supplier's Sales Order
- 2.2 Acknowledgment form. These Conditions shall apply to the Contract to the exclusion of terms and conditions stipulated, incorporated or referred to by the Customer at any time.
- 2.3 Any quotation given by the Supplier are subject to these Conditions and shall remain valid for 30 days from its date, but the Supplier reserves the right to withdraw or revise any quotation during that period.
- 2.4 Any provision of the Contract may only be varied or added to if agreed in writing and signed by a duly authorised officer of the Supplier and any instructions given by the Customer or undertakings given by the Supplier shall not have effect unless confirmed in writing and signed in a like manner.

3. Prices

- 3.1 Prices as stated in the Order are subject to increase at any time until delivery to reflect any increase in the cost to the Supplier due to any: -
 - a) factor outside the control of the Company, including changes in legislation
 - b) change in delivery dates, quantities or specifications requested by the Customer; or
 - c) delay caused by the Customer by failure to give adequate instructions and information to the Supplier
 - d) alteration in any price list
- 3.2 Prices shown in any price list are subject to alteration without notice.
- 3.3 Prices for deliveries in the UK unless otherwise quoted include delivery but not offloading.
- 3.4 Prices for deliveries outside the UK unless otherwise quoted are Ex – Works as defined by Incoterms 2010.
- 3.5 All prices are exclusive of VAT or similar tax, which will be charged to the Customer additionally, if applicable.

4. Delivery

- 4.1 Any date quoted for delivery shall be approximate only and the Supplier shall not be liable for any delay in delivery however caused. If a time for delivery is stated in the Order, it shall not be of the essence.
- 4.2 Where the Goods are to be delivered in installments, each delivery shall constitute a separate contract. Any failure by the Supplier to make any delivery or part delivery of any installment or any claim by the Customer in respect of any one or more installments shall not entitle the Customer to withhold payment in respect of any delivery already made or treat the contract as a whole as repudiated.
- 4.3 Delivery shall take place at the Supplier's premises, unless otherwise stated in the Order.
- 4.4 If the Customer fails to take delivery of the Goods or to give delivery instructions within 14 days after notification from the Supplier of readiness to despatch, then (without prejudice to any other claim or remedy which the Supplier may have the Supplier shall be entitled as follows to:-
 - a) treat the payment as having become due
 - b) store the goods at any premises until actual delivery entirely at the Customer's expense and risk. If the Customer fails to pay the charges for such warehousing, then the Supplier shall have the right to sell all or any of the Goods to defray the cost of sale and warehousing and charge the Customer any difference between the proceeds of sale and the Contract Price of the Goods.

5. Payment

- 5.1 Payment must be made in full by electronic bank transfer within 30 days from date of the Supplier's invoice for each delivery, subject to credit approval by the Supplier. If payment is not made in full by the due date, then the Supplier shall (without prejudice to any other rights) be entitled as follows to: -
 - a) terminate the Order in which case the Customer shall have no claim whatsoever against the Supplier
 - b) suspend further deliveries of Goods and work on Goods within the rest of the Order
 - c) charge interest at the rate of 2% per annum above the HSBC Bank plc base lending rate from time to time from the date when payment became due until the date of actual payment (both dates inclusive)
- 5.2 If the Supplier receives information which throws doubt on the creditworthiness of the Customer then the Supplier shall have the right to demand immediate payment of all outstanding invoices and to demand payment on account for Orders which have been acknowledged by the Supplier but for which invoices have not yet been submitted. If payment in advance is not made in respect of such Orders the Supplier may, without any liability whatsoever, cancel such Orders.

6. Description and Performance

- 6.1 **Drawings, descriptive matter, illustrations, weights, dimensions, and specifications issued by the Supplier are intended to be accurate but are approximate only and do not amount to any condition or warranty in this respect. The Supplier shall not be liable for failure of the Goods to attain any performance figures quoted.**
- 6.2 **The Supplier reserves the right at its absolute discretion at any time to change any specification issued by it.**

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- 6.3** If the Supplier has guaranteed any item within the specification figure and the Goods do not attain that guarantee in a material respect, the Supplier shall have the opportunity to rectify the failure. If the failure cannot be rectified, or the Supplier fails to rectify the failure, the Customer may either reject or accept the Goods, provided that a reduction in price has not been agreed.
- 6.4** Subject to Condition 11, the Supplier shall not be liable to the Customer for any loss (including consequential loss) damage, cost, and expenses suffered or incurred by the Customer directly or indirectly as a result of such failure to attain guaranteed performance figures.
- 6.5** Where the Customer has provided the Specification, the Customer shall assume responsibility for ascertaining that the Goods are in accordance with the Specification and are suitable for the Customer's purposes.

7. Inspection

- 7.1** The Supplier shall not be responsible for carrying out any tests to the Goods unless specifically required to do so on terms agreed between the Supplier and the Customer. The Company shall be entitled to make a charge for carrying out such tests or of any inspection.

8. Guarantee

- 8.1** The Supplier does not make, nor is there to be implied, any warranty relating to the Goods, their satisfactory quality or that they will be suitable for any particular purpose or for use under any specific condition Any recommendation or suggestion relating to the use, storage, handling or properties of the products supplied by MIDEL & MIVOLT Fluids Ltd or any member of its group, either in sales and technical literature or in response to a specific enquiry or otherwise, is given in good faith but it is for the customer to satisfy itself of the suitability of the product for its own particular purposes and to ensure that the product is used correctly and safely in accordance with the manufacturer's written instructions.
Instructions and guidance sheets can be found at the Product websites of midel.com and mivolt.com.
- 8.2** If, within a 12 month period from the date of despatch of the Goods a defect (as defined as a material deviation from the Specification) in the Goods is found to exist and reported to the Supplier in writing, the Supplier will, at its sole option, repair or replace the defective goods free of charge provided they are returned appropriately packed and carriage paid to the Supplier's premises.
- 8.3** The Supplier shall not be under any liability to repair or replace the Goods if: -
- damages are sustained in transit
 - the defect is a result of wear & tear
 - the defect is a result of wilful damage or negligence of the Customer
 - if the Goods have been used for a purpose other than those for which they are designed
 - if repairs of the Goods have been attempted by the Customer without the Supplier's approval
 - if the total price of the Goods has not been paid in full by the due date
 - if the defect is attributable to the specification provided by the Customer; or
 - if the Customer has not promptly notified the Supplier of its discovery of the defect.
- 8.4** Health and Safety at Work Act 1974. The Company has reasonable grounds to believe that it has ensured, as far as reasonably practicable, that its Goods are manufactured so that they will be safe when properly used by appropriately trained personnel. Nevertheless, the Goods should only be used for the purpose they are designed and in accordance with any written instructions or advice from the Supplier.

9. Damage, Shortage or Loss in Transit

- 9.1** The Company shall not be liable for any claim for non-delivery, partial or full loss or damage to the Goods unless the Customer has notified the Supplier in writing (copied to the carrier): -
- within 7 days of receipt of the Goods for partial loss or damage
 - within 14 days of the date of despatch of the Goods for loss or non-delivery
- 9.2** If the Supplier accepts the Customer's claim the Supplier shall be entitled, at its sole discretion to repair or replace the Goods.

10. Intellectual Property Rights

- 10.1** In the event of any claim being made by the Customer that any Goods supplied under the contract infringe any patent, copyright, design, trademark or other industrial or intellectual property right of any third party, the Supplier shall indemnify the Customer against all damages and costs awarded against Customer in connection with any claim provided that:-
- the Supplier is given full control of any proceedings or negotiations
 - the Customer shall give the Company all reasonable assistance for the purpose of such negotiations or proceedings
 - the Customer shall not pay or accept any such claim without the prior written consent of the Supplier
 - the Customer shall do nothing which would or might adversely affect any insurance cover which it may have in relation to such infringement and this indemnity shall not apply to the extent that the Customer recovers any sums under any such policy
 - the Supplier shall be entitled to the benefit of all damages and costs awarded in favour of the Customer which are payable by any other party in respect of any such claim

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- 10.2 Without prejudice to any duty of the Customer at common law the Supplier shall be entitled to require the Customer to take such steps to mitigate or reduce any loss which may arise from such infringement.
- 10.3 The Supplier shall not indemnify the Customer for any claim in respect of any design specification or instruction provided by the Customer or in respect of the Goods if they are used for any purpose or in a manner or in a foreign country not specified or disclosed to the Supplier by the Customer or to any claim resulting from the use of the Goods in association or combination with any other Goods not supplied by the Supplier.
- 10.4 In the event that the Goods are to be manufactured or any process is to be applied to them by the Supplier in accordance with any design, specification or instructions from the Customer, the Customer shall indemnify the Company against all loss, damage, costs and expenses awarded against or incurred by the Supplier in connection with any settlement of any such claim for infringement of any patent, copyright, design, trademark, or other industrial or intellectual property rights of any other party which results from the Supplier's use of the Customer's design, specification or instructions.

11. Supplier's Liability

- 11.1 Save as set out in these Conditions the Supplier shall not be liable to the Customer for any loss or damage arising directly or indirectly of any act or omission by the Supplier.
- 11.2 The Supplier shall be liable for death or personal injury which is due to its negligence in performing its obligations under these Conditions.
- 11.3 The Supplier shall be liable for any direct physical damage to the tangible property of the Customer which is due to the negligence of the Supplier in performing its obligations under these Conditions provided that its total liability shall not exceed £1 million. This sum represents the Supplier's total liability in respect of any single or a series of claims arising from the same cause (except for death or personal injury).

12. Third Party Claims

- 12.1 The Customer shall indemnify the Supplier for all claims for loss (including consequential loss) damages, costs, and expenses incurred by the Supplier in connection with any claim paid or agreed to be paid by the Supplier to any third party who has purchased the goods from the Customer or who has or may be affected by the uses of the Goods.

13. Insolvency or Default

- 13.1 If the Customer shall: -
- commit any material breach of the Contract at any time
 - be unable to pay its debts or to have no reasonable prospect of being able to do so
 - have an application made to the court for an interim order or a proposal is made for a voluntary arrangement in respect of it or a petition is presented, or bankruptcy order is made against it
 - go into liquidation or have a receiver or administrative receiver appointed in respect of its assets
 - reach any agreement with its creditors the Supplier may without notice and without further liability to the Customer suspend or terminate the Contract and stop any Goods in transit and without any prejudice to any remedy which the Supplier may lawfully enforce treat any invoices for Goods delivered to the Customer as having become immediately due and payable.

14. Title to Goods and Risk

- 14.1 Until all payments due from the Customer to the Supplier have been received the Supplier shall retain legal and beneficial title to the Goods.
- 14.2 Risk in the goods shall pass to the Customer upon delivery but until such time as the Customer secures title to the goods, the Customer shall: -
- store the Goods separately from any other goods, clearly marked and identified as being the property of the Supplier
 - be entitled to sell the goods in the normal course of business.
- 14.3 If any of the events referred to in Condition 13 occurs the Supplier or appointed agents shall be entitled to enter onto any land or premises occupied or owned by the Customer or any other premises where they are reasonably thought to be stored to repossess the Supplier's Goods and to dispose of the same.
- 14.4 The Supplier expressly reserves the right to sue for the price of the Goods.
- 14.5 If payments received from the Customer are not stated to refer to a particular invoice the Supplier may appropriate such payments to any outstanding invoice.

15. General

- 15.1 In the event that any of these Conditions or part of any condition is declared invalid or unenforceable by a court of competent jurisdiction all of the other Conditions or parts of conditions shall remain in full force and shall not be affected for the remainder of any term of the Contract.
- 15.2 Failure by the Supplier to enforce any of these Conditions shall neither prejudice nor restrict its rights nor shall any waiver of its rights operate as a waiver of any subsequent or continuing breach by the Customer.
- 15.3 All notices which are required to be given shall be in writing and shall be sent to the address of the Supplier as set out in the Order.
- 15.4 This Contract shall be governed and constructed in accordance with English Law, and in respect of any dispute the parties shall submit to the jurisdiction of the English courts.

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No. 16 COMPLIANCE WITH LAWS

16.1 Both the Supplier and the Customer shall comply with all applicable (including without limitation, health, safety, security and environment) laws, governmental rules, regulations and orders.

No. 17 ANTI-BRIBERY AND CORRUPTION/ANTI-MONEY LAUNDERING

17.1 The Customer represents and warrants that, in connection with these Terms and Conditions of Sale and the business resulting therefrom, it is knowledgeable about and will comply with all laws, regulations, rules and requirements relating to anti-bribery and anti-money laundering.

17.2 The Customer represents and warrants to the Supplier that its payments to the Supplier shall not constitute the proceeds of crime in contravention of anti-money laundering laws.

17.3 The Supplier may terminate an Order immediately upon written notice to the Customer, if in its reasonable judgment supported by credible evidence, the Customer is in breach of any of the provisions of this clause and has failed to provide information demonstrating such compliance. Nothing in these Terms and Conditions of Sale shall require the Supplier to perform any part an Order or take any actions if, by doing so, the Supplier would not comply with anti-bribery or anti-money laundering laws.

17.4 Only the Customer shall pay the invoice from the Supplier. No person other than the Customer shall pay the invoice without the prior consent of the Supplier.

No. 18 TRADE CONTROLS

18.1 The Customer warrants that it is knowledgeable about Trade Control Laws applicable to the performance of this Order including the list of Restricted Parties. The Customer shall comply with all applicable Trade Control Laws in relation to the purchase of Goods from the Supplier and in particular the Customer undertakes that it shall not, and shall procure that its/their contractors and agents shall not, do anything in connection with the purchase of Goods from the Supplier which causes Supplier to: (a) be exposed to a risk of being added to any Restricted Party list or otherwise becoming the target of any national, regional or multilateral trade or economic sanctions under Trade Control Laws; or (b) be in breach of any Trade Control Laws.

18.2 The Customer shall not directly or indirectly export, re-export, transfer, divert, trade, ship, import, transport, trans-ship, store, sell, deliver or re-deliver any of the products, information, technology or services provided by the Supplier pursuant to these Terms and Conditions of Sale to, through, or for use in, or for end-use by, a Restricted Jurisdiction or for end-use by a Restricted Party. The Customer agrees to impose or require the imposition of the conditions set out in this clause on any direct or indirect resale of products, information, technology or services provided by the Supplier to customers of the Customer.

18.3 For the purposes of this clause, "**Restricted Jurisdiction**" means a country, state, territory or region which is subject to comprehensive economic or trade restrictions under Trade Control Laws applicable to either the Supplier or the Customer. As of the date of these Terms and Conditions of Sale, "**Restricted Jurisdictions**" include Cuba, Crimea and Sevastopol, Iran, North Korea, Syria, Russia, Belarus and the non-government controlled oblasts of Luhansk, Donetsk, Zaporizja and Cherson in territories of Ukraine subject to amendment by the Supplier from time to time; "**Restricted Party**" means any individual, legal person, entity or organisation that is: (i) resident, established or registered in a Restricted Jurisdiction; (ii) classified as a US OFAC Specially Designated National or otherwise subject to blocking sanctions under Trade Control Laws; (iii) directly or indirectly owned or controlled (as these terms are interpreted under the relevant Trade Control Laws), or acting on behalf of, persons, entities or organisations described in (i) or (ii); or (iv) a director, officer or employee of a legal person, entity or organisation described in (i) to (iii); and "**Trade Control Laws**" means any laws concerning trade or economic sanctions or embargoes, Restricted Party lists, trade controls on the imports, export, re-export, transfer or otherwise trade of goods, services or technology, anti-boycott legislation and any other similar regulations, rules, restrictions, orders or requirements having the force of law in relation to the above matters and in force from time to time, including those of the European Union, the United Kingdom, the United States of America or any government laws in relation to the above matters applicable to the Customer or Supplier.