

Atlas Gentech (NZ) Limited: Terms of Trade

APPLICABLE TERMS AND ACCEPTANCE OF ORDER

These terms of contract between ATLAS GENTECH (NZ) Limited (the "Company") and the Buyer (the "Buyer") shall apply to all orders for Goods accepted by the Company from the Buyer. These terms and conditions shall override any previous conditions of trade that may be printed on existing company documents or invoices. In the case of conflict or dispute these Terms and Conditions shall prevail and take precedence over any document or oral message from the Buyer. Where the Company fails to enforce any terms or conditions under this contract the Company will not be deemed to have waived these rights with respect to any term or condition or right.

CONTRACT

The contract shall arise upon both parties accepting the order. In the case of the buyer acceptance of the order shall be complete upon the Buyer signing the order or otherwise placing the order, whether verbally or in writing, or accepting delivery of the order.

DELIVERY

Delivery shall be made at the place indicated by the order or as directed by the Buyer and if no place shall be indicated by the order or directed, delivery shall be made at the Buyers premises. The Buyer shall agree that any employee or agent of the Buyer who signs for delivery shall be authorised to accept delivery and the Company shall not be held liable for missing Goods where a signature has proven delivery. The company reserves the right to deliver the Goods in instalments. The Company may with hold delivery until all or any requirements of the Company have been met. The cost of delivery shall be charged to the Buyer unless otherwise specified.

The Company will make every effort to ensure delivery of goods but will not be liable for any loss or damage or consequential loss to the Buyer arising from delays in delivery.

PRICE

All published prices are indications only. Prices are therefore subject to alteration without notice and offers to purchase are only accepted for delivery at prices ruling at the time of delivery. Every effort will be made to keep customers informed of variations.

The Buyer shall pay to the Company upon demand an amount equal to the costs of the goods, delivery charges plus gst (if applicable) payable to the Company in respect of goods supplied to the Buyer.

The total amount invoiced shall be tendered by the Buyer to the Company without deduction of any kind.

All trade prices are exclusive of GST.

TERMS OF PAYMENT

Payment of the price is due on the 20th day of the month following the month of invoice unless varied in writing by the Company. If the buyer defaults in any payments or if the Buyer commits any act of bankruptcy or does any act which would render it liable to be wound up or have a receiver appointed, the company may terminate the contract without prejudice in any other rights it may have and payment for all goods delivered shall immediately become due and payable by the Buyer to the Company.

For the Sale of Goods to Companies or incorporations not registered in New Zealand the price shall be paid by the Buyer to the Company as follows:

- (a) in cleared funds prior to shipment of the Goods by the Company (such as credit card payment) OR
- (b) by irrevocable letter of credit at sight and established by the Buyer, OR
- (c) by any other means as notified to the Buyer in writing when the order is placed.

INTEREST FOR LATE PAYMENT

The Company may charge the Buyer interest on any money's outstanding under the Contract on a daily basis at a rate equal to 5% above the Company's bank indicator lending rate. Interest is payable from the date payment was due until the date the Company receives payment. The Company's right to charge interest is without prejudice to the Company's other rights or remedies for the Buyer's default in failing to pay on the due date, and the Company may suspend performance of any of its obligations and secure any Goods it has supplied in the Buyer's possession until payment is made in full.

RISK OWNERSHIP AND TITLE

The Buyer agrees that the Company has legal and equitable right to title in the Goods (ownership) until the contract price is paid.

Regardless of the Company ownership of the Goods, the Buyer agrees to accept risk in the Goods for any loss, theft, damage or deterioration of or to the Goods while in the possession of the Buyer. This means that the Buyer shall agree to properly store, protect and insure the Goods under the risk policy of the Buyer. Failure by the Buyer to properly protect and insure the Goods shall not absolve the Buyer of the legal responsibility to the Company to pay for the Goods in the event of fire or loss damage or theft while under the care and responsibility of the Buyer.

Notwithstanding that property in the Goods is retained by the Company, the Buyer shall store the Goods separately in the premises of the Buyer and in such a way that they are identifiable as the property of the Company and shall not alter the Goods in any way or mix the Goods with other goods owned by the Buyer unless the Buyer has paid the Company in full.

The Company authorises the Buyer to sell the Goods in the ordinary course of business and to deal with such proceeds of sale as fiduciary agent and bailee of the Company until the Buyer pays the Company in full without deduction or setoff. The Buyer shall agree as fiduciary agent and bailee of the Company that the proceeds of sale are the property of the Company until the outstanding debt to the Company has been paid.

The Company may revoke the authority given to the Buyer to sell the Goods that have not been paid in full by giving written notice at any time if the Company deems the credit of the Buyer to be unsatisfactory or if the Buyer is in default of its obligations under the contract or any other contract between the Company and the Buyer, and shall be deemed automatically revoked if the Buyer shall commit any act of bankruptcy, enter into any composition or arrangement with creditors, or (in the case of a Company) do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Buyer or a Receiver is appointed in respect of all or any assets of the Buyer. Where Goods in respect of which property has not passed to the Buyer are sold by the Buyer pursuant to the authority granted any book debt created upon sale of such Goods and the proceeds of sale of such Goods when received by the Buyer, shall be held upon trust by the Buyer for the Company and any proceeds of sale so received by the Buyer shall be placed in a separate bank account and shall first be applied towards the satisfaction of all indebtedness of the Buyer to the Company.

If the Goods, the subject of this contract, have become the constituent of mixed with or attached to any other goods, meaning Goods that are sold by the Company, and those goods are sold by the Buyer prior to the Company receiving payment, then a portion of the proceeds of that sale, attributable to the value of the Company's Goods, shall be the property of the Company, and the Buyer shall ensure that such proceeds are at all times held in a separate fund in trust for the Company.

The Buyer shall inform its creditors of the terms upon which it buys Goods from the Company including that the Company may create and register a Purchase Money Security Interest over the Goods under the Personal Property Securities Act and shall also inform any Trustee in Bankruptcy or Liquidator of the Purchaser or any Receiver of the Buyer's business or assets of the rights of the Company and title to the proceeds of sale.

In any event where Goods remain unpaid by the Buyer, the Company has unreserved right to enter the property of the Buyer or its agents during normal business hours and remove Goods relating to the unpaid amount in accordance with the Credit (repossession) Act and the Buyer will not hold the Company responsible for any economic or consequential loss that the Buyer may suffer as a result, whether the Goods are attached to other goods or property owned by the Buyer, or not.

The Buyer agrees that where Goods supplied have been made from specifications and Intellectual Property provided by the Buyer such specifications and Intellectual Property shall constitute part of the value of the Goods supplied and that the Company has an unreserved lien over and may take possession of such specifications and Intellectual Property until the buyer pays in full for the Goods.

Initials _____

CLAIMS

The liability of the Company for any loss or damage or injury arising directly or indirectly from any defect of the goods supplied is limited to replacement or repair of such defective goods or damages not exceeding the invoice value of such defective goods at the option of the company. The Company shall not be liable for any loss or damage or injury caused by the improper or incorrect operation or use of the goods supplied. The Company shall not be liable for any consequential indirect or special damage or loss of any kind whatsoever. Any claim by the Buyer under this clause must be made in writing and received by the Company within fourteen (14) days after delivery of the goods.

CLAIMS FOR GOODS INCORRECTLY ORDERED

The Company may at its discretion give credit for returned Goods incorrectly ordered which are delivered back to the Company at the Buyer's cost within (7) seven days in the same condition and packaging in which they were despatched, with a copy of the invoice. The Company may charge twenty (20) per cent of the net value of the invoice as a handling, restocking and administration fee. The Buyer shall agree to pay for any Goods incorrectly ordered that have not been returned within 21 days.

The Buyer agrees that where the Buyer returns Goods approved by the Company for return and those Goods or associated packaging, manuals, or accessories are missing or have suffered misuse, damage or deterioration while in the care and risk of the Buyer, the Buyer will pay the Company the difference in value between the original price of the Goods and the returned value of the Goods in addition to the restocking fee.

CLAIMS FOR DAMAGED OR DETERIORATED OR DEFECTIVE GOODS

The Company may, at its discretion, repair or replace any damaged or deteriorated Goods meaning Goods that are not of merchantisable quality or make a reasonable allowance on the purchase of goods to replace the Goods provided:

- (a) The Buyer makes a claim in writing, together with a copy of the invoice, specifically identifying the damage or defect(s) within seven (7) days of taking delivery; and
- (b) The Company has reasonable opportunity to investigate the claim.

If the Buyer does not comply with the above requirements, the Buyer will be deemed to have accepted the Goods and the Company will not incur any liability whatsoever in relation to the Goods.

The Buyer agrees that claims shall not be considered in respect of Goods which:

- (i) are not intact and in original condition.
- (ii) have been improperly stored causing damage or deterioration.
- (iii) have been modified or altered in any way different to the conditions in which they have been supplied.
- (iv) have been mixed with or attached to other goods of the Buyer causing damage or deterioration to the Goods.
- (v) the Buyer has elected to remedy the defect or fault or warrants a third party to remedy the defect or fault causing damage or deterioration.
- (vi) in case of discrepancies in order quantity or type of Goods where the claim is not made on the Company within seven (7) days of the receipt of the order.
- (vii) which have been ordered by the Buyer and where the Buyer has not notified the Company of the non receipt of the Goods within seven (7) days of the date of the order.

FORCE MAJEURE

The Company shall not be liable for any breach or failure to perform any of its obligations under this contract where such breach or failure is caused by war, civil commotion, hostilities, strike or lock out, act of God, fire, governmental regulations or directions, or any other cause force majeure beyond the Company's reasonable control. The occurrence of such an event shall not give the Buyer a right of cancellation of the contract

GROUND FOR TERMINATION BY THE COMPANY

This Agreement may be terminated by the Company immediately on written notice to the Buyer, if an Event of Default of payments due to the Company by the Buyer occurs.

Default will also mean, if the Buyer:

- (a) Fails to commence operation of the contract meaning orders given to the Company on or before commencement date meaning the date of the Buyers order.
- (b) Fails to comply with any quality or standards for the care of the Goods issued by the Company.
- (c) Shall commit any act of bankruptcy, or enter into any composition or arrangement with creditors.
- (d) Where the Buyer is a Company or incorporation do any act which would render it liable to be liquidated or if a resolution is passed or proceedings commenced for the liquidation of the Company or incorporation or if a Receiver is appointed in respect of all or any assets of the Company or incorporation.

IMMEDIATE STEPS UPON TERMINATION

Upon the termination of this agreement for any reason, all rights of the Buyer granted by this agreement shall terminate and any Intellectual Property provided by the Buyer to the Company shall become the property of the Company and the Buyer will not be entitled to receive any rebate or refund of the whole or any part of the money paid pursuant to this agreement.

NO RELEASE FROM OBLIGATIONS

Terminations of this agreement shall not relieve the Buyer of its obligations to pay all money owed by it to the Company on any account whatsoever, which money shall be payable immediately notwithstanding that the date for payment of the money may not have arrived. Termination of this agreement shall not relieve the Buyer from liability arising from any antecedent breach of the terms of this agreement.

APPLICABLE LAW FOR DISPUTE AND ARBITRATION

In the event of any dispute between the Company and the Buyer arising out of this Agreement, the substantive laws of New Zealand shall apply and such dispute shall be referred to a Mediator to be agreed between the parties and upon failure to accept the resolution of the Mediator shall be referred to an Arbitrator to be agreed between the parties and upon failure to reach agreement arbitration be conducted in accordance with the New Zealand Arbitration Act 1996 and any amendments thereof and such arbitration and legal hearings shall be conducted in New Zealand.

INTERPRETATION

The term "Buyer" refers to the person, association, firm, company or corporate entity with whom the Company enters into this contract and the term "Company" means Atlas Gentech (NZ) Ltd and its successors and assigns.

GUARANTOR

Where the Buyer is a Company, the person(s) referred to as guarantor(s) in this Agreement shall personally guarantee the obligations of the Buyer.

Signed on behalf of the Company

Signed on behalf of the Buyer

Director or other Title

Signed as Guarantor for the Buyer (Director)
