

## 1 DEFINITIONS AND INTERPRETATION

1.1 In these Conditions the following words have the following meanings:

“**Additive**” means the Seller’s d<sub>2</sub>w additive

“**Buyer**” the person(s), firm or company who purchases the Goods from the Seller;

“**Confidential Information**” any information of a technical, business or other nature (including, without limitation, data, formulae, processes, methods, designs, specifications and other trade secrets, know how, information relating to technology, customers, suppliers, marketing or business plans, products, services, promotional and marketing activities, finances and other business affairs) relating to the Seller’s business or any of its Related Persons including, without limitation, information relating to or arising from or subsisting in the Goods, or information which have been or may be obtained by or provided to the Buyer or any of its Related Persons either in writing, in disk or electronic form, orally or pursuant to discussions with the Seller or between any of their respective Related Persons.

“**Contract**” any contract between the Seller and the Buyer for the sale and purchase of the Goods which includes these Conditions or incorporates them by reference;

“**Goods**” any goods supplied or to be supplied to the Buyer by the Seller (including any part or parts of them) pursuant to the Contract;

“**Related Person**” associated companies, subsidiary undertakings, parent undertakings and directors employees, advisers, agents subcontractors or consultants

“**Seller**” Symphony Environmental Ltd. whose registered office is situate at Elstree House, Elstree Way, Borehamwood, Hertfordshire, England WD6 1LE and any of its subsidiary or parent undertakings or associated companies.

“**Intellectual Property**” means any rights owned by or licensed to the Seller in the nature of copyright, unregistered design right, trade mark, registered design, patent, know-how, or any other form of industrial or commercial property right.

## 2 APPLICATION OF TERMS

2.1 Each order for Goods by the Buyer from the Seller shall be deemed to be an offer by the Buyer to purchase Goods subject to these terms and conditions.

2.2 No order placed by the Buyer shall be deemed to be accepted by the Seller until a written acknowledgement of order is issued by the Seller or (if earlier) the Seller delivers the Goods to the Buyer.

2.3 The Buyer must ensure that the terms of its order and any applicable specification are complete and accurate.

2.4 Subject to clause 7 it is the Buyer’s responsibility to ensure that the goods are suitable for the Buyer’s intended purpose and that all laws in the place of delivery are complied with and that all taxes are paid.

### 3 PURCHASE PRICE & TERMS OF PAYMENT

- 3.1 The purchase price is set at prices prevailing on the date that the Seller accepts the order. The Seller reserves the right to increase the price in the event of an increase in the cost of raw materials, labour, overheads or other expenses of the Seller, or change in the exchange rate after the order but prior to the date of despatch.
- 3.2 The price for the Goods shall be exclusive of any value added tax and any other taxes and (unless otherwise agreed and confirmed in writing by the Seller) all costs or charges in relation to loading, unloading, carriage and insurance all of which the Buyer will pay in addition, when it is due to pay for the Goods.
- 3.3 Unless otherwise agreed, the Buyer shall pay the price of the Goods by wire-transfer to the Seller's bank in England before dispatch of the goods
- 3.4 If the Buyer fails to make full payment on the due date then without prejudice to the remedies in clause 6 the Seller shall be entitled to charge the Buyer interest on the amount unpaid at the rate of 2 per cent per month until payment in full is made (a part of a month being treated as a full month for the purpose of calculating interest), together with a sum equivalent to any bank charges legal costs or other costs charges or expenses incurred by the Seller arising from the late payment or recovery of sums due from the Buyer.

### 4 DELIVERY

- 4.1 Goods are sold ex works unless otherwise agreed.
- 4.2 The Seller shall use all reasonable endeavours to despatch the Goods to the Buyer so as to arrive on the delivery date specified in the Order, but any time or date agreed for despatch or delivery shall be an estimate only, as actual dispatch and delivery may not be under the Seller's control.
- 4.3 If the Buyer does not receive the Goods within three days of the date agreed for delivery the Buyer must notify the Seller forthwith in writing.
- 4.4 If the Buyer refuses to accept delivery, the Goods shall be at the Buyer's risk and the Buyer shall indemnify the Seller against all costs and expenses occasioned thereby, including insurance, carriage and storage costs.
- 4.5 Any liability of the Seller for non-delivery of the Goods shall be limited to delivering the Goods within a reasonable time or issuing a credit note at the *pro rata* Contract rate against any invoice raised for such Goods.
- 4.6 Customary tolerances and variances shall allow the Seller to:
- 4.6.1 deliver quantities within a ten per cent margin of those specified, for which the Buyer shall pay pro rata
  - 4.6.2 vary the thickness of the material quoted within a ten per cent margin where virgin materials are used.
  - 4.6.3 vary the thickness of material quoted within a twenty per cent margin where Second Grade or Recycled materials are used
  - 4.6.4 vary the Buyer's specifications as to shade provided that the colour specified by the Buyer shall be delivered
  - 4.6.5 vary the Buyer's specification as to size within a five per cent margin, whether larger or smaller
  - 4.6.6 vary the Buyer's specifications as to the contents of boxes or packs. There will be a 5% differential permitted in the case of low-content boxes or packs i.e. those specified

to contain less than 200 items, and a 7.5% differential permitted in the case of high-content boxes or packs, i.e. those specified to contain 200 items or more

4.6.7 vary the shape, size, and colour of additive granules.

4.6.8 vary the packaging in which goods are delivered

4.7 the Buyer acknowledges that any goods supplied in accordance with 4.6 above are supplied in accordance with the Contract.

## 5 ACCEPTANCE

5.1 The Buyer shall check the quantity of boxes or sacks containing the Goods against the invoice at the time of delivery and provide written confirmation of receipt to the carrier, with a note recording any damage.

5.2 The Buyer shall examine the Goods forthwith after delivery and will notify the Seller in writing within three days of delivery of any shortages discrepancies apparent defects in or any apparent loss or damage to the Goods together with the reasons therefor if known.

5.3 If the Goods are alleged to be defective the Buyer must retain a minimum of 60% of intact original boxes, sacks, rolls, bales or bundles for Seller's examination.

5.4 Unless the Buyer gives notice in writing to the Seller that the Goods are not in accordance with the terms of the contract within three days of receipt by the Buyer, (or fourteen days from use in the case of additives) the Goods shall be deemed to be satisfactory in every respect and the Buyer shall be deemed to have unreservedly accepted the Goods and shall pay for them accordingly.

5.5 The Buyer acknowledges that the Buyer is aware that any failure to comply strictly with this clause may prevent the Seller from making a claim under the Seller's insurance policy.

5.6 The Seller accepts no liability where the Goods have been subjected to direct sunlight or direct heat, or in the case of finished products have been cut, printed or otherwise fabricated or processed

5.7 The Goods comprised in each consignment shall be deemed to constitute a separate contract.

5.8 Failure to take and/or pay for any delivery in accordance with the contract shall entitle the Seller to:

5.8.1 cancel an undelivered portion or

5.8.2 suspend further deliveries under all or any orders or subsisting contracts until all payments due from the Buyer have been received.

## 6 TITLE AND RISK

6.1 Ownership of the Goods shall remain with the Seller until payment of the total price thereof and any other payments due to the Seller from the Buyer have been made.

6.2 If notwithstanding clause 3.3 goods are supplied on credit, and payment of the total price or other sums is not made on the due date the Seller shall have the right with or without prior notice at any time to retake possession of the whole of any part of the goods (and for that purpose to go upon any premises occupied by the Buyer thereof) without prejudice to any other remedy of the Seller.

6.3 Until such time as the Buyer has paid for the Goods the Buyer holds the Goods as bailee for the Seller and as such agrees:

- 6.3.1 to store the same separately in a readily identifiable state and at the Buyer's risk
- 6.3.2 in the event that the Buyer re-sells the Goods or any part thereof upon receipt of the proceeds of that sale from the purchaser the Buyer shall hold the whole of the same separately as an identifiable sum for the account of the Seller as beneficial owner thereof; and
- 6.3.3 maintain the Goods in satisfactory condition by storing them in a cool, shaded environment so as to prevent any damage or deterioration and keep them insured on the Seller's behalf for their full price against all risks to the reasonable satisfaction of the Seller. On request the Buyer shall produce the policy of insurance to the Seller, and hold the proceeds paid out under the insurance policy on trust for the Seller and not mix them with any other money, nor pay the proceeds into an overdrawn bank account.

6.4 In the event that:

- 6.4.1 the Buyer shall commit any breach of this contract or
- 6.4.2 the Buyer shall commit an act of bankruptcy, make any arrangement or composition with the Buyer's creditors; or
- 6.4.3 any petition or receiving order in bankruptcy shall be presented or made against the Buyer; or
- 6.4.4 (where the Buyer is a limited company) any resolution or petition to wind up the company (other than for the purpose of amalgamation or reconstruction while solvent) shall be passed by the Directors or Members, or presented; or
- 6.4.5 the Buyer is unable to pay its debts or ceases to trade, or a receiver of the whole or any part of the Buyer's undertaking shall be appointed, or
- 6.4.6 the Buyer suffers or allows any execution, whether legal or equitable, to be levied on his/its property or obtained against him/it, or fails to observe/perform any of his/its obligations under the Contract or any other contract between the Seller and the Buyer the Seller may at its option (i) terminate the Contract and seek damages from the Buyer and/or (ii) refuse to make deliveries to the Buyer and/or (iii) stop any Goods in transit to the Buyer and/or (iv) take possession of the Goods with or without notice. This clause shall be construed as an irrevocable license granted to the Seller by the Buyer to enter such premises and remove the Goods.

- 6.5 The risk of loss or damage to the Goods shall remain with the Seller until the Goods have been delivered to the Buyer or to a carrier. Thereafter the risk passes to the Buyer.

## 7 USE OF d<sub>2</sub>w ADDITIVE

- 7.1 The current edition of the Seller's Technical Enquiry Form must be completed by personnel at the factory before use of Additive (even for trials) commences. The Buyer will arrange for documents to be translated into the local language if necessary. If there is any doubt the Buyer must refer to the Seller's Technical Department.
- 7.2 On receipt of the completed TEF the Seller will supply the recommended grade of Additive in trial quantity and will supply Technical Data sheets and Manufacturing Instructions.
- 7.3 The Buyer will then carry out a trial before full production.
- 7.4 The Buyer agrees that:
  - 7.4.1 the Buyer will examine the Additive before incorporation into products and will report to The Seller any apparent defect before use.
  - 7.4.2 the Additive will be used at first for small-scale trial runs only and samples from the trial runs will be submitted forthwith to the Seller for free testing, together with control samples made with polymer and other ingredients from the same batch but not containing Additive.
  - 7.4.3 no products from trial runs will be supplied to a customer without a prior written acknowledgement signed by the customer that the goods are experimental, that they

are supplied without any warranty or guarantee, and such experimental product shall not bear the Seller's name nor the d<sub>2</sub>w™ trademark.

7.4.4 commercial production will not commence until the Buyer receives written confirmation signed by the Seller's Technical Dept. that testing has been satisfactory and that commercial production is appropriate. Thereupon The Seller will warrant that the Additive is fit for purpose provided that it is used in accordance with the Seller's Manufacturing Instructions and Technical Data Sheets

7.5 The batch number of the Additive shall be recorded and samples of products shall be kept, in respect of each test run and production run, and shall be produced to the Seller in the event of any claim.

## 8

### WARRANTIES AND LIABILITIES

- 8.1 The Seller warrants that upon payment for the Goods the Buyer shall acquire a clear title thereto free from all encumbrances.
- 8.2 The Seller warrants that the Goods are free from defective workmanship and materials. Any Goods not complying with this warranty (and which are promptly returned to the Seller at the Seller's expense) will be replaced by the Seller without charge. Defects in any consignment shall not entitle the Buyer to cancel other deliveries. For the avoidance of doubt the Seller is not liable for any claim arising from the use of any component of a finished product or of an intermediate product other than the Additive, except in cases where the Seller has undertaken to supply the finished product itself.
- 8.3 It is a condition precedent to any liability of the Seller that if Additive is alleged to be defective a claim shall be submitted to the Seller within 14 days of the date on which such additive was used, on the Seller's prescribed Claim Form, accompanied by all information and documentation requested by that Form.
- 8.4 Subject as aforesaid, the Seller will investigate any claim made by the Buyer in accordance with these conditions, but if and to the extent that any such claim shall be unfounded, the Buyer shall indemnify the Seller in respect of the cost of such investigation, including the cost of employee time.
- 8.5 For the purpose of trials, the Seller provides the Additive and information relating thereto on an "as is" basis. The Seller therefore expressly excludes in the case of trials all warranties, representations, guarantees or assurances of any kind, express or implied, relating to the Confidential Information, Materials and Intellectual Property Rights including any warranty that the Confidential Information is complete and accurate, that the Additives and the Intellectual Property Rights are fit and suitable for the purpose for which they are disclosed, or any other warranties regarding commercial viability, and/or safety.
- 8.6 The warranties contained in Clauses 8.1 and 8.2 are in substitution for any other rights to which the Buyer might otherwise be entitled and in particular but without limitation any implied undertakings, terms or conditions or warranties, whether statutory or otherwise, as to state or condition, quality, merchantability or fitness for any purpose, are excluded.
- 8.7 Without prejudice to the generality of the foregoing:
- 8.7.1 the Seller shall not be liable to the Buyer for a sum in excess of 100% of the price paid for the consignment in question, nor shall the Seller be liable for any indirect or consequential loss or damage (whether for loss of business, depletion of goodwill or otherwise), nor any costs, expenses or other claims for compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract.

- 8.7.2 If any goods are manufactured otherwise than in accordance with data supplied in the Technical Enquiry Form or not in accordance with Manufacturing Instructions or Technical Data Sheet, the Seller shall have no liability.
- 8.7.3 The Seller shall not be liable for any loss which could reasonably have been avoided by due diligence and prompt remedial action on the part of the Buyer.
- 8.7.4 The Buyer should take such legal advice as it thinks fit in relation to any representation or description to be made upon or about a product made with d<sub>2</sub>w additive, and any advice which the Seller may give is given strictly without legal responsibility.
- 8.7.5 Any technical advice or assistance which may be given is given strictly without legal responsibility.
- 8.8 In the case of finished-products, the Seller accepts no liability for the accuracy or conformity of any artwork name or other mark instructed or requested by the Buyer, and the Buyer shall indemnify the Seller against any claim in respect of breach of copyright, trademark infringement, passing-off, or any other claim in respect of the design of any goods or anything printed thereon.
- 8.9 The Buyer acknowledges that in the absence of the foregoing limitations of liability the prices would be significantly higher, or the goods would not be sold at all.

## 9 FORCE MAJEURE

If the Seller shall be unable to perform any of its obligations hereunder by reason of fire, explosion, war, riot, malicious damage, theft, strike, lock-out or trade dispute (whether or not involving the Seller's or the Buyer's employees) shortage or non-availability of materials or any other act, omission or state of affairs whether or not of a like nature which is beyond the Seller's reasonable control then the Seller shall be relieved of the obligations incurred under this contract to the extent that the fulfilment of such obligations is prevented frustrated impeded or delayed as a consequence of any such event.

## 10 OBLIGATIONS OF CONFIDENTIALITY

- 10.1 In consideration of Additive and/or Confidential Information and being made available to it or to any Related Person the Buyer undertakes to the Seller that it shall and shall procure that it, and each Related Person will:
- 10.2 use the Confidential Information and the Additive for the purpose contemplated by the Contract and for no other purpose whatsoever;
- 10.3 treat and safeguard all Confidential Information as private and confidential
- 10.4 ensure proper and secure storage of all Confidential Information and the Additive;
- 10.5 not at any time without the prior written consent of the Seller
- (i) disclose or reveal the Confidential Information to any other person or party whatever, other than those employees or other Related Persons of the Buyer on a need to know basis whose duties necessitate the receipt and consideration of the same and who are aware of the obligations of the Buyer under this Agreement and who are bound by obligations of confidentiality and non-use at least as onerous as those as are contained in this Agreement and in respect of whom the undertaking of the Buyer as contained in this paragraph 10 shall apply;
  - (ii) discuss correspond or have any other contact in respect of the Confidential Information with any person who is not the Seller or a Related Person of the Seller
  - (iii) use any information received from the Seller or any Related Person (whether or not it is Confidential Information) for any activity other than as permitted herein and in particular

shall not use the Confidential Information or Goods for the purpose of competition with or circumvention of the Seller.

- (iv) analyse or reproduce or develop or simulate the Confidential Information or the Additive
- (v) Supply to a third party on its own account or on behalf of others any pro-oxidant additive for use in oxo-biodegradable plastics within three years after the supply of Confidential Information or three years after the last supply of Additive by The Seller whichever is the later.

10.6 The Buyer shall be responsible for compliance by the Buyer's Related Persons of the obligations of confidentiality and non-use set out in this Agreement and any breach of such obligations by the Buyer's Related Persons shall be deemed to be a breach by the Buyer of its obligations under this Agreement.

10.7 The provisions of this clause 10 shall continue irrespective of completion of the contract of sale.

## 11 LICENCE OF INTELLECTUAL PROPERTY

11.1 The Buyer is hereby licensed to use the Additive and the Seller's d<sub>2</sub>w logo solely for the purposes contemplated by the Contract of Sale. The Seller is not bound to indemnify the Buyer or the Buyer's customers in respect of any claim arising out of use of the d<sub>2</sub>w logo.

11.2 The Buyer warrants that it shall not, and shall procure that its Related Persons shall not, represent that it has any title to or right of ownership in the Seller's logo or other Intellectual Property of the Seller, and shall promptly notify the Seller of any actual or threatened infringement of any such Intellectual Property Rights as may come to the attention of the Buyer.

## 12 ENTIRE AGREEMENT

12.1 This Contract embodies the entire understanding between the Seller and the Buyer and there are no representations, promises, terms conditions or warranties or obligations, oral or written express or implied, statutory or otherwise other than those contained herein.

12.2 These conditions of sale shall prevail notwithstanding any apparent variation of these terms and conditions (save in the manner specified in clause 14.1 below) by any proposal, quotation or other representation or statement made or given by the Seller or its employees, agents Distributors or representatives and notwithstanding any conflict between the terms of this agreement and the terms of any order or communication submitted by the Buyer in respect of the Goods.

## 13 ARBITRATION

13.1 Subject to clause 13.2 any dispute arising out of this contract shall be settled by arbitration in London and the Arbitrator shall in default of agreement between the parties within 21 days be appointed upon the application of either party to the President for the time being of the Law Society of England and the award of such arbitrator shall be final and binding upon the parties in the absence of any award by the arbitrator as to costs, the costs of the award shall be born equally by the parties.

13.2 Without affecting any other rights or remedies that a party may have, the Buyer (for itself and on behalf of the Buyer's Related Persons) acknowledges and agrees that damages might not be an adequate remedy for any breach by the Buyer or any of its Related Persons of the provisions of this Agreement, and that the Seller shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of the

provisions of this Agreement by The Buyer and/or any of its Related Persons and that no proof of special damage shall be necessary for the enforcement of this Agreement

## 14 GENERAL

- 14.1 No waiver, cancellation or alteration of the provisions of the Contract shall be valid unless made in writing and signed by a Director of the Seller.
- 14.2 The Contract shall be governed by and construed in accordance with the laws of England
- 14.3 Each right or remedy of the Seller under the Contract is without prejudice to any other right or remedy of the Seller whether under the Contract or not.
- 14.4 If any provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.
- 14.5 Failure or delay by the Seller in enforcing or partially enforcing any provision of the Contract will not be construed as a waiver of any of its rights under the Contract.
- 14.6 Any waiver by the Seller of any breach of, or any default under, any provision of the Contract by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Contract.
- 14.7 The parties to the Contract do not intend that any term of the Contract will be enforceable by any person that is not a party to it.

## 15 NOTICES

- 15.1 All communications between the parties about this Contract must be in writing and delivered by hand or sent by pre-paid first class post or sent by facsimile transmission (not by email):
  - 15.1.1 (in case of communications to the Seller) to its registered office or such changed address as shall be notified to the Buyer by the Seller; or
  - 15.1.2 (in the case of communications to the Buyer) to the registered office of the Buyer (if it is a company) or (in any other case) to any address of the Buyer set out in any document which forms part of the Contract or such other address as shall have been notified to the Seller by the Buyer.
- 15.2 Communications shall be deemed to have been received:
  - 15.2.1 if sent by pre-paid first class post, 5 days (excluding Saturdays, Sundays and bank and public holidays) after posting (exclusive of the day of posting);
  - 15.2.2 if delivered by hand, on the day of delivery;
  - 15.2.3 if sent by facsimile transmission on a working day prior to 4.00 pm, at the time of transmission at the location of the recipient and otherwise on the next working day.
- 15.3 Communications addressed to the Seller shall be marked for the attention of the Finance Director.

Available to download from our website at:

[http://www.degradable.net/downloads/Sales\\_Conditions.pdf](http://www.degradable.net/downloads/Sales_Conditions.pdf)  
[http://www.degradable.co.uk/products/Plastics\\_Conditions\\_of\\_Sales.pdf](http://www.degradable.co.uk/products/Plastics_Conditions_of_Sales.pdf)