

# TRUST FLEXITANKS

## Standard terms and conditions of sale

### **GENERAL**

1. TRUST FLEXITANKS herein after referred to as “the SELLER” contracts for the sale of flexitanks “the FLEXITANKS” to the purchaser “the PURCHASER” herein only in accordance with these specific Terms and Conditions of Sale (“THESE TERMS”)
2. The applicability of THESE TERMS shall not be affected by any documentation or communication from the PURCHASER purporting to give effect to different terms and/or conditions. THESE TERMS constitute the entire agreement between the SELLER and the PURCHASER and no variation to these terms howsoever expressed or implied shall be valid unless referred to in the acknowledgement of order referred to in clause 6 below.

**The headings used in THESE TERMS are for reference use only.**

### **ESTIMATES AND ORDERS**

3. Any order from the PURCHASER is deemed to be an unconditional acceptance by the PURCHASER of THESE TERMS to the exclusion of all other terms and conditions, warranties or representations written or oral, express or implied. The PURCHASER shall be responsible for ensuring the accuracy of each order, shall provide the SELLER with all information necessary for the SELLER to fulfil the order and shall (at its own expense) obtain all necessary import licenses, certificates of origin or other requisite documents relating to any export of the FLEXITANKS by the SELLER to the PURCHASER.
4. Where a verbal order is placed by the PURCHASER such verbal order must be confirmed in writing within 5 days.
5. Estimates are not binding and are subject to written confirmation upon receipt of an order in accordance with clause 6 below.
6. No contract shall be deemed to have been formed between the SELLER and the PURCHASER until such time as the dispatch to the PURCHASER of the SELLER’s written acknowledgement of order shall confirm the terms of such a contract.
7. Contracts cannot be assigned to third parties subject to clause 8 below.
8. The SELLER reserves the right to assign contracts of sale to companies within the same group of companies as the SELLER.

## **PRICES & SALES TERMS**

9. All prices estimated by the SELLER are for the quantities stipulated by the PURCHASER concerned only and should not be taken to apply to orders for greater or lesser quantities.
10. Prices are on EXW (ex works) basis unless otherwise specified and do not include value added tax (or any other applicable sales tax or duty) or insurance which will be added where applicable to contract values at the prevailing rate at the time of invoicing. According to Incoterms rules and legislation the FLEXITANKS are sold on EXW (ex works) basis which means that title and risk pass to the PURCHASER including payment of all transportation and insurance costs from the SELLER's factory and/or warehouse door unless specifically stated otherwise and agreed by the SELLER.
11. Price estimated reflects the information in the SELLER's possession at the date of the estimate and the costs prevailing at the time are estimated for the duration of the contract. The SELLER reserves the right to alter its specifications, prices, published terms of trade, catalogues and any other published material without prior notice. In the event that further information is provided subsequent to the date of the estimate and/or there are increases in costs of materials and labour, or any statutory obligations, then the SELLER reserves the right to revise its price on acknowledgement of the order in accordance with clause 6 above or during the progress of the contract. All prices are subject to modifications according to (though not exclusively) variability of PE raw material purchase prices.

## **DELIVERIES AND WARRANTIES**

12. Delivery periods commence from the receipt of a formal order in accordance with clause 19 below. Risk in the FLEXITANKS shall pass to the PURCHASER at the first time notified to the PURCHASER by the SELLER as the collection time (according to EXW Incoterms) whether or not the FLEXITANKS are actually collected by the PURCHASER at that particular time.
13. Time estimates for delivery are made in good faith and time shall not be specifically the essence in performance of the contract by the SELLER. In no circumstances whatsoever shall the SELLER be liable to the PURCHASER or any third party for any delay in delivery howsoever caused or any losses whatsoever that may arise as a result there from or in connection therewith.
14. The SELLER warrants that the FLEXITANKS will be of satisfactory quality and be free from defects in workmanship for a period of 12 months from the date of their delivery and will comply with any specification agreed for them,

only if the FLEXITANKS have been stored in compliance with the SELLERS guidelines and or instructions. Where it is alleged that the SELLER is in breach of this warranty, precise details of the breach must be supplied by the PURCHASER to the SELLER as soon as practicable. In the case where overt defects have been proven and therefore where a breach of warranty exists with regards to satisfactory quality, the cost of the returning FLEXITANKS containing such defects to the SELLER and the cost of returning such FLEXITANKS to the SELLER shall be reimbursed by the SELLER. No FLEXITANKS may be returned to the SELLER without its express and prior approval. All other liability howsoever arising is excluded to the widest possible extent permitted by law.

FLEXITANKS warranty will only apply if Trust bulkhead system is being used. Any other bulkhead system used, needs a written approval from the SELLER to maintain the warranty of the FLEXITANK

15. In the event of any breach of warranty contained in clause 14 above the SELLER's liability shall be limited to:-
- a. Replacement or repair of the FLEXITANKS in question together with reimbursement of the PURCHASER's reasonable costs of returning the FLEXITANKS to the SELLER; or
  - b. At the SELLER's option repayment of the price (where it has been paid) for the FLEXITANKS
  - c. Providing a refund as a compensation for loss of contents in the FLEXITANKS with a maximum refund of \$1000 per tonne carried or \$25000 per FLEXITANK where the SELLER's liability for the loss or damage is covered by the SELLER's insurance cover. If for any reason (other than the SELLER's failure to pay the insurance premium where insurance is reasonably available) the loss or damage is not covered by the SELLER's insurance cover then, the entire liability of the SELLER in accordance with this sub-clause shall not exceed \$500.
  - d. Providing a refund as a compensation for cleaning operations, transfer of goods and/or other logistics operations directly caused by the defective Flexitank with a maximum of \$10,000 per FLEXITANK. If for any reason (other than the SELLER's failure to pay the insurance premium where insurance is reasonably available) the loss or damage is not covered by the SELLER's insurance cover then, the entire liability of the SELLER in accordance with this sub-clause shall not exceed \$500.
  - e. The BUYER is responsible for ensuring it has adequate and appropriate insurance cover.
  - f. Product Warranty shall not apply when FLEXITANKS are not handled according to SELLER's guidelines like (though not exclusively):
    - i. Flexitanks shall not be underfilled nor overfilled by more than 500l from FLEXITANK nominal loading capacity.
    - ii. Contents shall not be loaded at temperatures hotter than 65° C or lower than 0° C.
    - iii. FLEXITANKS shall not be loaded by contents which are not specifically approved by the SELLER.

16. The SELLER does not accept any responsibility for damage or loss arising from the mishandling or misuse of the FLEXITANKS and in particular the PURCHASER's failure to strictly abide by any instructions and or operating manuals (written or oral) supplied by the SELLER for the operation of the PRODUCT.
17. The SELLER accepts no responsibility whatsoever where any of the FLEXITANKS supplied by the PURCHASER or through his offices or from sources dictated by the PURCHASER shall be in a defective or unsatisfactory condition and the PURCHASER shall indemnify the SELLER against any loss or damage including indirect or consequential loss or damage suffered by the SELLER arising in any way whatsoever as a result of such defects or unsatisfactory condition.
18. The SELLER shall have a general lien on all goods and documents relating to goods in its possession, custody or control for all sums due at any time from the PURCHASER or goods owner in connection with such goods and in addition a general lien on all goods and associated documents in its possession for all sums due to it from the PURCHASER or goods owner or any account whatsoever, and shall be entitled to sell or dispose of such goods or documents as Agent for and at the expense of the PURCHASER and apply the proceeds in or towards the payment of such sums on 28 days notice in writing to the PURCHASER. Upon accounting to the Customer for any balance remaining after payment of any sum due to the SELLER and the cost of sale and disposal, the SELLER shall be discharged of any liability whatsoever in respect of the goods or documents.

## **PAYMENT AND TITLE TO PROPERTY**

19. All invoices shall be due upon shipment unless otherwise agreed according to clause 20 and the PURCHASER shall pay the amount reflected on the invoice without deduction or set-off with any other outstanding balances by means of:
  - a. Bank wire transfer; or
  - b. Irrevocable letter of credit
20. Alternative terms of payment may be agreed between SELLER and PURCHASER and confirmed in the written acknowledgement of the order referred to in clause 6 above. Where alternative terms are offered the term "net cash 30 days" shall mean full payment 30 days from the date of invoice.
21. Where the PURCHASER:-
  - a. Is overdue with any payment owed to the SELLER, or
  - b. shall have failed to collect or accept delivery of the FLEXITANKS, or
  - c. makes defaults in or commits any breach of its other obligations to the SELLER hereunder, or
  - d. becomes bankrupt, insolvent or has a receiver or administrator appointed of the whole or part only of its assets or undertaking or execution or distress is levied upon its assets or under the national law of its country suffers the equivalent of any of these, or

- e. ceases or threatens to cease trade, or if the SELLER shall reasonably doubt the solvency of the PURCHASER, or
- f. makes a proposal pursuant to Section 1 of the Insolvency Act 1986, or
- g. suffers a petition to be presented pursuant to Section 9 of the Insolvency Act 1986 in respect of the PURCHASER, or
- h. has a winding-up petition presented against it or any parent company of it or suffers or does anything which is equivalent of any of these;

The SELLER reserves the right to stop delivery under any contract made between the PURCHASER and the SELLER and delivery will only be made and the further deliveries made under this and any other contract upon payment by the PURCHASER in full of all outstanding accounts due whether in relation to a contract for the FLEXITANKS or otherwise. If the SELLER exercises its rights to cease delivery any FLEXITANKS to be delivered to the PURCHASER following default shall be paid for on a proforma invoice before or at the time of dispatch of the FLEXITANKS and payment will become due on receipt of such proforma invoice. In no circumstances shall the SELLER be liable for loss or any nature suffered by the PURCHASER as a result of the application of this clause nor shall it be a reason for the cancellation of this or any other contract which shall at the SELLER's option remain in full force and effect. The SELLER further reserves the right to charge interest fees at the rate of 4% per month, capitalised at the end of each and every month on overdue payments ( as well before as after judgment) or in respect of any collection not executed or any delivery not accepted by the PURCHASER.

22.

- a. Notwithstanding collection, delivery and passing of risk, depending upon the terms of sale, the legal property in and beneficial ownership of the FLEXITANKS shall remain with the SELLER until the PURCHASER has paid all moneys owed by it to the SELLER whether in respect of the FLEXITANKS or otherwise and expressly including all the SELLER's costs arising through the SELLER's compliance with the clause 22.
- b. The PURCHASER shall adequately insure the FLEXITANKS held by it as bailee in accordance with clause 22 against loss or damage and in the event of such loss and/or damage shall hold the proceeds of such insurance on behalf of the SELLER as trustee for the SELLER.
- c. Until full payment is made the PURCHASER shall possess the FLEXITANKS of the SELLER as a bailee only and shall store the FLEXITANKS separately where they may be readily identifiable as belonging to the SELLER.
- d. The PURCHASER has the right to sell for the account of the SELLER, any of the FLEXITANKS in the possession of the PURCHASER in the normal course of business and or the normal commercial terms and having supplied the SELLER a copy of the resale agreement in question.
- e. Notwithstanding the above if any such sum due to the SELLER by the PURCHASER remains unpaid or if any of the events referred to in Sub-clauses 21 occurs the SELLER, its agents and employees shall be entitled forthwith to recover the FLEXITANKS if necessary by entry into and removal from the PURCHASER's premises without prejudice to

any other claims which the SELLER may have against the PURCHASER.

- f. It is hereby agreed that if any provision or part of any provision of this contract is deemed unenforceable, such enforceability shall not affect any other part of such provision hereof.

23. Payment shall be made at a nominated branch of the SELLER's bankers or at such other place as notified from time to time as the SELLER may direct.

## **HEALTH AND SAFETY**

24. it shall be a term of each sale that before putting any of the FLEXITANKS into use the PURCHASER will carry out such tests and examinations as are necessary to insure that the item purchased is so designed and constructed as to be safe and without risk to health when properly used and that no item will be put into use at work until any necessary work has been carried out so that the item complies with any relevant legislation rules or regulations.

## **MANUALS, GUIDES, CATALOGUES AND ILLUSTRATIONS**

25. all descriptive leaflets, catalogues, manuals, guides, illustrations, specifications, drawings and other particulars issued by the SELLER, as per those referred to in clauses 14, 15 and 16 above, are approximate only and shall not form part of any contract between the SELLER and the PURCHASER unless specifically agreed.

## **WAIVER**

26. the failure of the SELLER to enforce its rights at any time for any period of time shall not be construed as a waiver of such rights.

## **FORCE MAJEURE**

27. The SELLER shall be relieved of its liabilities incurred under any contract whatsoever to the extent to which the fulfilment of such obligations is prevented, frustrated or impeded as a consequence (though not exclusively) of Act of God, war, invasion, act of foreign enemy hostilities (whether war has been declared or not), civil war, rebellion, revolution, insurrection or military or usurped power or any similar event or by any statute, rules, regulations, orders or requisitions issued by any Government, Council or duly constituted authority in BELGIUM or elsewhere. The SELLER may at any time during the continuance of any of the aforementioned matters determine the contract without incurring any liability for such determination

## **NOTICES**

28. Any notice required to be given under THESE TERMS shall be deemed to be served in the following circumstances:-
- a. If sent by pre-paid first class post to the party to whom it is given at its last known address, in which case it shall be effective on the third day after posting
  - b. If sent by fax to the recipients fax number, in which case it shall be effective on transmission

## **LAW**

29. Orders for FLEXITANKS shall be governed and construed in all respects in accordance with the laws of SPAIN. The parties hereby submit to the jurisdiction of the Supreme court of judicature of SPAIN in relation to orders and all matters failing to be determined there under or in connection therewith.

## **THIRD PARTY RIGHTS ACT**

30. No third party should benefit from any of the contractual provisions in this contract.