



**Cimcool Europe BV – UK Branch  
Desford Hall, Leicester Lane  
Desford, Leicestershire  
LE9 9JJ**

## **GENERAL CONDITIONS OF SALE**

**Revision June 2009**

### **1. APPLICABILITY**

These general conditions of sale are applicable to all quotations and/or contracts of sale for the supply of goods and/or services by Cimcool Europe BV – UK Branch (“CE UK”). No variation shall be binding unless accepted by CE-UK in writing.

### **2. ACCEPTANCE**

- a** Quotations do not bind CE UK and no contract shall come into effect unless and until an order placed by a customer is accepted by CE UK in writing.
- b** These conditions shall apply to the exclusion of all other terms and conditions whether express or implied, save for CE UK’s liability under section 12 of the Sale of Goods Act, 1979 and such other provisions where the customer deals as a consumer as cannot be excluded.
- c** No change to or cancellation of an order which has been accepted by CE UK shall be permitted unless such change or cancellation is accepted by CE UK in writing and subject to payment of such charges (including an element for lost profit) as CE UK shall reasonably determine.

### **3. PRICES**

- a** Prices are ex works, CE UK’s warehouse Coventry, and include packing unless otherwise specified.
- b** Prices are subject to change without notice at any time and the price charged shall (subject to 3 c) be the price ruling at the date of dispatch.
- c** If dispatch is delayed beyond the date given in CE UK’s written acceptance through any fault of its own, price increases after that date will not apply.
- d** The customer shall be entitled to withdraw from the contract in the event of a price increase, but only if CE UK received notice of withdrawal by telefax or telegram forthwith upon receipt by the customer of notification of the price increase, and in any event within 5 days of such receipt.

- e Prices are exclusive of any duties, levies, tax and/or surcharge CE UK may be required to collect or pay upon the goods and/or services and all such amounts shall be payable by the customer.

#### **4. ORDER INCREASES**

Increases to any order already accepted and confirmed can only be accepted until 24 hours prior to planned dispatch date, or such longer time as may be required to manufacture the goods and obtain the required shipping documents, as determined by CE UK. Order increases received after this date will be considered as new orders.

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

- a Unless otherwise agreed upon payment terms are net 30 days from the date of invoice. No cash discount is allowed and payment should be made in sterling at HSBC Bank plc, New Street, Birmingham. CE UK reserves the right to require the customer to provide security, acceptable to CE UK, in respect of any or all orders accepted from the customer by CE UK prior to shipment. All credit accounts will require satisfactory trade and bank references and will be subject to credit limits which will be notified in writing from time to time.
- b Interest shall be payable on all sums not paid by their due date at the rate of 2% per annum above the base lending rate of HSBC Bank plc, both before and after judgement.

#### **6. SHIPMENTS**

Despatch date for Cimcool products will normally be within 7 days from the letter of CE UK's written acceptance of an order and receipt by it of full instructions and information enabling it to proceed, and is;

- a To be made from such Cimcool shipping location as may be determined by CE UK.
- b Subject to availability of goods and/or services and to confirmation, by the shipping department at the time of placing the order, of such shipping time.
- c Subject to settlement by the customer of all sums due for payment in respect of earlier deliveries.
- d Subject to unavoidable delays caused by strikes, accidents, shortages and any other cause whatsoever beyond CE UK's reasonable control.
- e Based upon the assumption that where necessary, export and import licenses have been obtained and granted. Acceptance by the customer of a delivery of goods shall constitute a waiver of any claim it might otherwise have in respect of the time of delivery.

## **7. WARRANTY**

- a** Goods are guaranteed against defective workmanship and material for a period of 12 (twelve) months from the date of manufacture. Any Cimcool produce or part thereof covered by these conditions which, under normal operating conditions in the plant of the original user thereof, proves defective in material or workmanship within this 12 month warranty period, to the satisfaction of an inspector of CE UK, will be replaced free of charge, provided that the customer promptly notifies CE UK of the defect and can establish to CE UK's reasonable satisfaction that the product has been properly installed, and maintained and operated within the limits and scope of rated and normal usage.
- b** No replacement will be made for Cimcool's fluid products which are more than one year old, as determined by the manufacturing control number, at the date of receipt of the customer's notice under Condition 7 a.
- c** This warranty does not extend to any goods or part thereof which has a life, under normal usage, inherently shorter than the twelve month period indicated above, provided that the notification to be shown on the accompanying invoice.
- d** If, and in so far as the goods are not manufactured by CE UK, CE UK only give a warranty in respect of such goods to the extent to which CE UK is entitled by its supplier to pass on a manufacturer's warranty, Details of such goods will be sent with the written acceptance of order.
- e** Except as expressly provided herein, there are no other warranties express or implied in respect of any product or part. Replacements must be accepted as complete satisfaction of all conditions and warranties. No warranty or merchantability or fitness for purpose shall apply.

## **8. SPECIFICATIONS AND PERFORMANCE**

Although they are stated as accurately as possible, descriptions, specifications, drawings or other particulars of goods however issued by CE UK or on its behalf are not representations nor are they guaranteed to be accurate and CE UK will not be bound by them, unless CE UK agrees to do so expressly in writing. All specifications given in descriptive literature are subject to alternation without notice.

## **9. LIMITATION OF LIABILITY**

- a** The liability of CE UK and any of its group companies (which shall include holding and subsidiary companies plus subsidiaries of such holding companies and those terms shall have the meaning set out in Section 736 of Companies Act 1985 "Group Companies") for any claims for direct injury, loss or damage made by the customer against CE UK whether in contract or tort (including negligence of CE UK, its servants or agents) arising out of or in connection with any defect in the goods and/or services or any act, omission neglect or default (whether or not the same constitutes a fundamental breach or breach of a fundamental term) of CE UK, its servants or agents in performance of this contract shall be limited to the price allocatable to the goods or part thereof of

services which gives rise to the claim and shall terminate at the end of the warranty period.

- b** Under no circumstances whatsoever shall CE UK or any of its affiliates have any liability whatsoever for loss of use or for any indirect or consequential damages howsoever arising.
- c** Nothing in this clause 9 shall operate to exclude CE UK's non-excludable liabilities under English law in respect of injury or death in the United Kingdom as a result of the negligence of CE UK, its servants or agents.

#### **10. PATENT INDEMNITY**

CE UK shall defend any suit or proceeding brought against the customer in respect of goods supplied hereunder and pay the customer's reasonable costs and damages awarded against the customer therein provided that:

- a** The said suit or proceeding is based upon a claim that the goods are part thereof covered by this contract constitute an infringement of any claim of any presently existing UK patent, other than a claim covering a process or product thereof ("a claim").
- b** The indemnity granted by this clause shall not extend to any claim, relating directly or indirectly to an infringement based upon (i) the manufacture, use or sale of any product or any part on any product not manufactured by CE UK or any CE UK group company or (ii) manufacture, use or sale of CE UK goods or any part thereof in combination with any product or any part of any product or thing not manufactured by CE UK or any CE UK affiliate as aforesaid.
- c** CE UK is notified of a claim and is given all information and assistance and the authority to defend said claim at CE UK's expense. CE UK shall not be responsible for any settlement of said claim made without its prior written consent nor where the customer makes any admissions or otherwise prejudices CE UK's conduct of negotiations or proceedings. Where the goods or any part are found to constitute an infringement and use of the same by the original user is forbidden, CE UK shall, at its own expense and at its sole discretion:
  - Procure for the customer the right to continue using the said goods or part thereof; or
  - Replace the same with non-infringing goods or part thereof; or
  - Modify it so it becomes non-infringing; or
  - Remove the said product or part thereof and refund the original user's net book value and transportation costs thereof.

The foregoing states CE UK's entire liability with respect to a finding of infringement of any UK or foreign patent by goods or any part thereof. To the extent that the said goods or any part thereof are supplied in accordance with specifications and designs furnished by the customer, the customer agrees to indemnify CE UK in the manner and to the extent set forth above mutatis mutandis.

- d. In no event shall CE UK or the customer be liable to the other in respect of loss of use or any indirect or consequential loss whatsoever relating to an infringement, whether in respect of claim or otherwise.

## **11. INCOTERMS**

Where terms are defined in Incoterms, edition 1990, they shall have the meaning and effect thereby provided.

## **12. PERFORMANCE OF THE CONTRACT**

- a. If CE UK is prevented or hindered from performing any contract or any part thereof by any circumstances beyond its reasonable control of whatever kind and whatever occurring, further performance of such contract shall be suspended for so long as CE UK is so prevented or hindered provided that if the performance of the contract is suspended for more than three calendar months the customer shall be entitled by notice in writing to CE UK forthwith to terminate the contract or to cancel any outstanding part thereof and in such circumstances the customer shall pay CE UK for all work done, materials used and goods delivered up to and including the date of termination. Without limiting the generality of condition 9, termination under this condition shall not render CE UK liable to the customer for any loss or damage suffered by the customer whatsoever as a result of CE UK's inability to perform its obligations under the contract by reason of any such circumstances.
- b. Where goods are delivered by instalments each such instalment shall be deemed to be sold or supplied under a separate contract to which these conditions shall apply (*mutatis mutandis*) and no default in respect of any one instalment shall affect or prejudice due performance of the contract as regards any other instalments.
- c. If performance of the contract is suspended at the request of or delayed through the customer's default including, without limitation, lack of, incomplete or incorrect instructions or refusal to collect the goods CE UK shall be entitled to payment hereunder for the work done, goods supplied or ordered and any other additional costs thereby incurred including storage and insurance provided that if the customer fails to collect or accept delivery of the goods or any part thereof within twenty eight days of written notification from CE UK that the goods are ready for collection or delivery CE UK shall be entitled (without prejudice to its other remedies for such breach) to sell or at its option destroy the goods and to apply the proceeds of sale thereof if sold and the scrap value if destroyed towards payment of all sums due to CE UK under the contract.

## **13. HEALTH AND SAFETY**

- a. The attention of the customer is drawn to the provisions of Section 6 of the Health and Safety at Work Act, 1974 as amended ("the Act"). CE UK will make available such information and revisions thereof as are appropriate relating to the goods and materials supplied hereunder in its possession to

ensure that as far as is reasonably practicable the same are safe and without risks to health for use at work at all times.

- b** The customer hereby undertakes pursuant to Section 6 (8) of the Act to take such measures as are communicated in writing to it by CE UK and to take such other steps as are sufficient to ensure, so far as is reasonably practicable, that the goods will be safe and without risks to health for use as work at all times when they are being set, used, cleaned or maintained and shall not use them nor permit them to be used without regard to any relevant information or advice relating to their use which has been communicated to the customer pursuant to this Condition.
- c** CE UK shall not be liable to the customer in any civil proceedings brought by the customer against CE UK in respect of a breach of or under any health and safety regulations, orders or directions made pursuant to the Act or under any other Directive, regulation, order or other instrument relating to health and safety where such exclusion of liability is permitted by law.
- d** The customer shall indemnify and keep indemnified CE UK in respect of any liability, monetary penalty or fine in respect of or in connection with the goods or services incurred directly or indirectly by CE UK under the Consumer Protection Act, 1987 the Act or any regulations, orders or directions made thereunder or any Directive, regulation, order or other instrument relating to health and safety.

#### **14. TITLE**

- a** Title to and property in the goods shall remain vested in CE UK (notwithstanding the delivery of possession of the same and the passing of the risk therein to the customer) until:
  - (i) The price of the goods; and
  - (ii) All other money due from the customer to CE UK or any CE UK group company has been paid or satisfied in full and until then;
  - (iii) CE UK may enter any premises with such plant vehicles and personnel as it considers fit at any time without prior notice to the customer and repossess and resell the goods if any of the events specified in Condition 15 hereof shall occur or if any sum owed by the customer to CE UK under this or any other contract or otherwise howsoever is not paid on the due date of payment;
  - (iv) The customer shall store the goods in a proper manner without charge to CE UK and ensure they are clearly identified as belonging to CE UK and allow CE UK access thereto from time to time during normal business hours and upon giving the customer reasonable notice for the purposes of examination.
- b** The rights and remedies conferred upon CE UK by this Condition 14 are in addition to and shall not in any way prejudice, limit or restrict or any other rights or remedies of CE UK under this or any other contract or otherwise whatsoever.

- c** All stock supplied on a consignment basis shall remain the property of CE UK, until such time as the stock has been invoiced and payment received in full. If by reason of company closure, bankruptcy, liquidation, or change of product to another supplier, stock is required to be returned to us, this shall be at your expense and subject to products and containers being in good condition and the material therein less than 12 months old and to manufacturer's specification.

Any material supplied by tanker and unused in storage shall be immediately invoiced at current UK list price on the date of termination. This product will become the property of the buyer. Cimcool will not accept any return.

All Cimcool products must be stored under cover and protected from freezing (minimum temperature of +4 degrees centigrade).

## **15. INSOLVENCY AND BREACH OF CONTRACT**

If any of the following events occur, are threatened or in the opinion of CE UK are reasonably likely to occur, namely:

- a** The customer commits any breach of this contract which it fails to remedy (if capable of remedy) within a period of thirty days from receipt of notice in writing from CE UK, requesting that such breach be remedied, or
- b** Any distress or execution is levied upon any of the goods or property of the customer; or
- c** The customer (or where the customer is a partnership any partner thereof) offers to make any arrangements with or for the benefit of his creditors or a petition is presented or an order is made for him to become bankrupt; or
- d** The customer (being a limited company) becomes unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986 or has an administrative receiver, receiver or a receiver and manager appointed of the whole or any part of its undertaking, property or assets or a petition is presented or an order is made or a resolution is passed or analogous proceedings are taken for the winding up of the customer or for the appointment of an administrator thereof the customer's authority to sell goods title to which is vested in CE UK or any CE UK group company shall cease and the Company shall thereupon be entitled without prejudice to its other rights hereunder forthwith to suspend further performance of this contract and of any other contract between CE UK and the customer until the default has been made good or to determine this contract or any other contract between CE UK and the customer or any unfulfilled part thereof or at CE UK's option to make partial supplies of goods. Notwithstanding any such termination, the customer shall pay CE UK for all work done, materials used and goods delivered up to and including the date of termination and shall in addition indemnify CE UK against any resulting loss, damage or expense incurred by CE UK in connection with the supply of the goods or non performance of this contract or any other contract between CE UK and the customer, including the cost of any materials, plant or tools used or

intended to be used therefore and the cost of labour and any other overheads including a percentage in respect of profit.

#### **16. SEVERANCE**

If at any time any provision of these Conditions is held to be or becomes void or otherwise unenforceable for any reason it shall be deemed omitted herefrom and shall not affect the validity and/or enforceability of the remaining provisions hereof.

#### **17. GOVERNING LAW**

The governing text of these terms and conditions shall be English. The construction, validity and performance of these conditions shall be governed in all aspects by English law and the parties hereto submit to the non-exclusive jurisdiction of the English Court.

**Desford Hall, UK, 17 June 2009.**