

ATOTECH INDIA PRIVATE LIMITED

Standard Terms & Conditions of Sale and Delivery

1. DEFINITIONS

In these Standard Terms & Conditions of sale:

“Company” means Atotech India Private Limited.

“Purchaser” means any person placing an order with the Company.

“Goods”/“Products” mean the goods or products including any part of product and equipment to be supplied by the Company to the Purchaser as detailed in the products list of the company. (This is subject to alterations from time to time.)

“Order” means any order for Products placed by the Purchaser with the Company.

“T&C” mean the Terms and/or Conditions (“Terms” / “Contract”) of Sale by the Company as amended from time to time.

2. BASIC TERMS

- a) The Company shall sell and the Purchaser shall purchase the Products in accordance with these T&C, which shall apply to the exclusion of any and all other T&C whether contained in the Purchaser’s order or any other document.
- b) Without limiting the manner in which these T&C may be accepted by the Purchaser, the Purchaser shall be deemed to have accepted and agreed to being governed by these T&C if the Purchaser: (a) signs this document or a duplicate thereof; (b) performs any of its obligations for the purchase of the Goods; (c) accept the Goods/Products supplied; (d) does not reject these T&C in writing within seven (7) days of the Purchaser’s receipt of this document.
- c) No variation to these T&C shall be binding unless agreed in writing between the authorised representatives of the Purchaser and the Company.
- d) Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document or information issued by the Company shall be subject to correction without any liability on the part of the Company.
- e) The Company may perform any of its obligations or exercise any of its rights under these T&C by itself or through any other member of its group.

3. ORDER

Orders shall be in writing or if given orally shall be confirmed in writing by the Purchaser. No order can be cancelled by the Purchaser without the prior written approval of the Company. The final quality, quantity, description and any specification of the Products shall be those as set out in the invoice raised by the Company. Any term whatsoever in contradiction with those contained herein unless amended by both the parties in writing shall not be final and binding on both the parties.

Any documents and information related to the offer or quotation, are solely a representation as to general characteristics and do not represent guaranteed characteristics. The contract will be concluded upon placement of a purchase order by the customer (offer) and Atotech’s order acknowledgement (acceptance). Atotech’s acceptance may be indicated by a written confirmation or by the dispatch of the ordered Products.

4. PRODUCT CHARACTERISTICS, TECHNICAL ADVICE

Product characteristics are shown solely and exclusively on the Product data sheet. Identified utilizations of the Products in accordance with any and all laws and regulations relevant to chemistry, do neither represent an agreement regarding corresponding contractual characteristics of the Products nor an utilization presupposed by the contract. In the event that Atotech provides samples or trial Products to the customer, the characteristics of any such samples or trial Products shall not be binding unless the parties have expressly agreed that such characteristics will be characteristics of the Products. Information about the Products, especially regarding characteristics and shelf life, shall be deemed guarantees only if the parties agree that such information will be treated as a guarantee. If Atotech provides technical advice, Atotech undertakes to do so only to the best of its knowledge; however, any such advice shall not excuse the customer from conducting his own examinations and trials. Atotech may perform any of its obligations or exercise any of its rights under these terms of the contract by itself or through any other member of its group, provided that any act or omission of any such other member shall be deemed to be the act or omission of the Company.

5. DELIVERY, TRANSFER, RISK AND RETURNS

- a) The Company shall use all reasonable endeavours to deliver the Products on the date and at the location specified in order. However, the date of delivery mentioned is an estimated date only and the Company shall not be liable for any loss or damages arising directly or indirectly from delay in delivery.
- b) The delivery period is deemed to have been complied with if the consignment has left the factory Premises of the Company within the agreed and or extended delivery period. If the consignment is delayed for any other reasons, then the delivery period shall be deemed to have been complied with upon notification by the Company to the Purchaser of the readiness of the Consignment for delivery. The Purchaser under no circumstances can refuse to accept delivery of the Product after 7 (seven) days from the date of the notification. Goods handed over to the transporter at Company’s facility shall be sufficient proof of delivery.
- c) The Purchaser must accept part delivery where full quantity is not available in stock. Unless otherwise agreed to by the Company:
 - a. All goods are dispatched by road at the discretion of the Company.
 - b. All products have best before usage as indicated on the label on the package or container. In absence of any such clarification, please contact the Company for details thereon.
 - c. All goods are dispatched in the Company’s standard packaging and labelling. Any special labelling required should be informed well in advance by the Purchaser and the same may be accepted by the Company.
 - d. In case, where the Purchaser desires to insure the goods himself, the insurance policy number, date and name of the insurance company must be communicated to the Company before the goods are consigned/ dispatched from the factory of the Company.
 - e. Products once sold will not be taken back.
6. No complaint for short weight or measurement or any particular deficiencies of the product will be considered by the Company unless notice of same is given in writing within 24 hours in case of short weight or measurement and/or 5 working days in all other cases from the date of receipt of the Products. Purchaser shall be deemed to have accepted the Products without any complaints whatsoever, in case the Purchaser fails to give notice within the specified period with particulars thereof.
7. The Company shall have complete lien over unpaid goods sold to the Purchaser whether in custody of the Purchaser or otherwise till all payments have been realized by the Company.

8. FORCE MAJEURE

The Company shall not be liable to the Purchaser by reason of any delay or failure to perform, any of the Company’s obligations, if the delay or failure due to any cause beyond the Company’s reasonable control (“Force Majeure”). Without limiting the foregoing, the following shall be regarded as causes beyond the Company’s reasonable control: (a) Act of God, pandemics, lockdowns, explosion, flood, lightning, tempest, fire, earthquake and other acts or elements; (b) war or threat of war (whether declared or not), civil war, riot, civil disturbance or disorder; (c) acts, restrictions, regulations, bye-laws, refusal to grant any licenses or permissions, prohibitions or measures of any kind on the part of any local, state, national, governmental or local authority; (d) import or export regulations or embargoes; (e) strikes, lock-outs or other industrial actions or trade disputes of whatever nature (whether involving employees of the Company or of a third party); (f) default of suppliers (where such default is itself caused by Force Majeure); (g) difficulties in obtaining raw materials, labour, fuel, equipment or machinery; (h) power failure or breakdown in machinery.

9. PRICE AND PAYMENT

- a) Terms of payments shall be as agreed between the parties in writing.
- b) The Purchaser understands that no officer of the Company is authorized to collect payment in cash.
- c) If any payment for the Products is not made when due, the Company shall be entitled, without prejudice to any other rights or remedies available in law, to charge interest from the due date of payment till the date of realization at the rate of 21% per annum.
- d) The Purchaser shall submit the appropriate declaration form, if any, under relevant tax regulations including its re-enactments whether as Goods and Service Tax, Value Added Tax or otherwise, within 1 (one) month from the date of receipt of supplies from the Company. The Company shall also be entitled to recover differential tax in respect of future supplies not withstanding any conditions to the contrary.
- e) In case the Company suffers any loss or damage on account of any false information or document supplied by the Purchaser the Purchaser shall immediately make good of the same upon mere notice by the company. In case the Purchaser fails to make good of the loss or damage suffered by the Company, the Company shall have right to avail the legal remedy available in law.

10. EXCLUSION OF LIABILITY

It shall be the responsibility of the Purchaser to satisfy himself/herself/itself as to the merchantability, suitability and/or fitness of the Products to its intended purpose and the method of the application and usage. The Company does not hold out any warranty in this regard. The Company shall not be liable for any losses, injuries, damages or adverse effect whatsoever arising/resulting whether directly or indirectly from:

- a) the use of the Products by the Purchaser or any other third party which do not confirm to the use as prescribed in its technical data or any technical advice given orally or in writing by the Company to the Purchaser;
- b) the use of Products by the Purchaser or any other third party outside normal conditions of use of the Products recognized or adhered to by users of similar Products regardless of the fact that such conditions of use are not expressly prohibited in the Company’s technical data or advice given by the Company to the Purchaser;
- c) the mixing of other Product of similar and/or different specifications of the Product by the Purchaser or any other third party;
- d) the failure of the Purchaser to comply with any express or implied warranties given by the Company or any other third party;
- e) In addition, the company has no liability towards the purchaser and/or any third party for consequential or incidental damages of any kind whatsoever including without limitation on account of loss of clientele, purchaser’s corporate reputation and goodwill. No liability for any indirect, incidental or consequential damages. Under any circumstances, the maximum aggregate liability of company shall not exceed 5% of the total sales volume of all products supplied to the affected purchaser plant in the preceding 12 months.

11. INDEMNITY

The Purchaser agrees to defend, indemnify and hold the Company, its holding, subsidiaries and affiliated companies and its and their officers, employees and agents, harmless from and against all suits, demands, claims, liabilities, losses, damages, expenses and costs of whatsoever nature arising out of or in connection with or resulting from: (a) the Purchaser’s non-performance or breach of these Terms; (b) the act, neglect, omission or default of the Purchaser or its servant, agent, employee, subcontractor or service provider.

12. WAIVER

Failure of either party at any time to enforce any terms, provisions or conditions or to exercise any rights herein set forth shall not constitute a waiver of the same nor effect the party’s right to enforce the same. Waiver of any breach or of any term, covenant or condition of the agreement can only be effective if in writing and signed by and/or on behalf of non-breaching party and shall not be deemed a waiver of any subsequent or continuing breach of the same or any other term, covenant or condition.

13. SEVERABILITY

If any provision(s) of this Agreement is held to be void or invalid or unenforceable, the remainder of this of Agreement shall continue to be binding and operative and will be in full force and in effect.

14. ARBITRATION

- a) Any claim, dispute or difference whatsoever relating to or arising out of or in connection with, this invoice, purchase or any contract or order, for the supply of goods by the Company to the Purchaser shall be referred to the arbitration, before a sole arbitrator to be appointed by the Company. The arbitration shall be subject to the Arbitration and Conciliation Act, 1996 as may be amended from time to time. The seat and venue of arbitration shall be Gurugram, Haryana. The Arbitration proceedings shall be undertaken in English. The arbitration award shall be final and binding on the parties.
- b) The Company has a right to seek interim relief and injunctions as deemed fit and appropriate by the Company.
- c) The arbitration agreement contained herein shall be governed by laws in effect in India.