

Augustus Oils Ltd - Terms and Conditions of Sale

1. **APPLICABILITY** - These standard conditions of sale ("Conditions") are the only terms and conditions applicable to any sale by Augustus Oils Ltd Incorporated in England ("AOL") to the Buyer which is deemed to have assented to these conditions notwithstanding inconsistent or additional provisions on buyer's order or otherwise, which are expressly excluded hereunder. Differing or additional terms and conditions are made under a separate written contract, or under the provisions set forth in the document or form to which these conditions are attached ("Sales Contract"), are reserved. Acceptance of delivery of the goods shall be deemed to be conclusive evidence of acceptance of these terms and conditions.
2. **ACCEPTANCE** - All verbal or written or EDI purchase orders ("Orders") placed by any person or company ("Buyer") and pursuant to which AOL supplies any goods denominated in the Form ("Goods") are subject to AOL's confirmation either through written confirmation ("Order Confirmation") or through shipping the Goods. Any Order shall be deemed to be firm and may be modified, rescinded or cancelled, in whole or in part, only upon mutual written agreement of AOL and Buyer.
3. **PRODUCTS DESCRIPTION AND QUANTITIES** - Products description and quantities are set forth separately in the Sales Contract. Buyer may not reject or revoke acceptance of a bulk shipment, which quantity is within 3% of the amount specified for such shipment and price payable by Buyer for such shipment shall be appropriately adjusted to reflect any overage or underage. Information supplied with regard to the percentage content of the Goods are only to be regarded as approximate average value and AOL shall not be liable for any minimal variations in such content which are within the tolerances applicable to the particular Goods and not materially relevant.
4. **PRICES** - Prices are fixed on the base of prices valid on the date of the invoice. Price changes communicated by AOL to Buyer after placement of the Order and prior to shipment thereof shall be binding upon the Buyer unless objected to in writing by the Buyer within 7 (seven) working days after receipt by Buyer of such communication. Prices are net of all delivery charges including VAT, custom duties, other taxes and cost of insurance, which shall be invoiced in addition to the prices of Goods, if not otherwise specified in the Sales Contract (Incoterms 1990 or other terms).
5. **PAYMENT** - All payments for Goods shipped are required upon receipt of our Pro-forma Invoice, unless otherwise specified in the Sales Contract. Any amount not paid by the Buyer when due will be subject to finance charge equal to 1.5% per month or such lower rate which is the highest permissible by applicable law. Without limiting any and all remedies available hereunder, AOL may defer or cancel delivery of any subsequent instalments of the Goods or of any other Goods ordered by the Buyer from AOL or any affiliated company thereof until full payment of all amounts due. Except with AOL's consent, no set off will be permitted.
6. **DELIVERY** - Deliveries are made in accordance with the Buyer's shipping instructions and AOL's Order Confirmation to the extent permitted by the availability of the Goods or of the raw materials thereof. AOL shall not be responsible for failure to meet the delivery date or period agreed between the parties, which are estimates only and shall not be liable for any cost or damage due to early or late delivery, if AOL is unable to serve total demand for the Goods. AOL may allocate the available quantity of the Goods, as it deems most fair in making partial shipments or shipments cancellation, and may give preference to the earliest commitments. Buyer may cancel any order for such partial or cancelled shipments under written notification to AOL upon information by AOL of such partial or cancelled shipment. Unless otherwise specified in writing (Incoterms 1990 or other), Buyer shall assume all risks of damage to or loss of the Goods upon delivery of the Goods to the first carrier or its agent acting as Buyer's representative. For Orders where delivery is to be made by collection by Buyer, such collection shall be at such premises of AOL as it may designate to Buyer and delivery shall be deemed to have taken place when the Goods are made available for collection by Buyer at such premises. AOL reserves the right to make delivery of Goods ordered by Buyer in instalments, and each instalment shall constitute a separate contract.
7. **WARRANTIES** - AOL warrants title, and that Goods shall comply with AOL's standard specifications in effect on the date of shipment and to the description of the Goods contained in the Sales Contract. AOL reserves the right at any time to change the specifications with or without advance notice. **AOL EXPRESSLY EXCLUDES ANY AND ALL EXPRESS WARRANTIES OTHER THAN AS PROVIDED ABOVE AND ANY AND ALL IMPLIED WARRANTIES INCLUDING WITHOUT LIMITATIONS THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE USE OR PERFORMANCE OF THE GOODS.** Without limiting the foregoing under no circumstances whatsoever shall AOL have any liability or obligation to the Buyer for any and all advice, assistance, recommendations or information provided by AOL to the Buyer with regards to handling, storing, applying or using any Goods supplied by AOL.
8. **LIMITATION OF LIABILITY** - Buyer shall carefully check all Goods upon receipt at the shipping destination. Claims must be notified to AOL in writing within 10 (ten) working days upon receipt of the Goods. Defects not reasonably detectable upon receipt of the Goods Should be notified within 10 (ten) working days of the Buyer's detection of the defects or 6 (six) months after receipt of the goods, whichever shall first occur. Upon request, a sample shall immediately be sent to AOL. Failure to give AOL such notice shall constitute full waiver of such claims by the Buyer. AOL shall not be liable for personal injury or property damage unless caused by AOL's negligence and in no event shall AOL be liable for any incidental or consequential damage. Buyer's exclusive remedy and AOL's sole liability for any and all cause's shall be limited to actual costs or charges directly related to any breach of the warranty made under 7 above and shall not exceed the price of the Goods. AOL will at Buyer's option replace such Goods as determined to be defective upon AOL's inspection at no price for the Buyer or a refund the purchase price. Buyer may not send the Goods back to AOL unless authorised in advance.
9. **PROPERTY** - The Goods remain the property of AOL until payment of the price has been received by AOL or the Goods are processed or resold by the Buyer, whichever shall first occur, and until such time as the property in the Goods passes to the Buyer hereunder, Buyer shall hold the Goods in a fiduciary capacity. Buyer is however entitled to dispose of the Goods in the ordinary course of business unless it becomes insolvent or proceedings are issued for bankruptcy or winding up of Buyer, in which situation AOL shall be entitled to suspend deliveries, stop Goods in transit or take back possession of the Goods. At any time until the Goods have been paid for and without prejudice to any other remedies, AOL or its agents shall be entitled to draw an inventory of such Goods and re-possess any Goods to which it has title hereunder. Nothing in this clause shall confer any right on the Buyer to return Goods, supplied hereunder or refuse or delay payment thereof.
10. **INTELLECTUAL PROPERTY**- No licence under any patent or proprietary know-how on the Goods shall be granted through any sale of the Goods hereunder and the Buyer is solely liable for any patent, trademark, or proprietary know-how infringement in using the Goods in combination with other materials or operation of any process.
11. **FORCE MAJEURE** - AOL shall not be liable in any way for any loss or damage arising directly or indirectly, though or in consequence of production, delivery or holding stock of the Goods being prevented or delayed by happenings or occurrences due to or by reason of any matters or things beyond the control of AOL.
12. **ASSIGNMENT, SEVERANCE, WAIVER** - Buyer shall not assign or charge the benefit of any sale with AOL without AOL's prior written consent. Each of the provisions of these conditions are severable and distinct from others and if at any time one or more of the provisions is or becomes invalid, illegal or enforceable. The validity, legality and/or enforceability of the remaining provisions of these conditions shall not in any way be affected or impaired by it. No failure to exercise or delay in exercising of any rights hereunder shall operate as a waiver of that or any other right, nor shall any single, defective or partial exercise preclude any other future exercise of that right.
13. **GOVERNING LAW AND JURISDICTION** - These conditions and any sale made hereunder shall be governed exclusively by the law of England, excluding the United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980. Any disputes related to these conditions or any sale made hereunder shall be submitted to the exclusive jurisdiction of the courts of England or at AOL's option to the competent jurisdiction of the Buyer's principal place of business.