

# **S.A. AJINOMOTO OMNICHEM N.V. PURCHASE TERMS AND CONDITIONS FOR EQUIPMENT AND FIELD WORK**

(rev.0 dated 01/04/04)

## **1. PREAMBLE**

The "Purchase Terms and Conditions for Custom Equipment and Field Work" contained herein shall apply unless modified in the purchase order document or in the contract.

## **2. DEFINITIONS - ORDER OF PRECEDENCE**

The term "Purchase Order" shall mean the purchase order document, the contract between parties (if any) as referenced in the purchase order document, the attachments to the purchase order document and/or the contract (such as the Purchase Terms and Conditions for Equipment set forth herein, the drawings, the specifications and any other document) and the amendments thereto issued by Buyer to Seller for the purchase of Equipment hereinafter defined. The term "Buyer" shall have the meaning of S.A. AJINOMOTO OMNICHEM N.V. The term "Seller" shall have the meaning of seller as identified in the Purchase Order. The term "Equipment" shall mean any and all items ordered under the Purchase Order and specified therein. The term "Work" shall mean all the work to be performed by Seller, whether at Seller's or its subcontractor's facilities, or at Buyer's facilities. The term "Acceptance of the Work" shall have the meaning as defined in Article 20 below. The term "Construction Site" shall mean that part of Buyer's facilities as defined in the Purchase Order. The term "Overtime Work" shall mean all hours which are required, by contract or law, to be paid at a premium hourly rate. The term "Price" shall mean the price of the Equipment as specified in the Purchase Order.

In case of conflict between the documents forming the Purchase Order, Seller shall inform Buyer of such conflict and the order of precedence in resolving such conflict shall be as follows: (a) the purchase order document including its attachments; (b) the contract between parties (if any) as referenced in the purchase order document including its attachments; (c) the Purchase Terms and Conditions for Equipment and (d) the other documents forming the Purchase Order in the precedence as defined in the purchase order document.

## **3. SCOPE, SPECIFICATIONS, DRAWINGS, TECHNICAL DOCUMENTATION AND OTHER ITEMS**

3.1. Seller shall provide to Buyer all specifications, drawings, technical documentation and other items within the time schedule, in the language and in the number of copies as specified in the Purchase Order. Buyer's approval of specifications, drawings, technical documentation and other items shall not relieve Seller of any of its responsibilities under the Purchase Order.

3.2. Buyer shall have the full and free property of and right to use the specifications, drawings, technical documentation and other items which are provided by Seller to Buyer under the Purchase Order.

## **4. CHANGES TO SCOPE OF SUPPLY**

Without invalidating the Purchase Order, Buyer shall have at any time the right to make changes in the Equipment or the Work, and in the specifications, drawings, technical documentation and/or any other items, to issue additional instructions, to request Seller to perform additional work or to omit a portion or portions of the Equipment and Seller shall comply with any such request. Any adjustment in the Price, the delivery or completion time or any other provision resulting from such change, addition or omission shall be communicated by Seller to Buyer by using a Field Change Notice (FCN) as set forth in the Attachment entitled "Field Change Notice", agreed upon between Buyer and Seller and documented in a change to the Purchase Order. Costs associated to changes communicated by Seller later than 1 week after the reason for the change occurred, will be rejected by Buyer.

## **5. COMPLIANCE WITH LAWS, REGULATIONS AND CODES**

5.1. Seller shall not manufacture, sell, price, mark, pack or transport the Equipment and Seller shall not perform, sell or price the Work in violation of any applicable law, rule or regulation, including but not limited to EC Regulations and Directives. To the extent that the Purchase Order is in conflict with any such law, lawful order, rule or regulation, Seller will timely notify Buyer of such conflict whereafter Buyer shall take appropriate measures. Seller will defend, indemnify and hold harmless Buyer, Buyer's subcontractor and Buyer's customer from and against any and all claims, losses, damages, costs and expenses resulting from or arising out of Seller's failure to comply with this Article.

5.2. The Equipment and the Work shall conform to all codes, regulations, norms and standards as required by the Purchase Order. Where such codes, regulations, norms and standards require approval of drawings and/or specifications or tests by official or non-official authorities, Seller shall obtain such approvals, shall perform such tests and shall supply any and all certificates and documents that are required to cover said approvals, all at its sole expense. No delay on the part of official authorities in relation to the foregoing will be considered as a case of force majeure.

## **6. RESPONSIBILITIES OF BUYER**

Buyer agrees to furnish the following at no cost to Seller for performance of the Work: (a) application for permits and approvals as are necessary for the performance of the Work at the Construction Site; (b) suitable access to and reasonable space for necessary temporary facilities at the Construction Site; (c) water and electricity as available on the Construction Site.

## **7. SELLER'S EXAMINATION**

Seller will be held to have examined the Construction Site, to have obtained from Buyer all information related to the Construction Site as may reasonably be required by Seller and to be satisfied as to the conditions under which Seller will be obliged to operate in performing the Work, such as obstructions, whether above or underground, the character and nature of the Work, safety regulations and all other considerations which may affect the Work in any manner.

## **8. SUBCONTRACTING**

8.1. All subcontracting by Seller shall be approved and authorized in writing in advance by Buyer. Seller shall be responsible for the direction and control of the work of all its subcontractors. Seller shall not be relieved of its responsibility for the Equipment and every part thereof manufactured by its subcontractors.

8.2. Seller shall secure in each subcontract the same rights for Buyer as Buyer has under the Purchase Order.

## **9. LABOR**

Seller shall employ, or cause to be employed, on or in connection with the performance of the Work only persons who are fit and skilled in the work assigned. Seller shall at all times enforce, or cause to be enforced, strict discipline and good order among the persons employed on the Work. Should any disorderly, incompetent, or objectionable person be employed by Seller, or by any of its subcontractors or vendors, upon or about the Construction Site, Seller shall, upon request of Buyer, cause such person to be removed from the Work and not again employed thereon without the written permission of Buyer.

## **10. OTHER CONTRACTORS**

10.1. Buyer reserves the right to enter into contracts with other contractors for work relating to but not included in the Work. Seller agrees at all times to cooperate fully with such other contractors and shall properly coordinate and correlate the Work with the work of such other contractors.

10.2. If any part of the Work depends, for its proper performance, upon the work of any such other contractor, Seller shall inspect such other contractor's work at the point of its connection to the Work. If Seller should fail to so inspect such other contractor's work and/or to report any such deficiencies or defects, Seller shall be deemed to have accepted such other contractor's work as being fit and proper for its connections to the Work, except as to deficiencies which may develop in such other contractor's work after Seller's performance under the Purchase Order.

10.3. Should Seller cause damage to the work of any such other contractor, Seller agrees to repair, or to remove from the Construction Site and replace, such work or to cause such work to be repaired, or to be removed and replaced, all at Seller's expense.

## **11. SAFETY AND SECURITY**

Seller shall comply with, and shall cause its permanent and temporary employees and subcontractors or vendors to abide by, all safety and security laws established by law, and Buyer's rules and regulations in force at the Construction Site and existing facilities. These conditions are contained in the latest version of procedure SHE-SOP-017. Said rules and regulations shall be accepted by Seller in writing before the commencement of any portion of the Work at the Construction Site.

## **12. PROTECTION OF THE WORK - FREE ISSUE MATERIAL**

12.1. Seller shall till the Date of Mechanical Completion cover and protect or cause to be covered and protected in a manner satisfactory to Buyer the Work from damage from the elements or from any other cause, and shall efficiently maintain or cause to be maintained, such covering and protection at all times at Seller's sole expense.

12.2. All material issued free to Seller by Buyer shall remain the property of Buyer provided, however, that till the date of Acceptance of the Work Seller shall be liable to keep such free issue material in good condition, in safe custody and fully insured and that Seller shall replace at its own cost any and all such free issue material lost, damaged or inefficiently used.

## **13. USE OF THE CONSTRUCTION SITE**

Seller shall store or cause to be stored all items required, shall erect or cause to be erected all temporary structures on, and shall confine or cause to be confined the operations of its personnel and those of all its subcontractors or vendors employed on the Work or on the Construction Site to only such portions of the Construction Site as may be designated by Buyer and in strict accordance with: (a) the rules and regulations referred to in Article 11 above, and (b) Buyer's specific instructions.

## **14. REMOVAL OF WASTE MATERIALS AND RUBBISH**

Seller shall not allow waste materials or rubbish to accumulate in or about the Construction Site and shall enforce compliance with all housekeeping standards in effect thereon. Seller shall promptly remove or dispose or have promptly removed or disposed of such waste materials and rubbish in accordance with all applicable rules and regulations. Any work, that Seller will be requested to perform in connection with the foregoing is deemed to be included in the Price. After the completion of the Work, Seller shall thoroughly remove all rubbish from and about the Work, and shall promptly remove all equipment, all tools, scaffolding and surplus materials, and shall leave the Construction Site clean and ready for use.

## **15. EXPEDITING, INSPECTION AND TESTING**

15.1. At the request of Buyer, Seller shall submit to Buyer a detailed schedule for the manufacturing and delivery of the Equipment. Seller shall give Buyer at least ten (10) working days prior written notification of readiness of the Equipment or any part thereof for inspection or testing in accordance with the provisions of the Purchase Order.

15.2. Buyer or its nominee shall at all reasonable times and at such times as requested by Buyer have access to any premises where the Equipment is being manufactured or where it is located, to monitor the progress of any and all work relating to the Equipment and/or to inspect and/or to test the Equipment at all stages of manufacture and/or when the Equipment is ready for delivery.

15.3. Buyer shall at any time be entitled to reject the Equipment or any part thereof which is found to be nonconforming to the Purchase Order. The Equipment or any part thereof so rejected shall be immediately replaced or corrected at Seller's expense and shall be resubmitted for inspection.

15.4. Buyer's approval of Seller's manufacturing drawings or other documents as well as inspection or testing by Buyer or his nominee during manufacture of the Equipment shall neither be deemed to constitute acceptance in part or in whole of the Equipment or any part thereof, nor shall it relieve Seller from any of its responsibilities under the Purchase Order, and the present General Terms.

#### **16. PACKING AND MARKING**

Seller shall, in accordance with the requirements of carriers, adequately protect, pack and mark the Equipment for transportation to its final destination and/or for prolonged storage. Each package shall be numbered and labeled with Buyer's Purchase Order number, stock number and any other marks stipulated in the Purchase Order. An itemized list of the contents shall be fastened in a waterproof covering on the outside of each package. All costs for such protection, packing and marking are deemed to be included in the Price.

#### **17. DELAYS DUE TO BUYER - COMPLETION TIME**

17.1. In the event Seller should be delayed in the completion of the Work by reason of any act or omission of Buyer or of another contractor or vendor employed by Buyer, the time within which the Work is to be completed shall be extended by the period of such delay, or a mutually agreed upon period but no such extension shall be made unless written notice thereof is given by Seller to Buyer within five (5) working days after the occurrence of such delay. Buyer and Seller shall agree on the actions to be taken to mitigate the consequences of such delay. Seller hereby waives all claims for additional payments by reason of such delay which are in excess of those provided for under the Purchase Order.

17.2. Time is of the essence hereof and (a) if the Work or any part thereof is not completed within the time specified in the Purchase Order, or within a reasonable time for completion of such Work if no time is specified, Buyer may without prejudice to Buyer's other rights under the Purchase Order charge Seller for all costs of every character whatsoever that Buyer has incurred and/or will incur as a result of or in any way connected with Seller's failure to meet the agreed upon completion date(s).

(b) if the Equipment or any part thereof is not delivered within the time specified in the Purchase Order, or within a reasonable time for delivery of such Equipment if no time is specified, Buyer may, without prejudice to Buyer's other rights under the Purchase Order, either: (x) refuse to accept such Equipment and rescind the Purchase Order, or (y) charge Seller for all costs of every character whatsoever that Buyer has incurred and/or will incur as a result of or in any way connected with Seller's failure to meet the agreed upon delivery date(s).

#### **18. RIGHT TO USE AND/OR OCCUPANCY**

Buyer shall have the right to use and/or occupy any portion of the Work which in the opinion of Buyer has been completed or substantially completed in accordance with the Purchase Order, provided that Buyer shall first have given to Seller written notice of Buyer's Acceptance of such portion of the Work which has been completed in accordance with the Purchase Order. Any such use and/or occupancy shall not, however, be deemed an acceptance of any part of such portion of the Work which has not been completed in accordance with the Purchase Order. The provisions of this Article shall apply to all or such part of the Work so accepted as from the date of the Acceptance of such part of the Work.

#### **19. OVERTIME WORK**

19.1. Overtime Work performed at Seller's election and Overtime Work, if any, required under any provision of the Purchase Order shall be performed at Seller's sole expense. Casual Overtime Work required by the nature of the Work such as the pouring and finishing of concrete, the lifting and setting of equipment, the erection of structural steel and piping and Overtime Work required for its safe, proper or expeditious performance shall for the purpose of payment not be classified as Overtime Work.

19.2. If Seller is requested or authorized to perform Overtime Work under the Purchase Order, Seller shall perform such Overtime Work, but subject to Seller obtaining the authorization(s) required by law.

#### **20. ACCEPTANCE**

20.1. Acceptance of the Equipment or any part thereof shall occur after delivery in accordance with the Purchase Order or after completion and acceptance of installation if Seller is obligated to install said Equipment, unless rejected by Buyer in writing within 30 days after such delivery or completion and acceptance of installation. However, if the Purchase Order provides for a performance test, acceptance of the Equipment or any part thereof will not occur until such tests have been successfully completed in accordance with Article 11.3. Acceptance of the Equipment shall not relieve Seller from any of its responsibilities under the Purchase Order, such as its responsibility to meet the warranties set forth in Article 11.

20.2. Acceptance of the Work or any part thereof (cf. Article 18) shall occur when it is the opinion of Buyer that the Work has been completed in accordance with the provisions of the Purchase Order, whereupon Buyer shall promptly give Seller written notice of Buyer's Acceptance of the

Work. Acceptance of the Work shall not relieve Seller from any of its responsibilities under the Purchase Order.

20.3. Buyer has the right to refuse acceptance of the Equipment or any part thereof if not accompanied by the documents defined in the Purchase Order.

20.4. Quantities of the Equipment shipped in excess of the quantities specified in the Purchase Order may be returned at Seller's expense.

20.5. Seller shall supply free of charge such certificates of origin of materials, components and/or of the Equipment as specified in the Purchase Order or required by laws and regulations.

#### **21. PRICE - TERMS OF PAYMENT**

21.1. The Price for delivery of the Equipment is valid "Delivered named point of destination, duties and taxes unpaid", unless any other delivery term has been expressly agreed upon in the Purchase Order.

21.2. Except as otherwise provided for under these terms and conditions or under the Purchase Order, the Price is firm and not subject to any escalation or adjustment of any kind (including Seller's failure to consider certain factors that affect the Price).

21.3. Seller will invoice hundred percent (100 %) of the Price after delivery of the Equipment and completion of the Work.

21.4. The invoice shall (a) be rendered as a hard copy separately for each delivery in case partial deliveries are allowed; (b) mention the Purchase Order number; and (c) be submitted in duplicate.

21.5. The invoice will be paid by Buyer within ninety (90) days after the date of receipt by Buyer of a valid and correct invoice. In the event a cash discount is granted the invoice due date will be calculated from the date the invoice is received by Buyer. Buyer will execute payments by whichever method Buyer deems appropriate.

#### **22. RECORDS AND BOOKS OF ACCOUNTS**

If in accordance with the Purchase Order, the Work will be performed on a Time and Material basis, Seller agrees to keep and cause its subcontractors to keep, proper records and books of accounts showing all data necessary for determining the cost, amounts, and charges earned under the Purchase Order, in such detail as is requested by Buyer and such records and books of account shall be open to audit by a representative of Buyer at all reasonable times during the performance of the Work and for a period of eighteen months (18) after the Acceptance of the Work or sooner termination of the Purchase Order.

#### **23. WARRANTY**

23.1. Seller hereby warrants that the Equipment and the operation thereof shall conform to the Purchase Order and that the Equipment and all components and parts thereof shall be of merchantable quality and free from defects whatsoever. If the Equipment, or any part thereof, fails to meet any or all of the foregoing warranties at any time prior to the Expiration Date of the warranty period, hereinafter defined, then, upon Buyer's request for corrective work, Seller shall, at its sole expense, promptly and within such a time and in such a manner as to minimize production interruption and/or losses of the facility in which the Equipment is incorporated, either: (a) dismantle, repair or correct said Equipment, component or part, at the place of installation, to the extent necessary to cause it to meet the foregoing warranties and re-install it; or (b) dismantle and remove said Equipment, component or part from its place of installation and either: (x) repair or correct it to the extent necessary to cause it to meet the foregoing warranties and reinstall it at its place of installation, or (y) furnish and install at said place of installation new Equipment or a new component(s) or part(s) which will meet the foregoing warranties and all other provisions of the Purchase Order applicable to the Equipment and the components and parts thereof.

23.2. Seller hereby warrants that the Work shall conform to the Purchase Order and that the Work shall be free from (a) defects in consumables and workmanship, and (b) defects in or due to design (other than any design supplied or specified by Buyer. If the Work, or any part thereof, fails to meet any or all of the foregoing warranties at any time prior to the Expiration Date of the warranty period, hereinafter defined, then, upon Buyer's request for corrective work, Seller shall, at its sole expense, promptly and within such a time and in such a manner as to minimize production interruption and/or losses of the facility in which the Work is incorporated, repair or correct said Work, or any part thereof, to the extent necessary to cause it to meet the foregoing warranties.

23.3. As used herein the "Expiration Date" shall mean twelve (12) months after the date the Equipment is put in operation, but in no event later than eighteen (18) months after delivery of Equipment or Preliminary Acceptance of the Work. In any event the warranty periods shall each be extended by the time it takes, after Seller receives Buyer's request for corrective work or replacement, to complete all of the corrective work and replacements required hereunder for such Equipment or Work. All Equipment, components or parts thereof repaired, corrected or replaced and all corrected Work under this provision, shall be similarly warranted by Seller, the period of such warranty being calculated from the date of repair, correction or replacement.

23.4. If Seller fails to comply with the provisions of this Article, promptly after any such request, or if the Work or the Equipment or any part thereof reveals defects requiring urgent repair or correction, Buyer shall have the right to perform or cause to be performed the work provided for above at Seller's risk and without prejudice to Buyer's other rights under the Purchase Order. After such work has been carried out, Seller shall pay Buyer the cost thereof incurred by Buyer within thirty (30) days after receipt of the invoice.

23.5. In the event the Equipment is modified or changed pursuant to the provisions of this Article, Seller shall modify or replace spare parts delivered to Buyer at Seller's sole expense.

23.6. If the Purchase Order includes a performance warranty and provides for a performance test to be conducted in order to establish that the Equipment meets said performance warranty, Seller warrants that the Equipment shall meet the performance warranty continuously during said performance test. The aforesaid performance test shall be conducted and completed within the period specified in the Purchase Order and shall not be repeated more than twice. If the Equipment fails to meet said warranty, Seller shall, at its sole expense, promptly proceed with corrective action as set forth in this Article whereupon a new performance test shall be carried out. If within the specified time or after three performance tests, whichever comes first, the Equipment continues to fail to meet said warranty, Buyer shall have the right to cancel the Purchase Order and put the Equipment at Seller's disposal at the place where it is located at that time, whereupon Seller shall promptly remove the Equipment therefrom and refund to Buyer all amounts paid by Buyer under the Purchase Order.

23.7. In the event that the Equipment fails to meet the warranties under the Purchase Order by reason of the failure of the Equipment to operate during the performance test in accordance with the energy efficiency rate (hereinafter called Energy Efficiency Rate) set forth in the Purchase Order, and Seller fails to remedy such failure within a reasonable time after being so requested in writing by Buyer, Seller shall pay to Buyer an amount per unit of energy that the Equipment operates below the Energy Efficiency Rate as defined in the Purchase Order. If however the Equipment fails to meet an Energy Efficiency Rate limit as defined in the Purchase Order, then Buyer shall have the right to cancel the Purchase Order and put the Equipment at Seller's disposal at the place where it is located at that time, whereupon Seller shall promptly remove the Equipment therefrom and refund to Buyer all amounts paid by Buyer under the Purchase Order.

23.8. In the event the Purchase Order covers more than one (1) unit of Equipment, then all of the warranties mentioned above shall be separately applicable to each such unit of Equipment.

#### **24. LIABILITY**

Seller is liable for and shall hold harmless and indemnify Buyer and Buyer's customer and their employees and agents, against any and all claims, liabilities, losses, damages and expenses of every character whatsoever, asserted against or incurred by Buyer as a result of or in any way connected with Seller's performance or Seller's failure to perform under the Purchase Order.

#### **25. FORCE MAJEURE**

25.1. Neither party shall be liable for default or delay caused by any occurrence beyond its reasonable control, but not including strikes limited to Seller's or his subcontractor's manufacturing plant and/or workshop, shortage of labor or delay in delivery of materials to be furnished by Seller, whether or not due to congestion at Seller's plant or elsewhere, or due to default on the part of a subcontractor except due to force majeure on the part of said subcontractor. In the event Seller should be delayed in the completion of the Equipment by reason of any such occurrence, the time within which the Equipment is to be completed shall be extended by the period of such delay but no such extension shall be made unless written notice thereof is given by Seller to Buyer within five (5) working days after the commencement of such occurrence. No extra payment shall be made by Buyer to Seller for any expenses over and above those provided in the Purchase Order incurred by Seller by reason of any such delay.

25.2. In the event the performance under the Purchase Order is delayed for more than thirty (30) days as a result of any contingency referred to in Article 25.1, Buyer shall be entitled to terminate in writing without prior notice to Seller the Purchase Order in whole or in part in accordance with the provisions of Articles 31.3 and 31.4, however the extra costs referred to in Article 31.4 paragraph (c) will not be deducted from the amounts due by Buyer to Seller.

#### **26. TITLE TO EQUIPMENT**

Title to Equipment shall pass to Buyer upon delivery of the Equipment in accordance with the applicable terms and conditions under the Purchase Order, provided, however, that in the event payment of the Price or any installment thereof is made by Buyer prior to delivery of the Equipment to Buyer, title to Equipment as it is manufactured and any portion thereof and all materials intended for the Equipment as soon as they arrive in Seller's premises, or Seller's subcontractor's premises, or are appropriated to the Equipment shall pass to Buyer at the moment such payment is made. Buyer's title to the Equipment or any part thereof shall neither constitute nor be deemed to constitute acceptance of the Equipment or any part thereof by Buyer and shall neither limit nor be deemed to limit in any manner whatsoever the rights of Buyer and the obligations of Seller under any other provision of the Purchase Order.

#### **27. LIENS AND ASSOCIATED CHARGES**

Seller shall indemnify and save harmless Buyer from and against liens against the Equipment or any portion thereof. Seller shall promptly advise Buyer of the existence of any such liens and/or charges. If at any time there should be evidence of any such lien or charge, Buyer shall have the right to retain from any payment then due, or thereafter to become due, under the Purchase Order an amount sufficient to discharge such lien or charge. Should there prove to be any such lien or charge after all such payments have been made, Seller shall refund to Buyer all moneys that the latter may be compelled to pay in discharging such lien or charge.

#### **28. SECRECY**

As used herein, "Confidential Information" shall mean and encompass any and all information, know-how and data, whether technical or non-technical, which is in any way, heretofore or hereafter, disclosed to Seller by or on behalf of Buyer in the course of, as a result of, or in

connection with the Purchase Order, whether or not specifically marked confidential. Except as otherwise agreed to in writing by Buyer, Seller shall keep confidential and prevent the disclosure to or use by others of Confidential Information, except on a confidential basis to such of its employees, vendors and subcontractors who need such Confidential Information in order to enable Seller to properly execute the Purchase Order and who sign secrecy agreements obligating them at least to the same extent as Seller is obligated under this provision, and Seller shall not use or permit to be used Confidential Information for anyone other than Buyer.

#### **29. PATENTS, TRADEMARKS AND COPYRIGHTS**

Seller shall protect and indemnify Buyer and Buyer's customer from and against claims, damages, judgments, expenses and loss arising from infringement or alleged infringement of any patent or copyright, by any item of Equipment (or any part thereof) and/or arising from the use by Buyer or Buyer's customer of the Equipment or the Work, and Seller shall defend and settle at its sole expense any suit or proceeding brought against Buyer or Buyer's customer for such infringement, provided that Seller is notified promptly in writing of the commencement of such suit or proceeding and provided further that Buyer shall not settle or compromise any such suit or proceeding without the prior written consent of Seller. The provisions of this paragraph, however, shall not apply to infringement caused by specifications furnished by Buyer.

#### **30. TERMINATION FOR CONVENIENCE**

Buyer may at any time terminate the Purchase Order in whole or in part, whether or not Seller is in default, by giving written notice to Seller and Buyer and Seller shall negotiate an equitable amount to be paid by Buyer to Seller to compensate Seller for the demonstrable actual costs incurred by Seller as a result of Buyer's termination under this provision.

#### **31. TERMINATION FOR DEFAULT**

31.1. In the event that : (a) Seller should be or become financially insolvent, should make a general assignment for the benefit of creditors, should have any proceeding brought by or against it seeking any reorganization, rearrangement, composition, readjustment, liquidation, dissolution, or similar relief, under the bankruptcy law or under any other applicable governmental or other law or regulation, or should have any proceeding brought seeking the appointment of a receiver or similar officer of the court with respect to Seller's business, and/or (b) Seller disregards laws, ordinances, governmental rules or regulations or instructions from Buyer which are consistent with the Purchase Order as evidenced by written notices from Buyer to Seller, and/or (c) Seller fails to perform or fulfill, at the time and/or in the manner herein provided, any obligation or condition required to be performed or fulfilled by Seller hereunder, including failure to supply the quality desired and failure to keep the specified delivery time, and such failure is not excused under the FORCE MAJEURE provision or is not remedied within fifteen (15) days after Seller's receipt of written notice from Buyer specifying such failure, Buyer shall have the right to terminate or rescind de jure and without summons or prior notice to Seller the Purchase Order in whole or in part, with immediate effect, by written notification given at any time after such events.

31.2. In the event that Buyer has reason to believe that Seller will not be able to perform or fulfill, at the time and/or in the manner herein provided, any obligation or condition required to be performed or fulfilled by Seller hereunder, including failure to supply the quality desired and failure to keep the specified delivery time and such failure is not excused under the FORCE MAJEURE provision and Seller either disagrees with or remains silent about Buyer's contention, Buyer shall have the right to appoint, at its sole option, an independent surveyor to assess whether or not Buyer's contention is correct. In the event Buyer's contention is confirmed in writing by said independent surveyor, then Buyer shall have the right to terminate or rescind de jure and without summons or prior notice to Seller the Purchase Order in whole or in part, with immediate effect, by written notification given at any time after such event, in which case Seller shall pay the costs and expenses related to the independent surveyor's audit. In the event, the independent surveyor confirms in writing to Buyer, that Seller will be able to meet all his obligations in the manner and within the time as required under the Purchase Order, then the costs and expenses related to the independent surveyor's audit will be borne by Buyer.

31.3. In the event of such termination or rescission Seller shall immediately discontinue all Work relating to the Purchase Order or to the part thereof so canceled, and shall at Buyer's option either cancel all outstanding orders for materials and/or Work or assign any of such orders to Buyer. Seller shall promptly deliver to Buyer all specifications, drawings, certificates and all other documentation relating to the Equipment or to the part thereof so canceled and shall notwithstanding any lien or any dispute between Buyer and Seller with regard to Seller's default or in consequence thereof of any character whatsoever, allow Buyer, at Buyer's sole option, to take possession of the whole or a part of the Equipment so canceled and remove it from Seller's or its subcontractor's premises. Buyer shall have the right to complete the Equipment/Work or the part thereof so canceled by whatever method Buyer may deem expedient.

31.4. Should Buyer elect to exercise its sole option to take possession of the whole or part of the Equipment/Work pursuant to Article 31.3, Seller shall be entitled to receive from Buyer payment of the balance between (a) The Price for the Equipment and Work or any part thereof which has been completed under the Purchase Order up to the Termination Date and that meet the specifications defined in the Purchase Order; (b) Seller's cost of labor, consumables and other things utilized in performing the Work or manufacturing the Equipment, or any part thereof which is in process under the Purchase Order on the Termination Date and that meet the specifications defined in the Purchase Order; (c) Seller's cost for all consumables, parts and materials and other things which are not covered by paragraph (b) above, which were purchased specifically for use in performing the Work or manufacturing the Equipment under the Purchase Order and which cannot be used by Seller for other purposes and that meet the specifications defined in the Purchase Order; (d) Seller's cost for engineering work required by the terms of, and performed under, the Purchase Order and that meet the specifications defined in the Purchase Order, Less the amounts specified hereunder: (a) the amounts previously paid under the Purchase Order; (b) all claims of Buyer against Seller, of every character whatsoever arising out of or in connection with or resulting from the Purchase Order and/or the Equipment/Work (including claims on account of Seller's failure to perform its obligations under the Purchase Order); (c) any reasonable extra costs incurred by Buyer through Seller's default. Any excess over such balance shall be paid by Seller to Buyer.

31.5. Seller shall furthermore indemnify Buyer against all claims, liabilities, losses, damages and expenses of every character whatsoever incurred by Buyer as a result of Seller's default.

**32. REMEDIES**

The rights and remedies of Buyer (including indemnifications payable by Seller) set forth in the Purchase Order are in addition to and shall not be exclusive of or prejudicial to any other rights or remedies of Buyer at law or in equity on the account of Seller's failure to perform its obligations under the Purchase Order.

**33. APPLICABLE TERMS**

If the Purchase Order constitutes an offer, Seller's acceptance of the Purchase Order is hereby expressly submitted to the provisions of the Purchase Order and shipment of the Equipment and performance of the Work or any part thereof shall be deemed to constitute such acceptance. If the Purchase Order constitutes an acceptance of an offer such acceptance is expressly made conditional on Seller's assent to the terms of the Purchase Order, and shipment of the Equipment and performance of the Work or any part thereof covered hereunder shall be deemed to constitute such assent.

**34. NON-WAIVER**

No waiver by either party of any breach by the other party of any of the provisions of the Purchase Order shall be construed as a waiver of any subsequent breach, whether of the same or of any other provisions of the Purchase Order.

**35. ENTIRE AGREEMENT**

The Purchase Order sets forth the entire agreement between the parties hereto pertaining to the subject matter hereof, and there are no other documents nor oral understandings, representations or warranties affecting it. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the provisions of the Purchase Order.

**36. AMENDMENTS**

No modification or amendment of any of the provisions of the Purchase Order shall be binding upon either party unless made in writing and signed by the duly authorized representatives of the parties hereto.

**37. SEVERABILITY**

The eventual invalidity of a provision of the Purchase Order shall not affect the validity of the remaining provisions thereof which will be construed when possible in such a way that the purpose of the Purchase Order, as intended by the parties, can be achieved in a lawful manner.

**38. PUBLICITY**

No information relating to the Equipment shall be released by Seller, either before, during or after delivery of the Equipment or performance of the Work, for publication or for advertising purposes without the prior written consent of Buyer.

**39. ASSIGNMENT**

Seller may not, without prior written consent of the buyer, assign or otherwise transfer to a third party the benefits or obligations resulting from the Purchase Order or in connection therewith, in whole or in part.

**40. NOTICES**

All notices that are required to be given pursuant to the Purchase Order shall be sent by registered mail. A notice shall be deemed to have been given on the date of mailing of the registered letter as shown on the post office receipt. All notices to Buyer shall be sent to the mailing address indicated on the purchase order document.

**41. HEADINGS**

The subject headings of the Articles are included for purposes of convenience only and shall not affect the construction or the interpretation of any of the provisions hereof.

**42. GOVERNING LAW**

The Purchase Order shall be governed by and construed in accordance with the laws of Belgium. All disputes arising out of or in connection with the Purchase Order shall in first instance be settled by the courts of Brussels. The application of the Uniform Law on the International Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods is excluded.

<b>FIELD CHANGE NOTICE (FCN)</b>					
From: S.A.AJINOMOTO OMNICHEM N.V.	("Buyer")				
To: .....	("Seller")				
Buyer hereby orders Seller and Seller accepts to make the change(s), addition(s) or omission(s) as described below subject to the terms and conditions contained herein and in the original Purchase Order or Contract referred to hereafter.					
Purchase Order: .....	Date of FCN: .....				
Description of the change(s), addition(s) or omission(s): (specify amount of labor, material and other things required or deleted)					
Seller's commitment or estimate for:					
<input type="checkbox"/> Impact on the original price (currency of the contract)  <input type="checkbox"/> Impact on contractual delivery time (working days)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 50%; padding: 2px;">FIRM</th> <th style="width: 50%; padding: 2px;">ESTIMATED</th> </tr> </thead> <tbody> <tr> <td style="height: 40px;"></td> <td style="height: 40px;"></td> </tr> </tbody> </table>	FIRM	ESTIMATED		
FIRM	ESTIMATED				
Buyer's representative: ..... Seller's representative: .....					
..... (signature)	..... (signature)				
..... (name)	..... (name)				
Distribution : orig: Buyer's Procurement Manager cc : Buyer's Project Manager Buyer's Requisitioner Buyer's Department Manager Seller					