

Dadco - General Terms and Conditions of Delivery and Payment

1. Definitions

The following words have the following meanings:

“Agreement”	the sales agreement to which these conditions apply and any appendices thereto;
“Affiliate”	in relation to any person, a Subsidiary of that person or a Holding Company of that person or any other Subsidiary of that Holding Company, who has been notified by the Buyer to the Seller as an acceptable affiliate;
“Buyer”	the buyer specified in the Agreement;
“Holding Company”	in relation to a person, any other person in respect of which it is a Subsidiary;
“Material”	the commodities specified in the Agreement;
“Order Confirmation”	a confirmation sent by the Seller, confirming the quantities of Material to be delivered following receipt of an Order Request;
“Order Request”	a periodic request from the Buyer for a partial delivery of the Material, subject to the Agreement (unless otherwise agreed with the Seller);
“Seller”	the seller specified in the Agreement;
“Subsidiary”	a subsidiary within the meaning of section 1159 of the Companies Act 2006, and in interpreting those provisions for the purposes of the Agreement, a company is to be treated as a member of a subsidiary even if its shares are registered in the name of (i) a nominee, or (ii) any party holding security over those shares, or that secured party's nominee.

2. Conclusion and Contents of Agreements

These General Terms and Conditions of Delivery and Payment (the "Terms") shall form an integral part of the Agreement. All deliveries of Material by the Seller shall be subject to the Agreement and these Terms. The parties expressly agree that no terms or conditions other than the Agreement and the Terms will govern the delivery of or payment for Material, even if other terms or conditions appear in or form part of an Order Request.

Upon delivery of the Material, these Terms and the relevant Order Confirmation shall be deemed accepted by the Buyer.

The Buyer shall deliver Order Requests during the period of the Agreement, requesting the delivery of Material in accordance with the Agreement.

An Order Request issued by the Buyer or by any of its Affiliates in accordance with the Agreement shall be binding on the Buyer from the date of its delivery to the Seller. Seller can accept to fulfil deliveries of the quantity of Material requested in the Order Request at its choice within a period of 4 weeks by sending the Buyer (or its Affiliate) an Order Confirmation or by supplying the Buyer (or its Affiliate) with the ordered goods in full or in the form of a partial delivery (in accordance with clause 8 of these Terms).

3. Prices, Freight and Loading

Unless otherwise provided in the Agreement or in the Order Confirmation, Seller's prices shall be effective exclusively FCA Stade (as defined in INCOTERMS 2010, published by the International Chamber of Commerce, Paris, France, which are incorporated by reference to the Agreement) on a bulk basis.

Unless otherwise provided in the Agreement, Seller shall load all Material, and the freight shall remain the responsibility of the Buyer. In the absence of specific instructions from the Buyer, the Seller may arrange the freight necessary, at the Buyer's expense, including all delivery requirements. Promptly on demand by the Seller, the Buyer shall indemnify the Seller for any freight and delivery costs and expenses, including any increased freight charges charged to the Seller.

The risk of loss or damage to the Material shall pass to the Buyer on delivery.

4. Payment

Payment shall be effected as specified in the Agreement, free of any set-off or deduction. Payment shall be considered to have been made when the amount has actually been received by Seller as cleared funds.

All bank charges shall be for the Buyer's account. All costs relating to non-compliance with the Agreement by Buyer, including the costs of collection of payments, shall be for the Buyer's account.

The Buyer shall pay default interest on any unpaid amount as from the due date until the date of receipt of the overdue amount, calculated at a rate of five per cent (5%) above the European Central Bank's base rate of interest per annum. Nothing in the previous sentence shall limit the Seller's right to claim damages or other remedies available to it under the Agreement or in law.

If the Buyer is in default with any payment due to the Seller under the Agreement or if the Seller has reasonable grounds to believe that payment may not be made by the Buyer when due, the Seller shall be entitled to suspend its performance of the Agreement until such payment has been made.

Seller may unilaterally, by giving notice to the Buyer, change the payment terms in the event of circumstances which, in the opinion of Seller, may have a material effect on the creditworthiness of Buyer, and / or Buyer's ability to perform its obligations. Seller shall be entitled to request advance payment or performance / payment security regardless of any agreements previously entered into. Seller may specify a reasonable period in which Buyer must pay in advance or provide performance / payment security. If the Buyer fails to comply with such request within the specified period, Seller shall be entitled to immediately terminate the Agreement. The Buyer's continued performance of the Agreement shall constitute acceptance of the changed payment terms notified to it by the Seller.

5. Taxes

Buyer shall be liable for payment of all taxes and duties, if applicable, imposed by any national, state or local government authority on the Material delivered hereunder or on its transportation from the point where risk passes to the Buyer.

6. Quality, Sampling and Quality Analysis

The Seller shall, together with each delivery, provide three (3) samples of the Material for analysis. A copy of the report of the analysis and one (1) sample of the Material shall be provided to the Buyer upon request on or after delivery of the Material. Two (2) samples shall be retained by the Seller, one (1) of which shall be sealed for the purposes of independent analysis.

Sampling and quality analysis shall be done in accordance with standard practices at AOS applicable at the time of the delivery of the Material.

The Material delivered is deemed to comply with Seller's standard specification unless Buyer notifies Seller, within fourteen (14) days of delivery of the Material, that the Material does not conform to the applicable specification, and the nature of that non-conformity. Seller shall advise the Buyer, within fifteen (15) days of receipt of Buyer's notice, whether or not it agrees with the Buyer's analysis. In case of disagreement between Seller and Buyer about the conformity of the Material, the sealed sample retained by the Seller will be analysed, at the request of either party, by an independent referee laboratory (selected by mutual agreement of the parties) within three (3) calendar months of the date of delivery of the Material. If the parties fail to select such an independent referee laboratory within one month of the request by either party, the disagreement shall be resolved in accordance with clause 19 of these Terms. The result of the referee analysis will be definitive as to the specification and nature of the Material as delivered by the Seller and binding on both parties. The Buyer shall bear the cost of the independent analysis, unless the analysis has confirmed that the Material delivered does not conform to the Seller's standard specification. If it is determined that the Material delivered to the Buyer does not conform to the applicable specification, the parties shall meet to reach an amicable settlement of the loss suffered (if any) by the Buyer. If an amicable settlement on loss cannot be reached, Seller shall, at its election, (i) replace the non-conforming Material or (ii) repay to the Buyer the amount paid by it for the non-conforming Material. The Buyer may return the non-conforming Material to the Seller at Seller's cost only if the terms and cost of shipment have been agreed with the Seller in advance.

Replacement of the non-conforming Material or repayment of the amount paid for the non-conforming Material shall be the Buyer's sole remedy in relation to failure to deliver the Material or delivery of the Material which does not conform to the specifications.

Seller warrants that (i) the Material delivered shall conform to the specifications set out in the Seller standard specification, (ii) the Material delivered shall be free from any rights of third parties and (iii) the Seller will convey good title in and to the Material. No other statutory and other conditions, terms or warranties, express or implied, shall apply to the Material delivered or to be delivered hereunder, including in relation to description, quality and/or fitness for purpose of the Material under English law.

7. Liability

The total aggregate liability of the Seller under the Agreement shall be limited to the amount paid for the order of the Material to which the liability relates. In no circumstances shall the Seller be liable for any incidental, consequential, indirect, special or contingent damages, loss of opportunity, loss of contract or loss of profit.

This limitation of Seller's liability also applies to the personal liability of Seller's employees, associates, workers, agents and auxiliary persons.

8. Partial Deliveries and delivery times

The Quantity of the Material may be delivered by way of partial deliveries requested in Order Requests confirmed by Order Confirmations. The Seller shall use reasonable endeavours to deliver the Material in the quantities specified in Order Requests that have been confirmed by way of an Order Confirmation. The Buyer acknowledges that the quantity and weight of Material actually delivered and reflected in the applicable invoice may deviate from the quantity specified in the Order Confirmation.

Deliveries requested by the Buyer shall be evenly spread throughout the delivery period, unless otherwise agreed by the Seller. If an acceptance period for delivery of the Material has been agreed, the Seller shall be entitled to make deliveries after its expiration.

Delay or failure by the Seller to make a delivery does not entitle the Buyer to terminate the Agreement, claim any damages or cancel an Order Request which has been confirmed by an Order Confirmation.

9. Force Majeure

If either party should, despite all reasonable efforts, be prevented or hindered, directly or indirectly, by circumstances beyond its control ("*Force Majeure*") from performing any of its obligations under the Agreement it shall be relieved from performance of these obligations (except for the obligation to make payments) but only during the period that the *Force Majeure* and its consequences continue and to the extent so prevented or hindered, and it shall not be liable for any delay or failure in the performance thereof or loss or damage which the other party may suffer as a consequence of such delay or failure.

Force Majeure includes fire, explosion, flood, earthquake, extreme adverse weather conditions, riot, war or threat of war, accident, act of God, embargo, legislation, regulation or directive having the force of law, shortage of or a breakdown in transportation facilities, civil commotion, act or threat of terrorism, unrest or disturbance, compliance with any order or instruction of any port, transportation, local or other authority, non-availability or shortage of electricity, gas, fuel or raw materials, failure of Seller's supplier to supply, breakdown or malfunction of plant or any other cause beyond the control of the affected party, whether similar or dissimilar to the causes mentioned above.

The affected party shall as soon as reasonably possible after its occurrence give notice of the *Force Majeure* to the other party with details and the expected duration of the *Force Majeure* and its consequences.

The affected party shall use all reasonable endeavours to terminate the *Force Majeure* and its consequences and upon termination shall give notice thereof to the other party, provided that neither party shall be required to settle an industrial dispute under particular conditions or deal with an industrial dispute in a particular way.

Notwithstanding any other provisions of this clause 9, the Buyer shall accept delivery of and pay for any Material for which an Order Confirmation has been issued by Seller prior to being notified by Buyer of any *Force Majeure*. If performance of any of the affected party's obligations is prevented due to *Force Majeure* for a period of 180 consecutive days or more, the

unaffected party may by notice to the other party terminate the Agreement. Such termination shall not prejudice any rights of the parties arising prior to the date thereof.

10. Retention of Title

Seller reserves title to all Material delivered by the Seller until satisfaction in full of all present and future claims due to the Seller under the Agreement.

In the event that any Material being subject to retention of title is connected, mixed or processed with any other material, the Seller acquires a co-ownership in any material newly created or in any material arising as a result of a mixture in proportion to the value of Seller's Material being subject to retention of title as compared to the value of the other material as at the time of the connection, mixture or processing. The Seller shall not assert any claims in respect to the increase in value arising as a result of such connection, mixture or processing.

In the event of a sale of any Material partially or entirely owned by the Seller, the purchase price claim under the resale is hereby assigned to the Seller up to the amount of the share of the value of the Seller's Material in the aggregate purchase price. Seller hereby accepts such assignment. Any consideration received by the Buyer (material assets, cash or due from banks) shall be accepted as the Seller's property.

In the event that the value of the claims assigned to the Seller by way of security exceeds Seller's claims secured by way of retention of title towards the Buyer by more than 20 %, the Seller shall be obliged, upon the request of the Buyer, to release any additional security provided.

All assets (material, monies, etc.) entirely or partially owned by the Seller shall be separately stored by the Buyer and adequately insured against loss, theft and damage by fire, water etc. To the extent that a hand-over is required, such hand-over shall be substituted by the storage of the Material etc. on the Seller's behalf by the Buyer free of charge. The Buyer shall not be entitled to pledge the Seller's Material or transfer such Material by way of security. Any third-party seizure shall immediately be notified to the Seller by submitting the documents required in connection with such an intervention. The costs of the intervention shall be borne by the Buyer.

11. Governing Law and Severability

The Agreement and all non-contractual obligations connected with it are made under and shall be governed and construed in accordance with English law. The UN Sales Convention (CISG) shall not apply.

Should any provision hereof be invalid or unenforceable, this shall not affect the validity of the remaining provisions.

12. Confidentiality

Except as required by law, each party shall keep the subject matter of the Agreement strictly confidential. Written approval by the other party has to be given before any commercial details of the Agreement can be disclosed to any third party, save that each party may disclose the contents of this Agreement to any of its Affiliates or to any person if so required by law to which it is subject.

13. Compliance with Laws

Each party hereby warrants to each other that, as at the date of the Agreement and at the date of each Order Request and Order Confirmation, it (i) has not engaged in any conduct in connection with the Agreement that is unlawful or otherwise restricted or prohibited under applicable competition laws and regulations; and (ii) has not given or offered to give, receive or agree to accept, any payment, gift or other advantage or done anything else which violates any applicable anti-corruption laws, including the UK Bribery Act and the relevant laws of Germany and of any other country in which it conducts its business.

14. Cancellation of Order Request

If the Buyer cancels an Order Request, Seller is entitled to receive a payment of 10% of the value of that order for costs arising from processing the order and for lost profit without submitting any evidence. This shall not prejudice the Seller's right to claim damages in excess of such payment.

15. Offsetting / withholding of payment

Buyer shall not be entitled to offset or to withhold payments under the Agreement unless such withholding or set-off has been expressly acknowledged and agreed by the Seller in writing and the Buyer's claims are undisputed or have been recognised by a non-appealable judgment or an arbitral award obtained in accordance with clause 19 of these Terms.

16. Successors / Assigns

The provisions of the Agreement shall be binding upon and inure to the benefit of the parties to it and their respective successors and permitted assigns. Buyer may not sell, assign, transfer, convey or delegate any of its rights or obligations under the Agreement without the prior written consent of the Seller. Notwithstanding anything to the contrary contained in the Agreement, nothing in the Agreement is intended to confer on any person other than the parties to it or their respective successors and permitted assigns, any rights, remedies, obligations or liabilities under or by reason of the Agreement.

17. Third parties

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or to enjoy the benefit of this Agreement.

18. Notices

Any notice under the Agreement shall be in writing and be sent by registered mail, courier, fax or email to the address, fax number or email address mentioned in the Agreement. Such notice shall be effective (a) if sent by registered mail, courier or email, upon delivery, evidenced by a delivery record and (b) if sent by fax, upon transmission, evidenced by a transmission record.

19. Dispute Resolution

Any dispute, controversy or claim arising out of or in connection with the Agreement, including the existence, legal validity, breach, amendment or termination thereof, shall be finally resolved, to the exclusion of the ordinary

courts, by arbitration in accordance with the rules of the London Court of International Arbitration ("LCIA Rules"), which LCIA Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. The seat, or legal place, of arbitration shall be London and the language to be used in the arbitral proceedings shall be English.

20. No Amendments

No amendment to this Agreement or the Terms will be effective, valid or enforceable unless it is in writing and expressly agreed by both parties. No amendment will be implied from the conduct of either or both parties.

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