5. Warranty, Liability and Notification of Defects

5.1 The Seller warrants the goods supplied by him to be free from defects which may reduce their value or affect their usability, to possess the agreed or guaranteed properties, to be suitable for the purpose stipulated in the order, to be in conformity with the generally accepted technical regulations, and to conform to the most recent legal provisions, regulations, to the German Law on the Safety of Appliances (Gerätesicherheitsgesetz) and to the appropriate safety specifications and rules for the protection of workers and prevention of accidents. Should the delivered goods fail to meet any or all of these requirements, Buyer shall be free to demand a remedy of the defect or the supply of defect-free goods, to cancel the contract or reduce the purchase price under the existing legal provisions, or to demand compensation for any losses or expenses incurred. If Seller has undertaken to guarantee the properties or durability of the goods supplied, Buyer can in addition lodge a claim under the terms of the guarantee. This shall not apply to defects or damage caused by:

a) normal wear and tear
b) inappropriate handling by Buyer.

Buyer shall notify Seller of any defects in the delivered goods as soon as they are discovered in the regular course of business. The above provisions shall apply mutatis mutandis to services such as assembly, erection, maintenance, etc.

5.2 Unless expressly agreed otherwise, the statutory warranty periods shall apply.

5.3 Seller’s warranty shall also cover any items manufactured by subcontractors.

5.4 If Seller is notified of a defect, the limitation period shall be extended by the time which elapses between such notification and the repair of the defect. If the item supplied by Seller is replaced by another new one, the limitation period shall begin anew. If the item is re-placed in part, the warranty period shall begin anew for the new parts.

5.5 Goods which are subject to complaint under the warranty shall remain at Buyer’s disposal until replacements have been supplied, whereupon they shall become the property of Seller.

5.6 In urgent cases, or if Seller defaults or fails in repairing a defect, Buyer may eliminate the defect himself at Seller’s expense or have itself repaired if of any of the other warranty rights mentioned in clause 5.1.

5.7 Acceptance of Seller’s supplies and services by Buyer shall not affect Seller’s obligations under the warranty law. Any additional or deleted services or supplies shall be stated separately in the invoice.

5.8 Seller shall hold Buyer harmless from any product liability claims or claims raised under the German Product Liability Law if the defect giving rise to the claim has been caused by Seller or any of Seller’s suppliers.

5.9 Notwithstanding these provisions Seller shall be liable under the existing legal provisions.

6. Tests

If tests are specified for the goods to be supplied, Seller shall bear the costs of such tests, including his own personnel costs, but excluding Buyer’s personnel costs.

Seller shall inform Buyer not less than one week in advance of the date on which the goods will be ready for testing and shall agree with him a date for the tests. If the goods are not presented for testing on this date, Buyer’s personnel costs shall be borne by Buyer.

If any defects are found in the goods which make it necessary to repeat the tests or conduct further tests, Seller shall pay all the personnel costs and other costs incurred in connection with testing the materials used by him in executing the order.

7. Insurance

7.1 Transport insurance shall in all cases be taken out by Buyer.

7.2 Seller shall take out at his own expense adequate third party liability insurance to cover damage resulting from services rendered by or goods delivered by or property belonging to him his personnel, or third parties commissioned by him. Seller shall, if so requested, submit to Buyer’s personnel showing the sums insured per policy.

7.3 The procurement of special assembly/errection insurance in addition to the third party liability insurance mentioned in clause 7.2 shall in each case be subject to agreement between Buyer and Seller.

7.4 Any machines, apparatus, etc. supplied by Buyer on loan will be insured by Buyer against the usual risks. Any further liability of Buyer for destruction of such machines, apparatus, etc., or damage thereby, shall be excluded, unless it has been caused willfully or through gross negligence.

8. Shipping Requirements

8.1 On the day on which the goods are dispatched, Seller shall send Buyer a detailed dispatch note for each consignment separately from the goods and invoice. The goods shall be accompanied by a delivery note and packing slip.

If the goods are sent by sea, the shipping papers and invoice shall state the name of the shipping company and the ship.

Seller shall choose the mode of transport most favorable and most suitable for Buyer.

Seller shall show in full the order reference number and point of unloading specified by Buyer in all dispatch notes, delivery notes, packing slips, bills of landing and invoices, on the outer packaging of the goods and elsewhere if appropriate.

8.2 Seller shall always pack, mark and ship dangerous goods in compliance with the appropriate national/international regulations. The company’s communication shall not only the risk category but also any further particulars required by the appropriate transport regulations.

8.3 Seller shall be liable for any damage caused by non-compliance with these provisions and shall pay any costs incurred thereby. He shall also be responsible for ensuring that these shipping requirements are complied with by subcontractors.

8.4 Any consignments of which Buyer is unable to take delivery because of non-compliance with these provisions shall be stored at Seller’s expense and risk. Buyer shall have the right to ascertain the contents and condition of such consignments. Tools and equipping material shall not be loaded together with goods.

9. Price and Conditions

Should Seller reduce his prices or grant better conditions, the prices and conditions effective at the date of delivery shall apply.

10. Invoce and Payment

10.1 Seller’s invoices shall agree with the respective orders in their wording, order of items and prices.

Any additional or deleted services or supplies shall be stated separately in the invoice.

10.2 Periods for payment shall begin on the specified dates, but not before the dates on which the goods and invoices are received.

10.3 Payment shall not be deemed to constitute acceptance of conditions and prices. The time of payment shall not affect Seller’s warranty obligations or Buyer’s right of complaint.

11. Documents

11.1 All drawings, standards, guidelines, methods of analysis, recipes and other documents supplied by Buyer to Seller for the manufacture of the goods to be supplied, as well as any such documents prepared by Seller according to special instructions from Buyer, shall remain Buyer’s property and shall not be used for any other purpose, reproduced or made available to third parties by Seller. Seller shall, if so requested, surrender them, and all copies and duplicates thereof, to Buyer without delay. Buyer reserves the industrial prop- erty rights to all documents he supplies to Seller.

Seller shall regard the inquiry and the order and all work in connection therewith as a trade secret and treat them accordingly as confidential. Seller shall be liable for any loss suffered by Buyer because he has failed to fulfil any of these obligations.

Seller shall provide Buyer with all documents needed for discussion of the goods or services to be supplied. Such discussion or other involvement of Buyer shall be exclusively within Seller’s responsibility and shall not release Seller from any warranty or other obliga-

11.2 Seller shall supply to Buyer in good time, at no cost to Buyer and without being specially requested to do so, all documents needed by Buyer for the use, erection, installation, prov- 131.3 ision, maintenance, storage, operation, servicing, inspection, maintenance repair of the goods sup- plied.

11.3 Whenever Buyer specifies standards or regulations, the latest version shall apply. Seller shall require Buyer to supply him with his works standards and regulations, in as far as they have not already been supplied.

11.4 Incidental costs

11.5 Mobile, models, tools, films, etc. that have been made by Seller to enable him to execute the order shall, on being paid for, become the property of Buyer, even if they remain in Seller’s possession. Seller shall be obliged to hand them over to Buyer on request.

13. Assembly, Erectio, Maintenance, Inspection, Repairs, etc.

13.1 If assembly, erection, maintenance, inspection, repairs, etc. are carried out in any of Buyer’s factories, such work shall be subject to the safety and conduct regulations for con- tractors and their personnel working on the premises of Lanxess Deutschland GmbH or its subsidiaries. These regulations will be supplied at the start of the assembly or erection or repair work, or they should be requested from Buyer’s plant security department.

13.2 Buyer shall not be liable for any property of Seller or his personnel which is brought onto Buyer’s premises.

14. Patent Infringement

Seller shall be liable for any infringement of patents, licenses or protective rights of third parties that may result from the supply or use of the goods. Any license fees payable shall be borne by Seller.

15. Advertising Material

Seller shall not refer to his business connection with Buyer in any information or advertising material except with Buyer’s written consent.

16. Applicable Law, Interpretation of Provisions, etc.

16.1 The present Conditions and the purchase contract shall be subject to German Law. Application of the UN Convention on Contracts for the International Sale of Goods dated April 11, 1980, which came into effect on January 1, 1991, shall be excluded.

16.2 Customs trade terms shall be interpreted in accordance with the most recent Incoterms.

17. Origin of Goods

The goods supplied must conform to the conditions of origin specified in the preferential agreements of the EEC, unless the order confirmation expressly states otherwise.

18. Place of Performance and Jurisdiction

Unless otherwise stipulated in the order, the place of performance shall be the point of delivery specified by Buyer. The place of jurisdiction shall be Cologne.

As at Leverkusen, January 2005