



Terms and Conditions of Supply

June 2003 Revision

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E3g Ltd – Terms and Conditions of Supply

(Revised June 2003)

1. Definitions

In these terms and conditions the following words shall have the following meanings:-

“the Company”	means E3g Limited or Eastland Compounding or any subsidiary thereof
“the Goods”	means the goods (including any instalment of the goods or any parts for them) which the Company is to supply in accordance with these terms and conditions.
“the Buyer”	means the corporate entity firm or person to whom Goods are supplied by the Company
“Incoterms”	means the international rules for the interpretation of trade terms of the International Chamber of Commerce as in force at the date when the Contract is made

2. Headings

The headings of these terms and conditions are for convenience only and shall have no effect on the interpretation thereof.

3. Making the Contract

3.1. The estimate which the Company provides to the Buyer comprises an invitation to treat which is open for a period of 30 days only from the date thereof, provided that the Company has not previously withdrawn it. Any order issued by the Buyer is subject to acceptance by the Company and a contract will only be formed when the Company has accepted the Buyer's offer to buy.

3.2. All orders are placed under these terms and conditions alone, and are accepted subject to the Company's minimum batch quantities. The



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Company reserves the right to request advance commitment in respect of raw materials for orders or schedules below such quantities.

- 3.3. The Buyer shall be responsible to the Company for ensuring the accuracy of the terms of any order (including any applicable specification) submitted by the Buyer, and for giving the Company any necessary information relating to the Goods within a sufficient time to enable the Company to perform the contract in accordance with its terms.
- 3.4. These terms and conditions exclude any other terms and conditions inconsistent therewith which a Buyer might seek to impose even though such other terms and conditions may be submitted in a later document or purport to exclude or supersede any terms or conditions inconsistent with them or may be contained in any other acceptance or counter-offer made by the Buyer.
- 3.5. Schedules issued by the Buyer shall form an integral part of any contract.
- 3.6. Unless otherwise agreed in writing the period of the contract shall be for the life of the product as anticipated when the order was accepted.
- 3.7. Any advice or recommendation given by the Company or its employees or agents to the Buyer or its employees or agents as to the storage, application or use of the Goods which is not confirmed in writing by the Company is followed or acted on entirely at the Buyer's risk and accordingly the Company shall not be liable for any such advice or recommendation which is not so confirmed.
- 3.8. The Company reserves the right to make any changes in the specification of the Goods which are required to conform with any applicable statutory of EU requirements or, where the Goods are to be supplied to the Company's specification, which do not materially affect their quality or performance.
- 3.9. No variation of these terms and conditions is permitted unless expressly accepted by the Company in writing.



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4. Cancellation

No order which has been accepted by the Company may be cancelled by the Buyer except with the agreement in writing of the Company and on terms that the Buyer shall indemnify the Company in full against all loss (including loss of profit), costs (including the cost of all labour and materials used) damages, charges and expenses incurred by the Company as a result of cancellation.

5. Price

- 5.1. All prices quoted are those ruling at the date of delivery of the Goods.
- 5.2. Unless otherwise stated all prices quoted are net ex-works exclusive of VAT.
- 5.3. The Company reserves the right at any time prior to delivery to adjust the price to take account of any increase in the cost of raw materials, labour or services or any currency fluctuations affecting the cost of imported materials.
- 5.4. The cost of pallets and returnable containers will be charged to the Buyer in addition to the price of the Goods, but full credit will be given to the Buyer provided that are returned undamaged to the Company before the due payment date.

6. Additional Costs

The Buyer agrees to pay for any loss or extra cost incurred by the Company through the Buyer's instructions or lack of instructions or through failure or delay in taking delivery or through any act or default on the part of the Buyer its servants, agents or employees.

7. Terms of Payment

- 7.1. Unless the Company otherwise agrees in writing all sums become due and payable under these terms and conditions on the 20th of the month following the month of delivery.
- 7.2. Time for payment shall be of the essence.
- 7.3. The Company reserves the right to charge interest at 3% above the base lending rate of the HSBC Bank plc from time to time on all overdue accounts,



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such interest being deemed to accrue on a day to day basis from the due date for payment under Clause 7.1

- 7.4. The price of the Goods shall be due in full to the Company in accordance with the terms of the contract and the Buyer shall not be entitled to exercise any set off, lien or other similar right or claim.
- 7.5. If the Buyer shall commit an Act of Insolvency as set out at Clause 16 then it/he will be deemed to have repudiated the Contract.
- 7.6. The Company reserves the right at any time at its discretion to demand security for payment before continuing with or delivering any order.
- 7.7. If upon the terms applicable to any order the price shall be payable by instalments or if the Buyer has agreed to take specified quantities of Goods at specified times a default by the Buyer of the payment of any due instalment or the failure to give delivery instructions in respect of any quantity of Goods outstanding shall cause the whole of the balance of the price to become due and payable forthwith.

8. Delivery

8.1. Delivery will be deemed to have been effected:-

- 8.1.1. When the Goods leave the Company's premises if the Customer's transport is used; or
- 8.1.2. When the Goods are delivered to the Customer's premises or such other premises as may be agreed by the Company and the Customer if the Company's transport is used.

8.2. All times or dates given for delivery of the Goods are approximate only and the Company shall not be liable for any delay in the delivery of the Goods however caused. Time of delivery is not of the essence. The Goods may be delivered by the Company in advance of the quoted delivery date on giving reasonable notice to the Buyer.



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- 8.3. The Company reserves the right to make delivery by instalments and to tender a separate invoice in respect of each instalment.
- 8.4. When delivery is to be by instalments or the Company exercises its right to deliver by instalments under Clause 8.3 hereof or if there be delay in the delivery of any one or more instalments for whatever reason this will not entitle the Buyer to treat the contract as repudiated or to damages.
- 8.5. Deviations in quality if the Goods delivered (representing not more than 10 per cent by value) from that stated in these terms and conditions shall not give the Buyer any right to reject the Goods or to claim damages and the Buyer shall be obliged to accept and pay at the contract rate for the quantity of the Goods delivered.
- 8.6. Where delivery is refused by the Buyer or is delayed suspended or made by instalments at the request of the Buyer or where the Company is unable to deliver the Goods due to circumstances beyond its reasonable control, the Company on giving notification of its readiness to deliver shall be entitled either to:-
- 8.6.1. Treat the contract as fulfilled and place the Goods into store. Delivery will be deemed to have taken place for invoicing payment and the passing of risk. The cost of storage and insurance of the Goods shall be for the Buyer's account; or
- 8.6.2. Sell the Goods at the best price readily obtainable and (after deducting all reasonable storage and selling expenses) account to the Buyer for the excess over the price under the contract or charge the Buyer for any shortfall below the price under the contract.

9. Export Terms

- 9.1. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in these terms and conditions but if there is any conflict between the provisions of Incoterms and these terms and conditions, the latter shall prevail.



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- 9.2. Where the Goods are supplied for export from the United Kingdom, the provisions of this Clause 9 shall (subject to any special terms agreed in writing between the Buyer and the Company) apply notwithstanding any other provision of these terms and condition.
- 9.3. The Buyer shall be responsible for complying with any legislation or regulations governing the importation of the Goods into the country of destination and for the payment of any duties on them.
- 9.4. Unless otherwise agreed in writing between the Buyer and the Company, the Goods shall be delivered FOB the air or sea port of shipment and the Company shall be under no obligation to give notice under Section 32(3) of the Sale of Goods Act 1979.
- 9.5. The Buyer shall be responsible for arranging for testing and inspection of the Goods at the Company's premises before shipment. The Company shall have no liability for any claim in respect of any defect in the Goods which would be apparent on inspection and which is made after shipment, or in respect of any damage during transit.
- 9.6. Payment of all amounts due to the Company shall be made by irrevocable letter of credit opened by the Buyer in favour of the Company and confirmed by a bank acceptable to the Company or, if the Company has agreed in writing on or before acceptance of the Buyer's order to waive this requirement, by acceptance by the Buyer and delivery to the Company of a bill of exchange drawn on the Buyer payable 60 days after sight to the order of the Company at such bank and branch as may be specified in the bill of exchange.

10. Inspection/Shortages

- 10.1. The Buyer is under a duty wherever possible to inspect the Goods on delivery or on collection as the case may be.
- 10.2. Where the Goods cannot be examined the carrier's note or such other notes as appropriate shall be marked "not examined".



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10.3. No liability for non-delivery partial loss or damage to the Goods occurring prior to delivery or for any claim that the Goods are not in accordance with the contract will attach to the Company unless claims to that effect are notified in writing by the Buyer to the Company (and in the case of claims for non-delivery partial loss or damage with a copy to the carrier if the Company's own vehicles have not been used to deliver the Goods):-

10.3.1. Within seven days of delivery for partial loss or damage or non-compliance with the contract; or

10.3.2. Within fourteen days of the date of the invoice for non-delivery.

10.4. In the event of a valid claim for non-delivery, partial loss or damage the Company undertakes at its option either to reprocess or replace the Goods at its expense but shall not be under any further or other liability to any person in connection with such non-delivery, partial loss or damage or non-compliance.

10.5. If the Buyer shall fail to give notice in accordance with Clause 10.3 above the Goods shall be deemed to be in all respects in accordance with the contract and the Buyer shall be bound to accept and pay for the same accordingly.

10.6. Where the Goods are delivered by the Company to the Buyer's premises it shall be the absolute responsibility of the Buyer to ensure that the Goods are off-loaded into the correct storage area.

11. Returns

Goods supplied in accordance with the contract cannot be returned without the prior written permission of the Company. The Company will not accept or take responsibility for Goods returned without its prior written permission. Duly authorised returns shall be sent to the Company's premises at the Buyer's expense.

12. Risk and the Passing of Property

12.1. Goods sold by the Company shall remain the sole and absolute property of the Company until such time as the Buyer shall have paid to the Company



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the full amount of the price of the Goods as stated on the invoice raised by the Company in respect of the supply.

- 12.2. Until such time as the property in the Goods passes to the Buyer the Company may for the purpose of recovery of the Goods enter upon any premises where they are stored or where they are thought to be stored and repossess the same.
- 12.3. Until such time as the Buyer becomes the owner of the Goods it will store them separately from its own goods or those of any other person and in a manner which makes them readily identifiable as the Goods of the Company and in such a way as to maintain the quality of the Goods.
- 12.4. The risk of the Goods shall pass to the Buyer upon delivery but ownership thereof shall remain with the Company until payment in full has been received.
- 12.5. In the event of the Buyer's failure to pay the price in accordance with its contractual obligations the Company shall have power to re-sell the Goods after reasonable notice, such power being additional to (and not in substitution for) any other power of sale arising by operation of law or implication or otherwise.

13. Stoppage

- 13.1. If the Buyer shall fail to accept the Goods or any instalment or part instalment thereof or shall fail to pay any sum due to the Company or shall commit an Act of Insolvency as set out in Clause 16, the Company in its discretion and without prejudice to any other right or claim may by notice in writing determine wholly or in part any and every contract between the Company and the Buyer or may (without prejudice to the Company's right subsequently to determine the contract for the same cause should it so decide) by notice in writing suspend further deliveries of Goods until any default by the Buyer be remedied.
- 13.2. For the avoidance of doubt it is hereby declared that nothing in these terms and conditions shall affect the rights given to the Company by Sections 38-48



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of the Sales of Goods Act 1979 or any statutory amendment or re-enactment thereof.

14. Warranties and Conditions

- 14.1. The Company warrants that it has title to and the unencumbered right to sell the Goods.
- 14.2. Every description or specification of the Goods is given in good faith based on average results of standard tests but any conditions or warranties express or implied that the Goods shall correspond with such description or specification are hereby expressly negative and the use of any such description or specification shall not constitute a sale by description
- 14.3. Any conditions or warranties (whether express or implied by statute common law or arising from conduct or a previous course of dealing or trade custom or usage) as to the quality of fitness of the Goods for any particular purpose even if that purpose is made know expressly or by implication to the Company are hereby expressly negated.
- 14.4. Notwithstanding that a sample of the Goods may have been exhibited to and inspected by the Buyer or results of standard tests upon a sample furnished to the Buyer it is hereby declared that such sample was so exhibited and inspected or tested solely to enable the Buyer to judge for itself the quality of the bulk and not so as to constitute a sale by sample. The Buyer shall take the Goods at its own risk as to their corresponding with the sample or as to their quality condition and/or sufficiency for any purpose.
- 14.5. Without prejudice to the foregoing provisions of this clause the application use and processing of the Goods is the absolute responsibility of the Buyer and Buyer shall be deemed to have carried out its own tests to ensure the suitability of the Goods for their intended purpose and applications.

15. Liability

- 15.1. Nothing in Clause 15 shall be deemed to exclude or restrict the Company's liability for death or personal injury resulting from negligence.

15.2.Exclusion:



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15.2.1. Clause 15.2 only covers defects caused by faulty design, manufacture, materials or workmanship. It does not impose any liability upon the company in respect of any defect in the Goods arising out of the act omissions negligence or default of the Buyer its servants or agents including in particular but without prejudice to the generality of the foregoing any failure by the Buyer to comply with any recommendations of the Company as to storage use of handling of the Goods.

15.2.2. The Company agrees that if any defect covered by Clause 15.2 is discovered during the period twelve months commencing with the date of despatch, the Company will either repair the Goods at its own expense or, if it chooses to do so, replace them.

15.2.3. The Buyer cannot claim the benefit of this Clause unless:

- He informs the Company of the relevant defect in writing within 7 working days of discovering it and gives the Company the opportunity to inspect the Goods; and
- He returns the Goods to the Company

15.2.4. The risk of accidental loss or damage to the Goods whilst being returned will be borne by the Buyer.

15.2.5. Where the Goods are for delivery by instalments any defect in any instalment shall not be a ground for cancellation of the remainder of the instalments and the Buyer shall be bound to accept delivery thereof.

15.2.6. The Company shall not be liable for imperfect work caused by any inaccuracies in any drawing bills of quantities or specifications by or on behalf of the Buyer.

15.2.7. The Company shall not be liable in respect of any defect arising from fair wear and tear, wilful damage, negligence, abnormal working conditions, failure to follow the Company's instructions, misuse or alteration of or repair of the Goods without the Company's approval.

15.3. Consequential Loss



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The Company shall not be liable for any costs claims or damages or expenses arising out of any tortious act or omission or any breach of contract or statutory duty or any other (including loss arising from the Company's negligence) calculated by reference to profits income production or accruals or loss or such profits income production or accruals or by reference to accrual of such costs claims damages or expenses on a time basis.

15.4. Limitation

The Company's total liability for any one claim or for the total of all claims arising from any one act or default of the Company (whether arising from the Company's negligence or otherwise) shall not exceed £100,000 or the contract price whichever is the greater.

16. Act of Insolvency of Buyer

16.1. This Clause 16 applies if:-

16.1.1. The Buyer makes a voluntary arrangement with its creditors or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purposes of amalgamation or reconstruction); or

16.1.2. An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Buyer; or

16.1.3. The Buyer ceases, or threatens to cease, to carry on business; or

16.1.4. The Company reasonably apprehends that any of the events mentioned above is about to occur in relation to the Buyer and notifies the Buyer accordingly.

16.2. If this Clause applies then, without limiting any other right or remedy available to the Company, the Company may cancel the contract or suspend any further deliveries under the contract without any liability to the Buyer, and if the Goods have been delivered but not paid for the price shall

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become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

17. Force Majeure

The Company shall be entitled to delay or cancel delivery or to reduce the amount delivered if it is prevented from or hindered in or delayed in manufacturing obtaining or delivering the Goods by normal route or means of delivery through any circumstances beyond its control including but not limited to strikes, lock-outs, accident, war, fire, reduction in or unavailability of power at manufacturing plant, breakdown of plant or machinery or shortage or unavailability of raw materials from normal source of supply.

18. Sales Promotion Documentation

Whilst the Company takes every precaution in the preparation of its catalogues, technical circulars, price lists and its other literature, these documents are for the Buyer's general guidance only and the particulars contained therein shall not constitute representations by the Company and the Company shall not be bound thereby.

19. Patents

The Buyer shall indemnify the Company against all costs claims and damages (not claimed) incurred or threatened arising out of any alleged infringement of patents trade mark copyright or other intellectual property right occasioned by the manufacture or sale of the Goods made to the specification of special requirements of the Buyer. The Company does not warrant and the Buyer should ensure that its use of the Goods will not infringe any patent or other intellectual property rights of a third party.

20. Tools

Any tools, artwork, cutting boards and the like made or purchased for the manufacture of the Goods shall remain the property of the Company even if the Buyer has been charged for the cost of such items.

21. Service Requirements

Unless expressly agreed the Company does not undertake to hold stock of or manufacture particular products after the end of the contract period. Requests for



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delivery after the contract period will be treated as a new enquiry for which the company will re-quote.

22. Notices

Any notice to be given hereunder shall be in writing and shall be deemed to have been duly given if sent or delivered to the party concerned at its address specified overleaf or such other address as that party may from time to time notify in writing and shall be deemed to have been served, if sent by post 48 hours after posting.

23. Assignment

Neither the Company nor the Buyer shall assign or transfer or purport to assign or transfer the contract or the benefits thereof to any other person without the prior written consent of the other.

24. Severability

If any provision of these conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these conditions and the remainder of the provision in question shall not be affected thereby.

25. Proper Law and Jurisdiction

The contract shall be governed by and construed in accordance with the laws of England and all disputes arising in connection with the contract shall be submitted of the jurisdiction of the English courts.



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