

## BASF CANADA INC. O/A BASF CANADA - GENERAL TERMS AND CONDITIONS OF SALE

**1. Entire Agreement.** These Terms and Conditions of Sale (the "Terms"), together with other sales terms, if any, agreed to by Buyer and Seller in writing ("Sales Terms"), contain the entire and exclusive agreement between the parties regarding the sale of each Product. The Terms, together with the Sales Terms, if any, are referred to herein as the "Contract". If there is a conflict between the Terms and the Sales Terms, the Sales Terms shall govern. All terms and conditions contained in any prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in Buyer's purchase order, which are different from or in addition to the Contract are hereby rejected and shall not be binding on Seller, and Seller hereby objects thereto. No addition to, or alteration or modification of, the Contract shall be valid unless made in a writing signed by an authorized representative of each party specifically referring to the Contract. Buyer shall be deemed to have full knowledge of the Terms herein and such Terms shall be binding if Products referred to herein are delivered to and accepted by Buyer, if the Buyer takes any action in furtherance of a sale or purchase of Product, or if Buyer does not within five (5) days from the date hereof deliver to Seller written objection to said Terms or any part thereof.

**2. Payment; Taxes.** The price for Product is the price in effect on the date of shipment, unless otherwise agreed by the parties. Seller may adjust the price of any Product upon at least ten (10) days prior notice. Payment for the full amount of each invoice shall be made to Seller, addressed as indicated on an invoice, in Canadian currency or American currency, as established in the invoice in question. All claims by Buyer shall be made by written notice to Seller in accordance with the provisions of Sections 6, 8 and 9 of these Terms, and no offset or deduction from any invoice is permitted. Acceptance by Seller of bank draft, cheque, or other media of payment is subject to immediate collection of the full face amount thereof.

In addition to the purchase price, Buyer shall pay Seller any and all governmental taxes, charges or duties of every kind (excluding any tax based upon Seller's net income or net worth) that Seller may be required to collect or pay upon sale, transfer or shipment of Product ("Tax"). Notwithstanding the above, Seller shall not collect, and Buyer shall not pay, any such Tax for which Buyer furnishes to Seller a properly completed exemption certificate and/or a tax exemption number as applicable. Buyer shall be responsible for any Tax, interest and penalty, if such exemption certificate or direct payment permit certificate is disallowed by the proper taxing authority. In the event of the introduction of any new taxes or governmental levies by any level of government in Canada subsequent to the effective date of the Contract that negatively effects Seller (other than taxes or levies based upon or measured by Seller's net

income, capital or net worth), Seller reserves the right to reopen negotiations at that time to address compensation from Buyer for said governmental taxes and/or levies.

**3. Breach; Termination.** If Buyer breaches any term of the Contract or any other contractual obligation in favor of Seller, (a) Seller may choose to defer any or all further shipments or other performance under the Contract and performance of any other contractual obligation in favor of Buyer until Buyer cures its breach, or (b) Seller may immediately terminate the Contract if Buyer fails to cure such breach within ten (10) days after receipt of written notice from Seller describing such breach. In the event of a termination, all outstanding payment obligations or other indebtedness of Buyer to Seller shall be immediately due and payable. Acceptance by Seller of less than the full amount due shall not be a waiver of any of Seller's rights under the Contract or applicable law.

Notwithstanding any provision in the Contract, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations under the Contract and any other contractual obligation in favor of Seller. In addition, in the event that Buyer fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of Buyer to Seller against any outstanding payment obligations or other indebtedness that Seller or any of its affiliates may owe Buyer.

**4. Force Majeure.** Neither Seller nor Buyer shall be responsible for any delay or failure to make or take delivery of Product due to any cause beyond its reasonable control, including without limitation (a) fire, storm (including snow storms, blizzards or ice storms), hail, flood, strike, lockout, accident, act of war or terrorism, theft or loss of Products, equipment malfunction, riot, civil commotion, embargo, (b) any regulation, law, order or restriction of any governmental department, commission, board, bureau, agency, court, or other similar government instrumentality ("Governmental Authority"), (c) inability of Seller to obtain any required raw material, water, electricity or other utility or energy source, equipment, labour or transportation, at prices and on terms Seller deems practicable from Seller's usual sources of supply, (d) mechanical failure or breakage or accidents related to equipment, machinery or lines of pipe, or (e) a subcontractor being impacted by any cause or circumstance described in this Section 4. Neither party is subject to any liability to the other for failing to perform during the period such inability exists. Without limiting the generality of the foregoing, under no circumstances shall Seller be obligated to purchase Product from a third party for delivery to Buyer in the event of a force majeure. Quantities so affected may, at the

option of either party, be eliminated from the Contract without liability, and should Seller be the party relying on this force majeure provision, any time commitments imposed on Seller in the Contract in respect of delivery of Product shall be extended by the period of time force majeure is claimed by the Seller, but the Contract shall remain otherwise unaffected. A party's obligation to render timely payment shall not be excused by this provision.

**5. Compliance with Laws.** Seller shall provide or make available to Buyer a Safety Data Sheet (SDS) for each Product. The SDS contains Product safety information and describes the properties and hazards of the Product and precautions associated with such things as handling, use, and transportation of the Product, as applicable. Buyer will familiarize itself with all such information and precautions, including but not limited to environmental, health and safety information contained in SDSs or otherwise transmitted to Buyer by Seller at any time. Buyer will instruct its personnel, agents, contractors, customers or any third party who may be exposed to the Product about such information and precautions and any risks involved in using or handling the Product, and will make copies of such information available to such parties. BUYER ASSUMES FULL LIABILITY AND RESPONSIBILITY FOR COMPLIANCE WITH THE SDS AND TO ENSURE NO MISUSE OF THE PRODUCT IN ANY MANNER. IN ADDITION, BUYER SHALL COMPLY WITH ALL APPLICABLE LAWS, STATUTES, ORDINANCES AND REGULATIONS OF ANY GOVERNMENTAL AUTHORITY INCLUDING, WITHOUT LIMITATION, THE CORRUPTION OF FOREIGN PUBLIC OFFICIALS ACT, CANADIAN EXPORT AND IMPORT CONTROL LAWS AND ENVIRONMENTAL LAWS ("APPLICABLE LAWS"). Seller assumes no liability for Buyer's failure to comply with Buyer's obligations arising under European Union REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals) Regulations. Buyer shall defend, indemnify and hold harmless Seller from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including legal fees on a substantial indemnity basis), penalties, and judgments (each, a "Claim") arising out of or related to (i) Buyer's (or others') processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any Product (or any product containing Product) or (ii) Buyer's violation of any Applicable Laws. Seller assumes no liability for failure of discharge implements or unloading equipment used by Buyer, whether or not supplied by Seller.

**6. Warranties.** SELLER WARRANTS THAT AT THE TIME OF DELIVERY (I) PRODUCT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND SECURITY INTERESTS; AND (II) PRODUCT COMPLIES WITH SELLER'S PUBLISHED SPECIFICATIONS (OR AS OTHERWISE REFERENCED IN THE CONTRACT). SELLER EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, BY FACT OR LAW, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES, REPRESENTATIONS OR CONDITIONS OF

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM STATUTE.

BUYER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. EXCEPT WITH RESPECT TO CLAIMS FOR SHORTAGES, BUYER'S FAILURE TO GIVE NOTICE TO SELLER OF ANY CLAIM WITHIN THIRTY (30) DAYS AFTER THE DATE OF DELIVERY SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THE PRODUCT AND A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO.

CLAIMS FOR SHORTAGES MUST BE RECEIVED BY SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF PRODUCTS. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INSPECT ANY SHIPMENT CLAIMED BY BUYER TO CONTAIN A SHORTAGE.

SELLER MAKES NO WARRANTY, REPRESENTATION, CONDITION OR GUARANTEE, EITHER EXPRESS OR IMPLIED, IN RESPECT OF ANY TECHNICAL ADVICE FURNISHED OR RECOMMENDATION MADE BY SELLER OR ITS REPRESENTATIVES CONCERNING ANY USE OR APPLICATION OF ANY PRODUCT, AND EXPRESSLY DISCLAIMS ALL WARRANTIES, REPRESENTATIONS AND CONDITIONS OF SUFFICIENCY, COMPLETENESS, SUITABILITY AND ACCURACY AND IN RESPECT OF THE RESULTS TO BE OBTAINED. WITH REGARD TO ANY HANDLING OF ANY PRODUCT, BUYER ASSUMES FULL RESPONSIBILITY FOR QUALITY CONTROL, TESTING AND DETERMINATION OF SUITABILITY OF PRODUCT FOR ITS INTENDED APPLICATION OR USE.

ANY ATTEMPT TO REMEDY OR CORRECT A CLAIMED DEFECT BY PERSONS OR ENTITIES NOT AUTHORIZED TO PERFORM SUCH WORK BY SELLER OR CONTINUED USE OF SUCH PRODUCT SHALL VOID THE PRODUCT WARRANTY SET FORTH ABOVE AND BUYER SHALL BE DEEMED TO HAVE ACCEPTED THE PRODUCT AS IS, WITH NO FURTHER OBLIGATION OF SELLER TO BUYER. IF REQUESTED BY SELLER, BUYER SHALL RETURN THE NONCONFORMING PRODUCT TO SELLER STRICTLY IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS CONCERNING SHIPPING, HANDLING, INSURANCE, AND OTHER MATTERS AS TO WHICH SELLER ISSUES INSTRUCTIONS. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL INVALIDATE ANY CLAIM BY BUYER FOR BREACH OF WARRANTY.

**7. Intellectual Property.** Since Seller has no control over Buyer's (or others') processing, sale, use, or disposition of any Product (or any product containing Product), including, without limitation, the admixing, reacting or combining of any Product with other products, chemicals or materials, Buyer assumes the entire liability and responsibility therefor and agrees to defend, indemnify and hold harmless Seller from and against all Claims arising out of or related to infringement of any

third party's intellectual property rights, patents on processes practiced by Buyer or patents on products made by Buyer.

**8. Limitation of Liability.** SELLER'S SOLE OBLIGATION AND LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, FOR ANY CLAIM OR LIABILITY IN ANY WAY CONNECTED WITH OR ARISING OUT OF THE CONTRACT OR ANY PRODUCT PROVIDED UNDER THE CONTRACT, WHETHER BASED IN TORT (INCLUDING NEGLIGENCE), CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY, SHALL BE FOR DIRECT DAMAGES ONLY AND IS EXPRESSLY LIMITED TO, AT SELLER'S OPTION, REPLACEMENT, REPAIR OR REWORK, AS APPLICABLE, OF NONCONFORMING PRODUCT OR PAYMENT IN AN AMOUNT NOT TO EXCEED, IN THE AGGREGATE, THE PURCHASE PRICE OF THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER LOSSES, EXPENSES OR DAMAGES OF ANY OTHER KIND OR CHARACTER TO BUYER, ITS CUSTOMERS, OR OTHER PERSONS OR ENTITIES, INCLUDING WITHOUT LIMITATION ANY LOSSES, EXPENSES OR DAMAGES RELATED TO THE LOSS OF PROFITS, SAVINGS, BUSINESS OR CONTRACTS, EXPECTED OR OTHERWISE, LOSS OF GOODWILL, LOSS OF PRODUCTION, LOSS OF USE, BUSINESS INTERRUPTION, OR INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL, AGGRAVATED, PUNITIVE OR EXEMPLARY LOSSES, DAMAGES OR EXPENSES INCURRED OR SUFFERED ARISING OUT OF THE CONTRACT OR ANY PRODUCT OR PRODUCTS SUPPLIED BY SELLER HEREUNDER OR UNDER THE CONTRACT, EVEN IF SELLER HAS BEEN ADVISED OF OR IS AWARE OF THE POSSIBILITY OF SUCH LOSSES, EXPENSES OR DAMAGES.

THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SET OUT IN THESE TERMS SHALL APPLY TO THE CONTRACT AS A WHOLE, AND IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION OR CLAIM, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE TERMINATION OF THE CONTRACT, A FUNDAMENTAL OR MATERIAL BREACH OR BREACHES AND/OR FAILURE OF THE ESSENTIAL PURPOSE OF THE CONTRACT OR ANY REMEDY CONTAINED THEREIN. THE ALLOCATIONS OF LIABILITY IN THIS PARAGRAPH REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES.

**9. Limitation of Action.** BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO ANY PRODUCT OR OTHERWISE ARISING UNDER THE CONTRACT WITHIN ONE (1) YEAR AFTER THE DATE OF DELIVERY SHALL FOREVER BAR ALL RIGHTS OF BUYER TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT

THERE TO NOTWITHSTANDING ANY APPLICABLE STATUTE OF LIMITATIONS.

**10. Allocation.** Seller may allocate its available supply of Product among its customers, itself, and its affiliates on such basis as Seller deems necessary, in Seller's sole option and at Seller's sole discretion, if Seller is unable, for any reason, to supply the quantities of Product contemplated by the Contract.

**11. Credit.** If at any time the financial responsibility or the credit risk of Buyer shall be unsatisfactory to Seller, Seller may a) require cash or satisfactory security prior to subsequent shipments or deliveries of Product or other performance under the Contract; b) withhold subsequent shipments of Product until Seller is no longer dissatisfied with the state of Buyer's financial responsibility or credit risk; and/or c) adjust the payment terms previously agreed to by the parties. The election by Seller to act pursuant to the foregoing avenues of action shall not impair any of the obligations of Buyer hereunder, and specifically, shall not affect the obligation of Buyer to take and pay for contracted Product. Buyer agrees to pay all costs and expenses, including legal fees on a substantial indemnity basis, incurred by Seller in the collection of any sum payable by Buyer to Seller. Seller shall be entitled to apply interest or a service charge on any overdue sum at a rate not to exceed the maximum rate allowed by applicable law.

**12. Title; Risk of Loss.** Unless otherwise provided in the Contract, title to and risk of loss of Product shall transfer to Buyer upon delivery to the carrier at Seller's shipping point; Buyer shall bear all risk of loss or damage in transit. Notwithstanding the foregoing, where Buyer is responsible for customs clearance into Canada following the applicable INCOTerms, title to and risk of loss of Product shall transfer to Buyer on the non-Canadian side of the border in the case of Product originating from the USA, otherwise in all other cases outside the Canadian border, regardless of the final destination of the Product.

**13. Admixture Products.** With respect to concrete admixture Products, Buyer shall provide, and agrees to be solely responsible for providing, a secondary containment system around/under the Product storage tanks designed to prevent migration of Product into environmental media. Buyer shall comply with all federal, provincial and local laws and regulations relating to secondary containment, and Buyer shall be solely responsible and liable for any failure to provide secondary containment around/under the Product storage tanks or any release of Product into the environment.

**14. Assignment; Survival.** Buyer shall not assign all or any portion of the Contract without Seller's prior written consent. The Contract shall bind and inure to the benefit of the successors and permitted assigns of the respective parties. In order that the parties may fully exercise their rights and perform their obligations arising under the Contract, any provisions of the Contract that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination of the Contract.

**15. Confidentiality.** Except as required by law or with the express written consent of Seller, Buyer agrees to receive and maintain all information received from Seller, including without limitation the terms of the Contract, in confidence, using the same degree of care which the Buyer employs with its own confidential information, provided this is no less than a reasonable standard of care, and the Buyer will not disclose to any person or make public or authorize the disclosure of any such information and will not use such information, including without limitation the terms of the Contract, for any purpose, except as expressly agreed to by Seller in writing or in another applicable agreement between Seller and Buyer. The Buyer acknowledges that its failure to comply with the provisions of this section may cause irreparable harm to Seller which cannot be adequately compensated for in damages, and accordingly acknowledges that Seller will be entitled to claim, in addition to any other remedies available to it, interlocutory and permanent injunctive relief to restrain any anticipated, present or continuing breach of this section.

**16. Governing Law; Miscellaneous.** The Contract shall be governed, interpreted and construed pursuant to the laws of the Province of Ontario and the federal laws of Canada applicable therein, and all conflict of laws principles are excluded. The parties hereto irrevocably submit and attorn to the exclusive jurisdiction of the courts of the Province of Ontario in respect of all disputes or matters arising whatsoever under or in connection with the Contract. The United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods, as amended, shall not apply to the Contract. Failure of either party to exercise any right it has under the Contract on one occasion shall not operate or be construed as a waiver by such party of its right to exercise the same right on another occasion or any other rights it has. Any waiver must be in a writing signed by the waiving party. If any provision of the Contract shall be adjudicated to be invalid or unenforceable, it is the parties' intent that the remaining provisions of the Contract will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible to reflect as closely as possible the intentions of the parties as evidenced from the provisions of the Contract. The section headings used herein are intended for convenience of reference only and shall not be considered in interpreting the Contract. Nothing in the Contract shall be construed as creating any direct or beneficial right in or on behalf of any third party. This Contract may be executed and delivered by the parties in one or more counterparts, each of which will be an original, and each of which may be delivered by facsimile, e-mail or other functionally equivalent electronic means of transmission and those counterparts will together constitute one and the same instrument. The parties agree that the Contract shall be drafted in English. Les parties conviennent que la présente convention soit rédigée en anglais.