

1. DEFINITIONS

"Seller" shall mean BASF New Zealand Limited, or any agents or employers thereof.

"Buyer" shall mean the Buyer, and person acting on behalf of and with the authority of the Buyer, or any person purchasing products and services from the Seller.

"Goods" shall mean:

- (i) all Goods of the general description specified on the front of the Credit Application;; and
- (ii) all Goods supplied by the Seller to the Buyer; and
- (iii) all inventory of the Buyer that is supplied by the Seller; and
- (iv) all Goods supplied by the Seller and further identified in any invoice issued by the Seller to the Buyer, which invoices are deemed to be incorporated into and form part of this agreement; and
- (v) all Goods that are marked as having been supplied by the Seller or that are stored by the Buyer in a manner that enables them to be identified as having been supplied by the Seller; and
- (vi) all of the Buyer's present and after-acquired Goods that the Seller has performed work on or to or in which goods or materials supplied or financed by the Seller have been attached or incorporated; and
- (vii) all products, services and advice provided by the Seller to the Buyer.

The above descriptions may overlap but each is independent of and does not limit the others.

2. ACCEPTANCE

Any instructions received by the Seller from the Buyer for the supply of Goods shall constitute a binding contract and acceptance of the terms and conditions contained herein.

3. COLLECTION AND USE OF INFORMATION

- (a) The Buyer authorises the Seller to collect, retain and use any information about the Buyer, for the purposes of assessing the Buyer's credit worthiness, enforcing any rights under this contract, or marketing and Goods provided by the Seller to any other party.
- (b) The Buyer authorises the Seller to disclose any information obtained to any person for the purposes set out in clause 3(a).
- (c) Where the Buyer is a natural person, the authorities under clauses 3(a) and 3(b) are authorities or consents for the purposes of the Privacy Act 1993.
- (d) The Buyer shall have a right of access to, and correction of, the information held by the Seller.

4. LIABILITY OF SELLER

The Seller is not liable for failure or delay in performance caused wholly or partially by unavailability of freight or shipping space, failure of manufacturer/supplier to supply whole or part of the Goods to the Seller, prohibitions or restrictions under any law or by any government or authority, inability to obtain any necessary export licence or import licence, force majeure, war, fire, explosion, accident, breakdown of machinery, rioting, civil or industrial disturbances, strikes or lockouts, shortage of labour, or due to any other circumstances, whether of a similar nature or not beyond the control of the Seller. Any such failure or delay shall not constitute a breach of contract but the contract shall be deemed to be suspended with liberty to the Seller at any time to cancel it or any unfulfilled part thereof or to renew it upon the cessation of the cause preventing delivery.

5. DISPUTES AND RETURN OF GOODS

Upon delivery of the Goods or any part of the Goods Buyer shall inspect such Goods and within seven (7) days deliver to the Seller notice in writing of any claim against the Seller. If no such notice is received by the Seller within the said period of seven (7) days the Goods shall be deemed to be in all respects in accordance with the order and the Buyer shall be bound to accept and pay for the same accordingly and, subject to clauses 0 to 10(b) (inclusive), Buyer shall have no claims against the Seller.

6. DELIVERY

- (a) The failure of any delivery or the rejection by Buyer of any Goods delivered or part thereof shall not vitiate or affect this contract regarding the balance of the Goods to be delivered.
- (b) The Seller reserves the right to deliver by instalments and each instalment shall be deemed to be sold under a separate contract. The Seller will use its best endeavours to deliver by the agreed date, but the Seller shall be under no liability whatsoever in the event of late delivery.
- (c) All delivery, carriage and/or freight costs in relation to the delivery of the Goods shall be payable by the Buyer, including any tax, levies or duties payable on the Goods.

7. BUYER DEFAULTS

Upon the happening of any of the following events, viz: in the event of Buyer failing to adhere to the Seller's terms of payment, if in the opinion of the Seller the financial circumstances of Buyer so warrant; or if Buyer shall become bankrupt or commit any act of bankruptcy; or if Buyer (being a company) goes into liquidation or provisional liquidation, has a receiver appointed, suspends payment of debts, enters into any deed, scheme, composition or arrangement with or for the benefit of its creditors or any class of them or has an official manager appointed, the Seller shall be entitled to stop Goods in transit (and in any such event the Seller reserves the right of disposal in respect of such Goods) or to suspend deliveries of Goods without being liable for any loss or damage suffered by Buyer by reason of or in consequence of any such stoppage in transit or suspension of deliveries or at the Seller's option the Seller shall be entitled to determine the contract immediately reserving to the Seller all its other rights and remedies. Upon any such determination or the cancellation of this sale for any cause the Seller shall be entitled to recover payment for all deliveries already made and for the cost of labour already expended and for materials already obtained or ordered for the purpose of future deliveries (whether or not such materials have been incorporated into the Goods being purchased by Buyer), including appropriate overheads.

8. PRICE AND PAYMENT

Subject to clauses 9(a) to 9(e) (inclusive) and unless otherwise agreed in writing, the Seller's terms of payment are net cash payable by the end of the month following the month of delivery. No discount is allowed. Interest will be charged on all overdue accounts at the rate of 2.5% per month, calculated daily. The total amount payable by the Buyer for a supply is equal to the quantity of the supply multiplied by the value per unit (the "GST-exclusive consideration") plus any amount payable under clauses 9(a) to 9(e) (inclusive). The term "value" means the cost of the Goods as agreed between the Seller and the Buyer and includes all disbursements the Seller has to pay to others on the Buyer's behalf, which is a GST-exclusive amount.

9. GOODS AND SERVICES TAX

- (a) In addition to paying the GST-exclusive consideration, the Buyer must pay to the Seller an amount equal to any goods and services tax ("GST") payable for any supply by the Seller under or in connection with this document, without deduction or set-off of any other amount.
- (b) The Buyer must make that payment under clause (a) as and when the GST-exclusive consideration or part of it must be paid or provided.
- (c) The Seller must issue a tax invoice to the Buyer for any supply for which the Seller may recover GST from the Buyer under this contract.
- (d) The Seller must refund to the Buyer any overpayment by the Buyer for GST when the Seller has received a refund or credit of the GST paid to the Commissioner of Inland Revenue.
- (e) If a payment to satisfy a claim or a right to claim under this contract gives rise to a liability to pay GST, the payer must pay, and indemnify the payee against the amount of that GST.

10. LIABILITY AND CONSUMER GUARANTEES ACT 1993

The Seller undertakes that the Goods will correspond to the description in the latest issue of the manufacturer's/supplier's data sheet relating to that class of Goods and that the Buyer will be given a good legal title. All warranties, conditions, liabilities or representations in relation to, inter alia, the quality or fitness of the Goods (other than any being or giving rise to non-excludable rights under any laws of New Zealand (including the Consumer Guarantees Act 1993)) which might but for this clause be implied herein by law or otherwise are hereby expressly negated and excluded. Any civil liability of the Seller to the Buyer in respect of or in any way related to the Goods pursuant to any such non-excludable rights or pursuant to any express warranty herein or otherwise howsoever, shall insofar as the same may legally be done be limited at the Seller's option to the repair or

replacement of the Goods or the supply of equivalent Goods or the payment of the respective cost thereof, and the Seller shall not be liable for any indirect or consequential loss whatsoever and howsoever arising even if due to the negligence of the Seller, its servants or agents.

- (a) The provisions and guarantees of the Consumer Guarantees Act 1993 are excluded where the Buyer acquires Goods from the Seller for the purposes of a business in terms of section 2 and section 43 of that Act.
- (b) Manufacturer's warranty applies where applicable.

11. LIABILITY FOR ADVICE

Without limiting the generality of the preceding clause, any advice, recommendation, information, assistance or service provided by the Seller in relation to the Goods or their use or application shall be given in good faith, but all warranties, claims and liabilities (including negligence) in relation thereto (other than any warranties, claims and liabilities which are by law non-excludable) are hereby negated and excluded. If and to the extent that there are any non-excludable rights under any laws of New Zealand relating to such advice or other services, the liability of the Seller shall insofar as the same may legally be done be limited at the Seller's option to providing the advice or services again or paying the cost of having the advice or services provided again.

12. RISK, TITLE AND SECURITY (PERSONAL PROPERTY SECURITIES ACT 1999)

- (a) Until full payment has been made of all amounts owing by Buyer to the Seller on any account:
 - (i) All payments for a supply of Goods under this contract shall become immediately due if Buyer makes default in paying any other sums due to the Seller or if any of the default events described in clause 7 shall happen.
 - (ii) The title in the Goods shall not pass to Buyer and Buyer shall keep the Goods as bailee for the Seller. The Goods shall nevertheless be at the risk of Buyer from the time of delivery to its premises, and Buyer shall indemnify the Seller against all loss or damage to the Goods from whatsoever cause occurring after such time. Buyer shall store the Goods so as to clearly identify them as the property of the Seller, and shall return them to the Seller on request.
 - (iii) In addition to any rights of the Seller under the Personal Property Securities Act 1999 (PPSA), the Seller is irrevocably authorised to enter any premises where the Goods are kept, and to use the name of Buyer and to act on its behalf, if necessary, to recover possession of the Goods.
 - (iv) The Buyer grants to the Seller, and acknowledges that the Seller has, a security interest (for the purpose of the PPSA) in all present and after acquired Goods and any proceeds derived from the sale of the Goods. The security interest secures all monies owing to the Seller under any contract or otherwise. The Buyer acknowledges that each security interest over the Goods (or their proceeds) arising under this clause 12(a) is a 'purchase money security interest' under the PPSA to the extent that it secures payment of the amounts owing for those Goods and may be registered as such. The Buyer must do anything reasonably required by the Seller to enable the Seller to register these security interests, with the priority the Seller requires, and to maintain those registrations. The security interests arising under this clause attach to the Goods when the Buyer obtains possession of the Goods and the parties confirm that they have not agreed these security interests attach at any later time.
- (b) The Buyer waives its right to receive a copy of the verification statement or financing change statement relating to the Seller's security interest and agrees, to the extent permitted by law, that as between the Buyer and the Seller:
 - (i) Sections 114(1)(a), 133 and 134 of the PPSA will not apply;
 - (ii) The Buyer will have none of the rights referred to in sections 116, 120(2), 121, 125, 129 and 131 of the PPSA; and
 - (iii) Where the Seller has rights in addition to, or existing separately from, those in Part 9 of the PPSA, those rights will continue to apply and will not be limited by section 109 of the PPSA.
- (c) No provision of this contract creates an intention to contract out of the Credit (Repossession) Act 1997 where it may apply and any provision which has such an effect is ineffective.
- (d) If the Goods are attached, fixed or incorporated into any property of the Buyer, by way of any manufacturing or assembly process by the Buyer or any third party, title in the Goods shall remain with the Seller until the Buyer has made payment for all Goods, and where those Goods are mixed with other property so as to be part of or a constituent of any new Goods, title to these new Goods shall be deemed to be assigned to the Seller as security for the full satisfaction by the Buyer of the full amount owing between the Seller and the Buyer.

13. GOVERNING LAW

This contract shall be governed by and construed in accordance with the law of New Zealand, and the parties submit to the jurisdiction of the courts of New Zealand.

14. HIRE EQUIPMENT

Containers, in which Goods are delivered (including pallets, Pallecons, crates and containers) which are not owned by the Seller ("Hire Equipment") shall be either:

- (a) accepted by the Buyer as lessee of the equipment from its owner, and the Buyer's taking of possession of that Hire Equipment or signature on the Seller's "Shipping Document" shall constitute the Seller's acceptance of the terms and conditions, and all liability, relating to the hire of that Hire Equipment from its owner, and the Buyer shall indemnify the Seller for all liability, costs and damages however caused relating to that Hire Equipment; or
- (b) replaced immediately by the Buyer with equivalent equipment of comparable standard which is undamaged and in good condition.

If the Buyer fails to comply with (a) or (b) or return containers in which Goods are delivered the Buyer shall indemnify the Seller for, in the case of Hire Equipment, the hire costs incurred by the Seller or, in the case of containers owned by the Seller, the value of the container.

15. MISCELLANEOUS

- (a) Notwithstanding anything contained in any order or other document from the Buyer the only terms, conditions or warranties of this contract shall be those set out hereon or agreed to by the Seller in writing.
- (b) Failure by the Seller to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of the rights or obligations of the Seller.
- (c) If any provision of this contract shall be valid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- (d) The Seller reserves the right at any time to vary these Terms and Conditions of Sale by one month's written notice to the Buyer's principal place of business.