

## **1. SCOPE OF APPLICATION**

All products supplied and services offered by BASF to the Customer shall be governed strictly and exclusively on the basis of these terms and conditions of sale. These terms and conditions super cede any terms and conditions stipulated by Customer irrespective of that stipulated on a Customer's order.

## **2. THE GOODS**

Goods are defined as the subject matter of any order placed by the Customer and accepted by BASF in writing.

## **3. PRODUCT QUALITY, SPECIMENS & SAMPLES**

**3.1** Unless otherwise specifically agreed between the parties in writing, the quality of the goods is determined strictly and exclusively in accordance with BASFs product specifications, as updated by BASF from time to time and which have been made available to the customer and further copies of which may be requested from BASF at any time.

**3.2** The description in respect of the properties and composition of specimens and samples are binding on BASF only insofar as they have been specifically agreed in writing by BASF to define the quality of goods.

**3.3** BASF does not warrant the suitability for any specific purpose of the goods, and in so far as permitted under the Consumer Protection Act, any product specifications or other information provided by BASF shall not relieve the Customer of the need to conduct his own investigations and tests as to the suitability and application of the goods for any particular purpose and the Customer shall have no claim against BASF if the goods are provided in accordance with the product specifications thereof but are not suitable for any particular purpose not specifically agreed to in writing by BASF before the goods were supplied.

## **4. PRICE**

The purchase price of any goods or services supplied or rendered by BASF shall be the price reflected in the written quotation sent by BASF to the Customer from which an order will be generated by the Customer and accepted by BASF. BASF quotations are valid for the period indicated thereon and upon expiry of the validity period. BASF reserves the right to change its prices from time to time as it, in its discretion, deems fit.

## **5. ORDERS**

- 5.1** Orders placed by the Customer for BASF's goods or services, shall be made in writing to the nominated domicilium of BASF.
- 5.2** Orders shall constitute offers to obtain BASF's services at BASF's prevailing fee and/or to purchase the goods in question at the prevailing prices of BASF and shall be capable of acceptance by BASF through the delivery of goods and/or provision of the services or by the written acceptance or confirmation of the order.
- 5.3** BASF shall not accept orders that are not written.
- 5.4** In the event that BASF makes delivery of the Product to the Customer in instalments, each instalment shall be deemed to be the subject of a separate contract and non- delivery or delay in delivery of any such instalment shall not affect the balance of the contract or entitle the Customer to cancel the contract.
- 5.5** When goods are delivered in accordance with 5.4 above, payments relating to separate deliveries shall be paid in advance and payment by the Customer shall not be postponed until such times as all the goods ordered have been delivered.
- 5.6** Should BASF at its own election and with agreement from the Customer or at the Customer's request agree to engage a carrier to transport goods to the Customer, such carrier shall be the Customer's agent and BASF shall engage the carrier on fair, just, and reasonable terms and conditions. The Customer indemnifies BASF against all and any demands and/or claims and/or liability which may arise or be made against BASF by the aforesaid carrier or which may be claimed by the Customer out of the transportation of the goods by the aforesaid carrier.
- 5.7** If the Customer fails to take delivery of the goods ordered due to a direct /indirect act/omission by the Customer, its employees or agents, then the risk in the goods shall immediately pass to the Customer and the Customer shall be liable to pay BASF the reasonable costs of storing, insuring and the handling of goods, until delivery takes place.

## **6. Payment**

- 6.1** Payment in full is to be made in advance from date of BASF's statement, unless specifically otherwise stated on an official BASF tax invoice.
- 6.2** In all cases where the Customer uses a postal banking, electronic or similar service to effect payment, such services shall be deemed to be agent of the Customer
- 6.3** Should any amount not be paid by the Customer on the due date, then the whole amount in respect of all purchases by the Customer shall immediately become due, owing and payable irrespective of the dates when the goods were purchased and the Customer shall be liable to pay interest in respect of the amounts unpaid as at the due date at the compound rate of 2% above the prime rate (as defined in 6.4)
- 6.4** The term "prime rate" shall mean the prime overdraft lending rate charged by BASF's bank as certified, in the event of a dispute, by any manager of such bank whose appointment and authority it shall not be necessary to prove and whose decision shall be final and binding.
- 6.5** The Customer shall not be entitled to claim set off or deduction in respect of any payment due by the Customer to BASF for goods or services supplied.
- 6.6** BASF may allocate all payments made by the Customer at the discretion of BASF.

## **7. CREDIT FACILITIES**

- 7.1** The Customer understands that BASF'S decision to grant credit facilities to the Customer is at the sole discretion of BASF.
- 7.2** BASF reserves the right to withdraw any credit facilities at any time without prior notice, and the nature and extent of such facilities shall at all times be in BASF'S sole discretion. In addition, BASF may request that the Customer provide adequate security in respect of any credit facility.

## **8. OWNERSHIP & RISK**

- 8.1** Notwithstanding that all risk in and to all goods sold by BASF shall pass on delivery (as set forth in Article 9) and irrespective of whether BASF may not be the distributor of the goods, ownership of all goods sold and delivered shall remain vested in BASF until the purchase price has been paid in full. In the event of a breach of these terms and conditions by the Customer, or if the Customer is sequestrated or placed under liquidation or judicial management or commits any act of insolvency or enters into any compromise with its creditors or fails to satisfy a judgment granted against it within 7 days of the date of judgment or changes the structure of its ownership, BASF shall be

entitled to take possession of the goods without prejudice to any further rights vested in BASF, and is hereby irrevocably authorized to enter upon the Customer's premises to take possession of such goods without an order of court.

**8.2 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.

**8.3** The Customer shall have no claim against BASF for damages caused due to loss of profits or otherwise occasioned by the removal of goods from the Customer's premises as aforesaid notwithstanding that such removal was effected without an order of court.

**8.4** Goods in possession of the Customer bearing BASF's name, trademarks and labels, shall be deemed to be those for which payment has not yet been made, and should any breach of these terms occur, may be repossessed by BASF as set forth in paragraph 8.1.

**8.5** BASF shall be entitled to identify its goods merely by way of packaging and for other distinguishing features. BASF shall not be obliged to identify the goods by way of serial numbers or any other form of intricate identification.

**8.6** In the event of Customer processing the goods before payment is made in full, BASF shall be considered a manufacturer and shall directly acquire sole title to the newly produced product. If the processing involves other materials, BASF shall acquire joint title to the newly produced product in the proportion to the value of the goods, as invoiced.

## **9. DELIVERY**

**9.1** Delivery shall be affected as specifically agreed between the parties in writing. General commercial terms shall be interpreted in accordance with the INCOTERMS in force on the date the agreement is concluded.

**9.2** BASF shall have the right to defer delivery under this Agreement or any other supply agreement entered into with the Customer if and for as long as the Customer fails to pay any invoice under one or more of the supply agreements entered into with BASF when due.

**9.3** In the event that the Customer rejects delivery of the goods or services and the goods or services have been delivered on the date, time and location agreed upon, the goods are not damaged and there is no reasonable explanation for the rejection of delivery of the goods, BASF may charge the Customer a reasonable cancellation fee.

## **10. DAMAGE IN TRANSIT**

Notice of claims arising out of damage in transit must be lodged by Customer directly with the carrier within the notification period specified in the contract of carriage and BASF shall be provided with a copy of the notice.

## **11. BUYER'S COMPLIANCE WITH LEGAL REQUIREMENTS**

The Customer shall comply with all laws and regulations regarding import, transport, storage and use of the goods.

## **12. LIABILITY**

**12.1** BASF shall not be liable to the Customer in any manner in the event of impossibility or delay of BASF supply due to circumstances entirely beyond the control of BASF, such as but not limited to those described in Clause 24 below, and where BASF informed the Customer as soon as it became aware of impossibility or delay in the supply.

**12.2** BASF shall not be liable to the Customer for goods delivered in good order and thereafter damaged in the possession of the Customer due to improper care or storage, use or application, contrary to any instructions and/or warnings provided or available for the goods, or any other direct or indirect act or omission by the Customer, its employees or agents resulting in the goods being damaged or causing harm to any person or damage to any property.

**12.3** BASF shall not be liable for any harm caused by the goods to a third party if the harm caused to the third party is due to the Customer, its employees or agents providing inadequate instructions or warnings in respect of the goods to the third party.

**12.4** 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.

**12.5 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.

### **13. SECURITY**

If there are reasonable doubts as to Customer's ability to pay, or if Customer is in default of its payment obligations, BASF may, subject to further claims, revoke agreed credit periods and make further deliveries dependent on the provision of sufficient security by the Customer.

### **14. NEGOTIABLE INSTRUMENTS**

Acceptance of any negotiable instrument by BASF shall not be deemed to be a waiver of BASF's rights under this agreement. In relation to a cheque furnished by the Customer, it waives its right to insist on notice of dishonor or protests being given to it in the event that the cheque is dishonored.

### **15. CUSTOMER'S RIGHTS REGARDING ALLEGEDLY DEFECTIVE GOODS**

**15.1** The Customer must notify BASF in writing of any

15.1.1 Unsuitable goods within 2 (Two) days of delivery of the goods; or

15.1.2 Allegations of defective goods within 2 weeks of delivery of the goods or prior to the expiry of any durability dating provided thereon, whichever is earlier.

15.1.3 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.

**15.2** If the goods are defective and the Customer has duly notified BASF in writing in accordance with 16.1 above, then BASF has the right to either remedy the defects, supply the Customer with replacement goods, without accepting any liability arising out of such defective good.

### **16. RETURNED GOODS**

**16.1** The goods sold by BASF are only returnable, at BASF's sole discretion or where the incorrect goods have been supplied, the goods are unsuitable for a purpose stated by the Customer in writing to BASF and confirmed in writing by BASF to the Customer, such an instance the following shall apply:

16.1.1 Unless alleged to be unsuitable or defective at time of use as contemplated in Clause 15 above, all goods returned must be complete, clean, sealed, undamaged and in their original packaging.

16.1.2 The value of credit or refund for any returned goods will be calculated as per original invoice.

16.1.3 BASF must be notified of relevant, packing slip and batch numbers before any claim will be considered.

### **17. BREACH**

Should the Customer fail to make any payment of any amount due on due date, or breach any of the other terms and conditions contained herein (all of which are deemed material)

or commit an act of insolvency, or allow a judgment to be entered against it, or be provisionally or finally liquidated or sequestrated, or in the opinion of BASF has a cash flow problem or other financial or commercial difficulty which may in any way whatsoever negatively impact upon the ability of the Customer to comply with any of its current or future obligations in terms of this or any other contract of the Customer with BASF, then BASF without prejudice to and in addition to its other legal remedies shall be entitled to cancel this contract or any unfulfilled part thereof; or to claim payment of the full price or the balance thereof as the case may be, and failing such payment, BASF is specifically authorized to repossess all unpaid for goods in the possession of the Customer.

## **18. LEGAL PROCEEDINGS**

- 18.1 Regardless of the place of execution or performance under these terms and conditions or domicile of the Customer, these terms and conditions and all modifications and amendments hereof, shall be governed by and decided upon and construed under and in accordance with the laws of Arab Republic of Egypt.
- 18.2 The Customer hereby submits to the jurisdiction of Magistrates Court, notwithstanding that the amount of BASF's claim may exceed the jurisdiction of the Magistrates Court.
- 18.3 A certificate issued and signed by any member or manager of BASF, whose authority need not be proved, in respect of any indebtedness of the Customer to BASF or in respect of any other fact, including the fact that such goods were sold and delivered, shall be prima facie evidence of the Customer's indebtedness to BASF and prima facie evidence of such other fact and prima facie evidence of the delivery of the goods.
- 18.4 The Customer's physical address as given on the front page of this document shall be recognized as the Customer's address for receipt of notices and execution of legal documents for all purposes in terms of this agreement whether in respect of the serving of any court process, notices, the payment of any amount or communications of whatever nature. BASF chooses its domicilium as -----.
- 18.5 All legal costs, including attorney/own client costs, tracing agent's fees and collection charges which may incur in taking any steps pursuant to any breach by the or enforcement of these terms and conditions.

## **19. ALTERNATIVE DISPUTE RESOLUTION**

- 19.1 Where a statutory or accredited ombud has jurisdiction in terms of the Consumer Protection Act, all disputes falling under the jurisdiction of said ombud shall be referred to the ombud for a recommendation.
- 19.2 Where there is no ombud as contemplated in 19.1, and the dispute is one falling und BASF and the Customer may agree to refer any dispute arising from or in

connection with this agreement to arbitration, which arbitration shall be final and binding on both BASF and the Customer and shall only be to Arbitration as contemplated in 19.3 to 19.6 below.

19.3 BASF and the Customer may agree to refer any dispute arising from or in connection with this agreement to arbitration, which arbitration shall be final and binding on both BASF and the Customer and shall only be subject to Review by the High Court if one of the established grounds for review exist and under no circumstances shall the arbitrator's decision be appealed to the High Court or any other body.

19.4 When BASF and the Customer have agreed to refer the matter to arbitration in terms of 19.3 above, in the interests of a speedy and cost effective resolution of the dispute, a short form or expedited form of arbitration shall be adopted and the rules of the arbitration shall not require that any party prepare and file any documents in a form identical to or similar to that of Court pleadings and Heads of Argument. This informality shall not detract from the onus to commence and the burden of proof which shall follow the High Court practice in this respect.

19.5 The arbitrator must be a person agreed upon by the parties and shall at least hold a tertiary qualification in the technical field of the dispute, except where the dispute relates predominantly to the interpretation of this agreement or any law, regulation, or by-law, in which case the appointed arbitrator shall have at least 10 years practical experience as an attorney in private practice or as an advocate of the High Court.

19.6 Failing the agreement on the appointment of an arbitrator or the rules of the arbitration, an arbitrator must be appointed by the Arbitration Foundation of Arab Republic of Egypt, who shall then finally resolve the dispute in accordance with the rules of the Arbitration Foundation of Arab Republic of Egypt.

## **20. CONTINUING COVERING SURETYSHIP**

20.1 I, by my signature hereof (which appears below) do hereby bind myself in my private and individual capacity as surety for and co-principle debtor with the Customer in favor of BASF for the due performance of any obligation of the Customer and for the payment to BASF by the Customer of any amounts which may now or at any time be become owing to BASF by the Customer.

20.2 I understand that my liability for amounts owing by the Customer to BASF is not limited to any credit limit granted by BASF to the Customer.

20.3 The amount which BASF can claim from the suretyship shall not be limited by any credit granted by BASF to the Customer. Should this credit limit be exceeded by

the Customer for any reason whatsoever, the surety shall not be entitled to claim liability for the credit limit amount only.

20.4 I acknowledge and understand that as surety and co-principal debtor, I waive and renounce the benefits to which I may be entitled to arising from the legal exceptions including, but not limited to:

- a) Excussion - the right to require BASF to proceed first against the Customer for payment of any debt owing to BASF before proceeding against the surety.
- b) Cession of action - the right to require BASF to cession of the action for payments of debts to the surety before any action against the surety may be taken.
- c) The benefit of simultaneous citation and division of debt the right of a co-surety to be liable only for his pro rata share of the principal debt.
- d) The right to an accounting from BASF.

20.5 This suretyship is given as a continuing covering suretyship for the present and future obligations of the Customer to BASF.

## **21. CESSION OF BOOK DEBTS**

21.1 The Customer does hereby irrevocably cede, pledge, assign, transfer and make over unto and in favor of BASF all of its rights, title, interest, claim and demand in and to all book debts of whatsoever nature and description and howsoever arising which the Customer may now and at any time hereafter have against all and any persons, companies, firms, partnerships, associations, syndicates and other legal persons whomsoever the Customers' debtors without exception as a continuing covering security for the payment due or at any time hereafter be or become owing by the Customer to BASF.

21.2 Should it transpire that the Customer at any time has entered into prior deeds of cession or otherwise disposed of any of the right, title and interest in and to any of the debts which will from time to time be subject to this cession then this cession shall operate as a cession of all the Customer's reversionary rights.

21.3 Notwithstanding the terms of the foregoing cession, the Customer shall be entitled to institute action against any of its debtor provided that all sums of money which the Customer collects from its debtors shall be collected on BASF's behalf, and provided further that BASF shall at any time be entitled to terminate the Customer's right to collect such monies/debt.

21.4 The Customer shall be obligated to deliver all relevant information in documentation form or otherwise to BASF upon demand to enable BASF to claim

monies owed to the Customer from third parties.

## **22. GENERAL**

- 22.1 This contract represents the entire agreement between BASF and the Customer and shall govern all future contractual relationships between BASF and the Customer and shall also be applicable to all debts which the Customer may owe to BASF prior to the Customer's signature hereto.
- 22.2 The Customer acknowledges that it is aware that BASF'S dealers and sales persons have no authority to vary these terms and conditions of sale, and BASF assumes no liability and shall not be bound by any statements, warranties or representations made by such dealers and or sales persons, save as expressly stated in writing and signed by a manager or a director of BASF duly authorized thereto whose names are available on request.
- 22.3 No amendment and/or alteration and/or variation and/or deletion and/or addition and/or cancellation of these terms and conditions, shall be of any force or effect unless reduced to writing and signed by, the Customer, and a director of BASF. No agreement purporting to obligate BASF to sign a written agreement to amend, alter, vary, delete, add or cancel these terms and conditions, shall be of any force or effect, unless reduce to writing and signed by the Customer, and a director of BASF.
- 22.4 The Customer acknowledges that no warranties, representations or guarantees have been made by BASF or on behalf of BASF which may have induced the Customer to sign this agreement.
- 22.5 No relaxation or indulgence which BASF may give at any time in regard to the carrying out of the Customer's obligations in terms of any contract shall prejudice or be deemed to be a waiver of any of BASF'S right in terms of this agreement.
- 22.6 The Customer shall not cede its rights nor assign its obligation in terms hereof without BASF'S prior written consent thereto.
- 22.7 BASF shall at any time in its sole discretion be entitled to cede all or any of its rights in terms of this application for credit facilities including all terms and conditions to any third party with prior notice to the Customer.
- 22.8 The Customer undertakes to notify BASF in writing within a period of 7 (seven) days of any change of address, change in ownership, name change or any changes in information as set out in this agreement and shall likewise inform the Customer of any such changes affecting BASF.
- 22.9 The headings in this document are included for convenience only and are not to be taken into account for the purpose of interpreting this agreement.
- 22.10 Each of the terms herein shall be a separate and divisible term and if any such term becomes unenforceable for any reason whatsoever, then the term shall be severable and shall not affect the validity of the other terms.
- 22.11 Provided that they do not conflict with any of the terms and conditions

contained herein, such as general practices, terms and conditions applicable to the industry in which BASF conducts business shall be applicable to all dealings between BASF and the Customer

### **23. FORCE MAJEURE**

To the extent any incident or circumstance beyond BASF'S control (including natural occurrences, war, strikes, lock-outs, shortages of raw materials and energy, obstruction of transportation, breakdown of manufacturing equipment, fire, explosion, acts of Government), reduces the availability of goods from the plant from which BASF receives the goods such that BASF cannot fulfil its obligations under this agreement, and BASF has informed the Customer accordingly and without delay, BASF shall:

- (i) Be relieved from its obligations under this agreement to the extent that BASF is prevented from performing such obligations and
- (ii) Have no obligation to procure goods from other sources. If the aforementioned occurrences last for a period of more than 3 (three) months, BASF is entitled to withdraw from the agreement without the Customer having any right to compensation.

### **24. DISCLOSURE OF PERSONAL INFORMATION**

The Customer understands that the personal information given in the credit application form is to be used by BASF for the purpose of assessing the Customer's credit worthiness. The Customer confirms that the information given is accurate and complete. The Customer further agrees to update the information supplied, in order to ensure the accuracy and completeness of the information given, failing which BASF will not be **liable as a result of any inaccuracies or lack of completeness of information.**

### **25. NOTICES**

25.1 Any notice or communication required or permitted to be given in terms of this agreement shall be valid and effective only if in writing and if received or deemed to be received by the addressee as stipulated in 26.2 and 26.3 below.

### **26. COMPLIANCE**

In performing its obligations under this Agreement, the Customer undertakes to comply with all applicable laws and regulations (in particular, but not limited to, relating to antitrust and anti-corruption).

### **27. TERMINATION**

This agreement shall commence on the day of last party signing and shall continue for

indefinite period unless terminated by either party on two months written notice to the other.

I, the undersigned do hereby warrant that all the information recorded in this application is true and correct and that I am duly authorized to sign on behalf of the applicant and I agree that all transactions concluded with BASF shall be subject to the terms and conditions specified herein and agree to be bound by all such terms and conditions, and without limiting the generality thereof, especially clause 20 (the suretyship), insofar as the latter relates to the signatories.

THUS DONE AND SIGNED BY THE CUSTOMER AT

.....

ON THIS THE ..... DAY OF..... 20 .....

For and on behalf of the Customer, duly authorized hereto.

FULL NAME: \_\_\_\_\_ FULL NAME:

\_\_\_\_\_

DESIGNATION: \_\_\_\_\_ DESIGNATION:

\_\_\_\_\_

SIGNATURE: \_\_\_\_\_ SIGNATURE:

\_\_\_\_\_

AS WITNESSES:

1. Full Name: \_\_\_\_\_ Signature:

2. Full Name: \_\_\_\_\_ Signature:

