# BASF Zambia Ltd
# Standard Terms and Conditions of Sale - 2022

**These Standard Terms and Conditions of Sale** ("**T&Cs**") **contain assumptions of risk and/or liability by you and/or the entity you represent** ("**Customer**") **and may limit and exclude liabilities, obligations and legal responsibilities, which BASF Zambia Ltd and its affiliates** (collectively, "**BASF**") **will have towards the Customer.**

## 1. SCOPE OF APPLICATION

The supply of all products and services (collectively, the "**Goods**") by BASF to the Customer shall be governed by these T&Cs.

## 2. PRODUCT QUALITY, SPECIMENS & SAMPLES

2.1 The quality of the Goods shall be determined strictly and exclusively in accordance with BASF's product specifications (in effect at delivery of the Goods and available on request).

2.2 The properties of specimens and samples (including any descriptions and compositions) constitute examples only and shall not constitute a representation by or create any binding obligations on BASF.

2.3 BASF does not warrant the suitability of the Goods for any specific purpose and gives no express or implied warranties in respect of the Goods.

## 3. PRICE

3.1 The purchase price of the Goods: (a) shall be the price reflected in BASF's written quotation or in limited instances BASF's standard price list (as provided by BASF to the Customer and valid only for the period indicated thereon); and (b) excludes all VAT (if applicable) and costs and expenses that may be incurred by BASF in provision of the Goods.

3.2 BASF reserves the right to change its prices from time to time at its discretion. Any price changes shall not apply to already Accepted Orders (as defined in clause 4.3).

## 4. OFFERS AND ACCEPTANCE OF ORDERS

4.1 BASF's quotations are not binding offers but merely invitations.

4.2 All orders for Goods ("**Order**") need to be placed by the Customer in writing, in accordance with BASF's standard processes.

4.3 A binding agreement for the provision of any Goods ("**Accepted Order**") only comes into existence upon BASF's acceptance of an Order.

## 5. PAYMENT OF AN ACCEPTED ORDER

5.1 Payment shall be made in full to BASF and without any set-off, deduction or withholding within 30 days of the date of BASF's initial statement relating to an Accepted Order, unless expressly otherwise stated on BASF's official tax invoice.

5.2 Should the Customer fail to pay any invoice timeously, then:

5.2.1 the amount outstanding will attract interest of 2% above the prevailing prime overdraft rate charged by Citibank from time to time, compounded monthly, from the due date of payment to the actual date of payment;

5.2.2 all amounts payable by the Customer for Goods delivered to Customer shall immediately become due, owing and payable irrespective of the dates when the Goods were purchased or delivered; and

5.2.3 BASF will be entitled to withhold delivery of Goods pursuant to any Accepted Order until date of payment.

5.3 A certificate issued and signed by a representative of BASF, whose authority need not be proved, in respect of any indebtedness of the Customer to BASF shall be prima facie evidence of the Customer's indebtedness to BASF.

5.4 Subject to applicable law, BASF may allocate payments made by the Customer at its discretion.

5.5 The Customer shall make all payments net of any applicable tax (direct or indirect), duties or other charges. Without limiting the foregoing, if any amount is withheld in the form of withholding tax, the Customer shall pay BASF such amount as would be necessary to ensure that the net amount actually received by BASF would be equal to the full amount BASF would have received had no such withholding been required.

## 6. OWNERSHIP & RISK

6.1 All risk in and to the Goods shall pass to the Customer on delivery and each party shall take out insurance as per the agreed Incoterms®.

6.2 Ownership in all Goods shall remain vested in BASF until the purchase price of such Goods has been paid in full.

## 7. DELIVERY

7.1 Delivery shall be affected as per the Parties' agreed Incoterms®.

7.2 Any dates quoted for delivery are approximate only, and the time of delivery is not of the essence. BASF shall not be liable for any delay in delivery.

7.3 If BASF delivers up to and including 5% more or less than the quantity of Goods ordered, the Customer may not reject them.

7.4 If the Customer fails to take delivery, without good cause, of the Goods ordered 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 such Goods.

## 8. DAMAGE IN TRANSIT

Notice of claims arising out of damage in transit must be lodged and carried out in accordance with the agreed Incoterms®. The Customer shall co-operate and assist BASF where it is required to lodge or defend any claims.

## 9. LIMITATION OF LIABILITY AND INDEMNITY

As far as is legally permissible:

9.1 BASF's aggregate cumulative liability, howsoever arising, to the Customer under these T&Cs shall be limited to the received purchase price of the Goods to which the liability relates.

9.2 BASF and its directors, officers, employees, contractors and agents ("**Representatives**") shall not be liable for, and the Customer irrevocably and unconditionally indemnifies and holds BASF and its Representative harmless against any and all claims, actions, damages, losses, demands, liability, costs and expenses of whatsoever nature ("**Loss**") to the extent that: (i) the Goods comply with BASF's standard specification; (ii) BASF´s liability exceeds the limitation of liability referred to above; (iii) if the Loss arises out of or is related to any act or omission of the Customer or its Representatives (including any inadequate instructions or warnings); and/or (iv) the Loss is related to any non-compliance/breach with these T&Cs or any local legal requirements by the Customer or its Representatives.

9.3 BASF shall not be liable for any consequential, incidental, punitive or any other indirect damages.

## 10. CUSTOMER'S RIGHTS REGARDING ALLEGEDLY DEFECTIVE GOODS

10.1 The Customer shall inspect the Goods immediately following delivery of the Goods for quantity variances and defects. Any complaints shall then be made in writing to BASF at the address stipulated in clause 18.1 below:

10.1.1 immediately, in the case of patent defects; or

10.1.2 no later than seven days after discovery of the defect, in the case of latent defects,

but in any event no later than six months after receipt of the Goods. The Goods supplied shall otherwise be considered free of defects.

10.2 Where Goods are found to be defective by BASF after the Customer has complied with clause 10.1, then BASF has the right to elect to remedy the defect or to supply the Customer with non-defective replacement Goods. This clause 10.2 constitutes the Customer's exclusive remedy and BASF's only liability in respect of defects in the Goods and, for the avoidance of doubt, is subject to clause 9.

## 11. RETURNS AND CANCELLATIONS

The Customer may not cancel any Accepted Order or reject delivery of or return any Goods without the prior written consent of BASF (which remains at BASF's sole discretion). BASF shall be entitled to impose reasonable terms and conditions (including charging a reasonable fee) when consenting to the cancellation of any Accepted Order or the return of any Goods.

## 12. BREACH AND TERMINATION

If the Customer commits a breach of any provision of these T&Cs (all of which are deemed to be material) or commits an act of insolvency or otherwise becomes bankrupt or insolvent, or allows a judgment to be entered against it, or is provisionally or finally liquidated or sequestrated, or becomes subject to business rescue, administration or similar proceedings ("**Default**"), and fails to remedy such Default within five business days of written notice by BASF calling for such Default to be remedied, then, without prejudice to and in addition to its other legal remedies and any rights under these T&Cs, BASF shall be entitled to:

12.1 immediately cancel these T&Cs or any Accepted Order(s) under these T&Cs on written notice to the Customer; and/or

12.2 claim specific performance or recover any damages which it would otherwise be entitled to recover (which may include payment of the full price of any Accepted Orders or the balance thereof).

## 13. GOVERNING LAW

These T&C's (including their existence, validity, interpretation, implementation, termination and enforcement) shall be governed by and construed in accordance with the laws of Zambia.

## 14. LEGAL PROCEEDINGS & DISPUTE RESOLUTION

14.1 Nothing in this clause 14 shall preclude either party from seeking urgent interim relief or summary judgement (or any analogous relief in any other jurisdiction) from any court of competent jurisdiction.

14.2 In the event of any dispute arising out of or in connection with these T&Cs including the breach, termination or invalidity thereof, then the parties agree that upon written notice either of them may refer the matter to be settled by arbitration.

14.3 The parties may agree on the arbitration procedure and, failing agreement within 10 business days of the notice referred to in clause 14.2, the arbitration shall be conducted in accordance with the UNCITRAL Arbitration Rules in force at the date of notice. The arbitration shall be administered by the parties.

14.4 The notice referred to in clause 14.2 shall include all information required by the UNCITRAL Arbitration Rules to stand as a 'notice of arbitration' and a 'statement of claim' and shall constitute such documents for the purposes of the proceedings. Similarly, the defendant's 'response to the notice of arbitration' shall include all information required by the UNCITRAL Arbitration Rules to stand as its 'statement of defence' and shall constitute such a document for the purposes of the proceedings.

14.5 The number of arbitrators shall be one and shall be a Zambian qualified advocate or attorney of at least ten years' experience, as agreed to between the Parties or, failing agreement, appointed by Chairman of the Chartered Institute of Arbitrator (Zambia Branch) (which shall be the appointing authority in terms of the UNCITRAL Arbitration Rules).

14.6 The arbitration shall be held in Nairobi and in English.

14.7 The arbitration award shall be final and binding on the parties and shall not be subject to appeal.

14.8 The Customer shall be liable for all costs incurred by BASF in the enforcement of any rights which it has under these T&C's, including collection charges and costs, on an attorney and own client scale to the extent permissible and failing this attorney and client scale whether incurred prior to or during the institution of legal proceedings (whether in court or by way of arbitration) or if judgment has been granted, in connection with the satisfaction or enforcement of such judgment.

14.9 This clause shall survive termination of these T&C's.

15. **GENERAL**

15.1 In implementing these T&Cs and any Accepted Order, the Customer shall comply with all applicable laws and regulations (including but not limited to import, use, storage, anti-trust and anti-corruption laws).

15.2 Any Accepted Order together with these T&Cs shall constitute the entire agreement between the Parties. BASF shall not be bound by any express or implied verbal or written term, representation, warranty or promise not recorded herein. These T&Cs shall supersede and take precedence over any terms or conditions stipulated by the Customer.

15.3 No amendment, addition, waiver and/or cancellation of these T&Cs shall be of any force or effect unless reduced to writing and signed by, the Customer, and a director of BASF. For the purposes of this clause 15.3, "**writing**" shall not include email or other data messages and "**signed**" shall not include electronic signature, as defined in the Electronic Communications and Transactions Act, 2002.

15.4 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 Accepted Order or other agreement between the parties shall prejudice or be regarded as a waiver of any of BASF's rights in terms of these T&Cs.

15.5 The Customer shall not cede its rights nor delegate its obligations in terms hereof without BASF'S prior written consent thereto. BASF shall at any time in its sole discretion be entitled to cede all or any of its rights or delegate its obligations, to any third party with prior notice to the Customer.

15.6 The Customer undertakes to notify BASF in writing within a period of seven days of any change of address, name change or any changes in information as set out in any Order.

15.7 Each of the provisions herein shall be a separate and divisible term and if any such provision becomes unenforceable for any reason whatsoever, then the provision shall be severable and shall not affect the validity of the other provisions. In such case, the provision shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted.

15.8 No remedy hereunder is intended to be exclusive of any other remedy that is otherwise or may in future be available under any law.

16. **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, cyber-attacks, epidemic or pandemic (whether or not officially declared by the WHO), or acts of government or other authority), prevents or delays BASF from fulfilling its obligations under any Accepted Order, BASF shall inform the Customer as soon as reasonably possible and shall: (i) not be liable and shall be relieved from its obligations; (ii) be entitled to extend the time for performance of its obligations by a period at least equivalent to that during which performance has been prevented or delayed; and (iii) have no obligation to procure Goods from other sources. If BASF is so prevented or delayed for a period of more

than 3 (three) months, BASF may terminate the applicable Accepted Order(s) on notice to the Customer without the Customer having any right to compensation.

17. **PERSONAL INFORMATION AND IT SECURITY**

The Customer:

17.1 in submitting any information to BASF unconditionally and voluntarily consents to the processing its personal information for any and all purposes related to these T&Cs which may include, but is not limited to: (i) assessing its financial position and ability to adhere to these T&Cs or any related obligations; (ii) providing it with goods and/or services; (iii) evaluating, developing or improving BASF's goods and/or services; (iv) keeping it informed about relevant goods and/or services; and/or (v) providing it with an efficient and smooth customer experience;

17.2 agrees, in the absence of any written objection received from the Customer, that such processing consent shall be indefinite (until withdrawn in writing by the Customer) or for the period otherwise required in terms of any applicable law;

17.3 confirms that the information it provided is accurate and complete and agrees to maintain and update such information when necessary. Failing which BASF shall not be liable for any loss, damage or injury as a result of any inaccuracies or lack of completeness and indemnifies BASF against any such loss, damage or injury as well as any unintentional disclosures;

17.4 authorises BASF to share its personal information with any third parties (including but not limited to other BASF group companies) for the purposes of providing the Goods hereunder and/or any other legitimate interests of BASF;

17.5 agrees that BASF may transfer its personal information to foreign countries in accordance with applicable law;

17.6 consents to BASF contacting and request information from any third party, credit bureau or business, to obtain any information relevant to this Agreement; and

17.7 agrees and acknowledges that, to the extent permitted by applicable law, if it believe that BASF has utilised its personal information contrary to applicable law, that it will first resolve any concerns with BASF. Thereafter, if it is not satisfied that it has the right to lodge a complaint with the relevant authorities (once or if established).

17.8 This Agreement is subject to the provisions of BASF's Privacy Statement which may be accessed on **www.basf.com**

17.9 For the placement of electronic Orders by the Customer, BASF only provides for respective interfaces. The Customer must carefully handle access data (username and password) provided. In the event of loss or unauthorized access to these access data, the Customer shall immediately inform BASF. The Customer is liable to BASF for any damages resulting from the late notification to BASF of such loss or unauthorized access.

18. **NOTICES**

18.1 The Customer chooses as its address for receipt of notices, communications, legal processes and other documents, the Customer's physical address as given on the Goods Application Form. BASF chooses (its physical address at the time) currently being the following: the Pavilion, Sixth Floor, Lower Kabete Road, Nairobi. A party may by written notice change its address for the purposes of this clause 18.1 to any other address (other than a post office box number) provided that the change shall become effective on the 7th day after the receipt of such written notice.

18.2 Any notice or communication shall be valid and effective only if in writing and if received or deemed to be received in terms of clauses 18.3 and 18.4 below.

18.3 Any notice to a party sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to its address specified in clause 18.1 ("**Address**"), shall be deemed to have been received on the 7th business day after posting (unless the contrary is proved).

18.4 Any notice to a party delivered by hand to a responsible person during ordinary business hours at its Address shall be deemed to have been received on the day of delivery.