

## General Conditions of Purchase of BASF Holdings South Africa (Pty) Ltd and its Affiliated Companies Located in South Africa

### 1. General

**1.1** These general conditions of purchase ("Conditions of Purchase") form an integral part of all contracts (including, without limitation, all future contracts) for the delivery of goods or the provision of services ("Contract") between a supplier of goods or a service provider (hereinafter "Contractor") and BASF Holdings South Africa (Pty) Ltd or any of its affiliated companies located in South Africa (hereinafter "Principal").

**1.2** General terms of business of the Contractor shall only apply if and insofar as the Principal has explicitly accepted them in writing. Any references of the Principal to correspondence from the Contractor containing or referring to the Contractor's general terms of business shall not constitute the Principal's acceptance of the applicability to this Contract of such general terms of business. The Contractor's general terms of business shall also not apply if the Principal should accept any goods / services in the knowledge that the Contractor has purported to deliver them on general terms of business of the Contractor that deviate from or are in conflict with these Conditions of Purchase.

### 2. Offer

**2.1** Offers and price quotes shall not be remunerated and shall not create any obligations on the part of the Principal.

**2.2** In its offer the Contractor shall explicitly expose any discrepancies between its offer and the Principal's inquiry. If the Contractor has alternatives for an inquiry which is technologically or economically superior it shall additionally present this offer to the Principal.

### 3. Delivery Date, Partial Delivery of Goods / Partial Provision of Services

**3.1** The Contractor must comply with the agreed dates of delivery or dates of provision of services, respectively. In each instance the Contractor shall be required to deliver the goods or provide the services, free of any defects, to the Principal, within the Principal's regular business hours, accompanied by the required shipping documents (if applicable) to the address specified in the purchase order (hereinafter "Place of Destination"). If the Principal and the Contractor have agreed to a delivery including assembly / service, the delivery of the goods free of any defects shall not be considered to have taken place until the relevant assembly / service has been duly carried out as specified in the Contract. If a formal acceptance procedure is stipulated by law or specified in the Contract, the time specified for such acceptance procedure shall be adhered to by both parties. Any Deliveries of goods / provision of services made in advance or partial deliveries / partial provision of services shall require the Principal's prior written agreement.

**3.2** If the Contractor recognises that it will not be able to fulfill its contractual obligations either in full or in part, or not within the stipulated timeframe, it must notify the Principal in writing forthwith. The notice must state both the reason(s) for the delay and the predicted delay in delivery time. Any acceptance by the Principal of a delayed or partial delivery of goods / provision of services shall in no way whatsoever constitute a waiver of any rights of the Principal relating to late or partial delivery of goods / provision of services.

**3.3** Any changes to the goods to be delivered or services to be provided require the prior written consent of the Principal.

**3.4** If any documents or other support is required or needed by the Principal to enable the Contractor to carry out the Contract, the Contractor shall request same in a due and reasonable time.

### 4. Sustainability

**4.1** The Principal conducts its business in accordance with the principle of sustainable development and adheres to internationally recognised fundamental standards for

occupational health and safety, environmental protection, labor and human rights as well as responsible corporate governance ("ESG Standards"). The Principal has described its understanding of the ESG Standards in the "Supplier Code of Conduct" (see: <http://www.basf.com/supplier-code-of-conduct>). The Principal expects the Contractor to adhere to the ESG Standards. Furthermore, the Principal calls upon the Contractor to ensure that all its subcontractors of any tier adhere to the ESG Standards likewise. The Principal shall have the right to check adherence to the ESG Standards, either itself or through third parties that it commissions, with prior notice.

**4.2** While performing the contract, the Contractor must adhere to the Principal's occupational health and safety and environmental protection requirements specified in the contract.

### 5. Quality

**5.1** The Contractor shall carry out and maintain effective quality assurance and, if requested, demonstrate this to the Principal. To this end, the Contractor shall use a quality assurance system with elements as per ISO 9000 or a similar system of equivalent standard. The Principal shall have the right to inspect the Contractor's quality assurance system, with prior notice, either itself or through third parties commissioned by the Principal.

### 6. Use of Subcontractors

**6.1** Third parties (in particular, any subcontractors) may only be employed or replaced by the Contractor with the Principal's prior written consent. If the Contractor intends to use subcontractors to perform some or a portion of the Contract from the outset, the Contractor must inform the Principal of this when submitting its offer.

**6.2** The appointment and approval of a subcontractor shall not relieve the Contractor of its obligations under the Contract and it shall remain responsible for any failure on the part of any subcontractor as well as remedying and mitigating any such failures or defaults.

### 7. Delivery, Shipping, Packaging, Passing of Risk

**7.1** Unless agreed otherwise, the delivery of goods shall be made "DAP to the Place of Destination (Incoterms 2010)" Unless agreed otherwise, the delivery shall be accompanied by two copies of the delivery note, the packing list, cleaning and inspection certificates according to the agreed specifications and all other necessary documents. If known, the following details must be given in all shipping documents and, for packaged goods, on the outer packaging too: purchase order number, gross and net weight, number of packages and type of packaging (i.e. disposable / reusable), completion date, Place of Destination (unloading point) and consignee. For projects, the complete job number and assembly building must be given as well.

**7.2** For third country deliveries (imports), the shipping documents must specify whether the goods are being delivered duty paid or duty unpaid.

**7.3** If the goods are delivered duty unpaid, the Contractor must submit all relevant customs documents to the Principal as are necessary for customs clearance. The Contractor shall also ensure that all information necessary for a customs advance notification procedure is complete, correct and in good time at the disposal of the responsible party who must submit the advance notification, so that no delivery delays may result.

**7.4** If the goods are delivered duty paid, the proof of customs clearance shall be included in the shipping documents.

**7.5** The Contractor shall notify the Principal in detail and in writing about any possible obligation to obtain a permit for (re)exports according to the respective national export and customs regulations, as well as the export and customs

regulations of the country of origin of the goods/ services, if the Contractor is aware that the goods / services will be re-exported.

**7.6** The Contractor shall uphold the Principal's interests during the delivery. Goods must be packed with packaging materials approved for the Place of Destination as so to avoid damage during transport. The Contractor is liable as per the statutory provisions for any damage incurred due to improper packaging.

**7.7** For domestic deliveries, upon the Principal's request the Contractor shall collect any accumulated outer packaging, transport and sales packaging from the Place of Destination following delivery and dispose of it or have this done by a third party.

**7.8** The Contractor shall package, label and ship products according to the applicable national and international laws and regulations. The Contractor shall in particular provide the Principal with a safety data sheet, in English

**7.9** Up until the arrival of the goods specified in the Contract with the documents mentioned in clauses 7.1 and 7.2 at the Place of Destination, the Contractor shall bear all risk of loss and/or damage. If the parties have agreed a delivery inclusive of assembly / service, the risk of loss or damage shall pass to the Principal after the assembly / service has been duly completed and accepted by the Principal, in accordance with the Contract and following the handover of the goods.

**7.10** If a formal acceptance is stipulated by law or by the contract, the passing of risk shall take place upon acceptance by the Principal. If formal acceptance is agreed, the risk of loss shall not pass from the Contractor to the Principal before a successful acceptance has been confirmed by the Principal in writing in the acceptance certificate. Payment of invoice balances shall not replace a formal acceptance.

## **8. Origin of Goods**

**8.1** The Contractor declares the non-preferential origin of goods (country of origin) in commercial documents. Upon the Principal's request he will provide a proof / certificate of origin specifying the origin of the goods.

**8.2** The goods must comply with the regulations for the preferential origin of goods as per the bilateral or multilateral agreements or the unilateral regulations for the origin of goods pursuant to the Generalized Systems of Preferences (GSP), insofar as the delivery is within the scope of preferential trade.

## **9. Condition of the Delivery / Service, Complaints, Rights in the Event of Defects**

**9.1** The Contractor is responsible for delivering goods and services free of defects, in particular compliance with the agreed specification of goods and services, and, additionally, for ensuring that guaranteed properties and features are present. In addition, the Contractor guarantees, warrants and undertakes to ensure that goods and services:

- meet the current technical standards and, if applicable, the generally recognised standards in plant safety, occupational medicine and hygiene,
- are delivered by qualified personnel,
- are in line with all pertinent legal regulations at the Place of Destination, and
- are fit for the purpose for which they have been ordered by the Principal.

If machines, equipment or plants constitute delivery items, they shall meet the special safety requirements applicable to machinery, equipment and plants at the time of contract fulfillment.

**9.2** The Contractor guarantees, warrants and undertakes that all materials contained in the goods have effectively been pre-registered, registered (or exempt from the obligation to register) and, if relevant, authorised in accordance with all applicable legal requirements for the uses disclosed by the Principal.

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**9.3** In the event of any defect(s) existing in respect of the goods, irrespective of whether such defect(s) is/are clearly apparent at delivery of such goods or only become apparent at a later point in time, the Principal shall notify the Contractor within twenty (20) business days following the Principal's actual discovery of such defect(s).

**9.4** In the event of any defects, the Principal has the right to demand rectification of such defects according to applicable law. The mode of rectification shall be at the Principal's discretion. The rectification location shall be at Principal's option. The Contractor shall bear the cost of rectification and must execute rectification in all respects in accordance with the Principal's instructions and requirements. If (i) rectification does not take place within a reasonable period of time, (ii) rectification has failed, or (iii) it is not necessary to fix a grace period for rectification, the Principal shall be entitled to claim under all other legal remedies in the event of defects (including, without limitation, to claim for all loss and/or damages).

**9.5** Where:

- any of the circumstances listed in Clause 9.4 (i), (ii) or (iii) are present;
- the Contractor refuses to rectify any defects,
- the Principal has a reasonable fear of further related losses or a loss of use of the goods in question, or
- rectification may not be further postponed due to other reasons,

then the Principal, in addition to the rights named in Clause 9.4, has the right to remedy the defects itself at the cost and liability of the Contractor, or allow this work to be undertaken by third parties. The Principal in such case shall be entitled to demand full compensation from the Contractor for the required measures. A grace period for rectification is particularly unnecessary if there is a danger of unreasonably high damages and/or the Contractor cannot be reached. In addition, the applicable law shall apply. Any additional rights of the Principal concerning the Contractor's statutory liability for defects or under any guarantees shall remain unaffected.

**9.6** Claims under warranty shall become time-barred thirty-six (36) months after the passing of risk unless a longer expiration period is prescribed by law. The Principal shall not be deemed to have waived any of its rights to make claims under warranty in the absence of an express written waiver.

## **10. Infringing Property Rights**

It is the Contractor's responsibility to ensure that the delivery of the goods and / or provision of the services and the use thereof by the Principal pursuant to the Contract will not infringe any patent laws, copyright or other proprietary rights of third parties. Notwithstanding other legal claims, the Contractor shall indemnify the Principal from any third party claims for which the Principal may be held liable as a result of the infringement of any of the aforementioned property rights if these are based on a culpable violation of obligations by the Contractor. In this case, the Contractor shall bear the cost of any licensing fees, expenses and fees incurred by the Principal in preventing and / or rectifying any infringements of property rights.

## **11. Insurance**

The Contractor shall maintain sufficient liability insurance at its own expense for damage for which it or its subcontractors or agents for which it is vicariously liable are responsible. Evidence of the amount of insurance coverage for each occurrence of damage shall be provided to the Principal upon request. The Contractor's contractual and legal liability remains unaffected by the extent and amount of its insurance coverage.

## **12. Invoicing, Payment**

**12.1** The agreed prices shall be net of any applicable value-added tax. Invoices are to be issued for deliveries made and

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services provided. These invoices shall comply with the relevant statutory invoicing requirements according to the national value-added tax legislations to which the deliveries / services being invoiced are subject. If self-billing (evaluated receipt settlement) is agreed, the Contractor must transfer to the Principal all data required as per the applicable value-added tax legislation specified in advance.

**12.2** The Contractor must provide a separate, auditable tax invoice for each purchase order, which must include all of the legally required information under South African law. The invoice must include the Principal's full order number and, if applicable, the Contractor's delivery note number. Certificates of work completed and any other records are to be submitted with the invoice. Invoices must correspond to the information in the purchase order in respect of the goods described, price, quantity, the order of the items and item numbers. Invoices are to be sent to the billing address specified by the Principal in the purchase order.

**12.3** Unless agreed otherwise, the payment period shall commence as soon as an invoice that meets the applicable value-added tax requirements has been received at the billing address. In the case of self-billing, the payment period commences the day the credit memo is issued. Payment will be made subject to determination of contractual compliance and completeness for the delivery / service provided. The Contractor must comply with the Principal's procurement process and invoice submission requirements.

**12.4** Payment by the Principal shall not be an indication of acceptance of conditions or prices, and shall not constitute a waiver of:

- the Principal's rights with regard to deliveries made/ services provided that differed from those as agreed upon,
- the Principal's rights to inspection, and
- the right to find fault with an invoice due to other reasons.

### **13. Assignment of Contract, Transfer, Change of Company Name, Offsetting, Retention**

**13.1** The Contractor may only assign the rights and obligations under the Contract to third parties with the prior written consent of the Principal.

**13.2** The Contractor is required to notify the Principal forthwith in writing of any assignment of the Contract by virtue of law and of any change of its trade name.

**13.3** The Principal may assign the rights and obligations under the Contract at any time without the Contractor's prior agreement to any affiliate company or to any entity that is directly or indirectly controlled by or under common control of BASF SE, whether by direct or indirect ownership of at least 50 % of the voting securities, contract, or otherwise.

**13.4** The Contractor shall not be permitted to set off any claims, irrespective of whether such claims are undisputed or substantiated by court judgement.

**13.5** The Principal may at any time, without limiting any of its other rights or remedies, set off any liability of the Contractor to the Principal against any liability of the Principal to the Contractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.

### **14. Termination, Rescission**

**14.1** The Contract may be terminated without notice for good cause. Grounds for good cause shall, in particular but without limitation, include:

- A breach of a material clause of these Conditions of Purchase or the Contract by the Contractor which is not remedied within ten (10) business days of receipt of a written complaint by the Principal; or
- the Contractor being unable (or admitting it is unable) to pay

its debts generally as they fall due or being (or admitting to being) otherwise insolvent or stopping, suspending or threatening to stop or suspend payment of all or a material part of its debts or proposing or seeking to make or making a general assignment or any arrangement or composition with or for the benefit of its creditors or a moratorium being agreed or declared in respect of or affecting all or a material part of its indebtedness; or

- the purchase or use of the goods or the service is or will be either entirely or partly impermissible due to legal or official regulations.

Further rights legally provided to the Principal regarding termination, termination for good cause and rescission from the contract shall remain unaffected by this provision.

**14.2** If the Principal terminates the Contract for good cause and if other existing contracts between the Principal and the Contractor cannot be maintained for the same grounds for good cause, the Principal shall also be entitled to terminate such other contracts existing at the time of termination and contracts which have not yet been fulfilled against a pro rata remuneration for the services already provided. In such events, the Contractor shall not be entitled to any further claims for damages, reimbursement of expenses or remuneration.

**14.3** If the Contractor has acquired from the Principal any documents, records, plans or drawings within the scope of or for the purposes of fulfilling the Contract the Contractor must forthwith hand them over to the Principal in the event of termination of the Contract. These requirements apply likewise in the event of rescission.

### **15. Contractor's Removal Duty in the Event of Termination of Contract**

In the event of termination of the Contract, the Contractor must, at its own expense and regardless of the grounds for termination, forthwith dismantle and remove all plant, tools and equipment related to the Contract as soon as is reasonably possible after the date of termination of the Contract. Any waste or debris produced by the Contractor's work must be promptly removed and disposed of appropriately by the Contractor at its own expense. If the Contractor does not fulfill its duties in this regard, the Principal may undertake the work itself or have it undertaken by a third party and charge the expenses incurred to the Contractor if the work has still not been completed after a reasonable period of time has elapsed. These requirements shall likewise apply in the case of rescission.

### **16. Documents, Confidentiality, Rights of Use**

**16.1** The Contractor must provide to the Principal the agreed quantity of any plans, calculations or other documents in order not to exceed the contractual deadline for execution or as are required for the intended use of the goods

**16.2** The review of any documents by the Principal shall not relieve the Contractor of any of its responsibilities under the Contract.

**16.3** Any models, samples, drawings, data, materials and other documents provided to the Contractor by the Principal (hereinafter "Principal Documentation") shall remain the property of the Principal and must be returned to the Principal upon its written request at any point in time. The Contractor shall have no rights to retain any Principal Documentation. The Contractor must observe the proprietary rights of the Principal in and to all Principal Documentation.

**16.4** The parties are obliged to keep confidential all technical, scientific, commercial and other information obtained either directly or indirectly within the scope of the Contract, in particular the information given by the Principal in Principal Documentation (hereinafter "Confidential Information"). The parties may not exploit Confidential Information for commercial purposes, make it the object of industrial property rights, pass

it on or make it accessible to third parties in any way. The Contractor is entitled to share confidential information with subcontractors approved by the Principal if the subcontractor requires this information in order to fulfill the Contract.

**16.5** Confidential Information may not be used for any purpose other than fulfilling the Contract. The aforementioned confidentiality obligation shall continue to apply for a period of ten (10) years after the contract has ended.

**16.6** This confidentiality requirement shall not include: (a) any information that a party lawfully possessed prior to the other party's disclosure of such information, or (b) is lawfully known to the public, or (c) has been lawfully obtained from a third party. Also excluded from this confidentiality requirement shall be information that is disclosed to persons subject to a legal obligation to keep such Confidential Information confidential, in which case the relevant party shall not release such a person from its obligation to keep such information confidential. The burden of proof for such an exception lies with the party wishing to rely on such exception.

**16.7** The parties shall ensure that their employees and other vicarious agents deployed to fulfill the Contract are obliged to confidentiality according to the above confidentiality provisions by means of appropriate contractual obligations, too. Upon reasonable request, either party shall confirm compliance with these obligations to the other in writing.

**16.8** The parties shall specifically undertake all required, appropriate precautions and measures to effectively protect the Confidential Information obtained at all times against loss or against unauthorised access. This includes, in particular, the creation and maintenance of appropriate, required access and entry precautions for facilities, repositories, IT systems, data storage devices and other information storage devices, especially those which contain Confidential Information. This also includes informing and instructing those people who are granted access to Confidential Information pursuant to this clause. The parties are required to promptly notify one another in writing in the event that Confidential Information is lost and / or accessed by unauthorised parties.

**16.9** The Contractor shall grant the Principal rights of use free from any restrictions as to area, content or time for all plans, drawings, graphics, calculations and other documents related to the Contract, in all known media formats including electronic media, internet and online media saved to all imaging, audio and data storage devices, for the contractually agreed purposes or purposes implied as per the Contract. This information may have either been prepared by the Contractor itself or by third parties.

**16.10** In addition, the Contractor shall grant the Principal an exclusive right to use and exploit work results that the Contractor created specifically for the Principal or had third parties create for the Principal, and shall obtain any necessary consents required from third parties. Pre-existing rights of the Contractor or of third parties shall remain unaffected hereby.

#### **17. Publicity Ban, Severability Clause, Applicable Law, Place of Jurisdiction**

**17.1** The Contractor may only refer to or publicly disclose otherwise its business relationship with the Principal with the prior written consent of the Principal, or where this is unavoidable in order to fulfill the Contract.

**17.2** The invalidity or unenforceability of any provision or part of a provision of these Conditions of Purchase or the Contract shall not affect the validity of the entire Contract.

**17.3** This Contract (including its existence, validity, interpretation, implementation, termination and enforcement) and all modifications and amendments thereof, shall be governed by and decided upon and constructed and interpreted under and in accordance with the laws of the Republic of South Africa.

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**17.4** For purposes of applying for urgent relief, the Contractor and the Principal hereby consent and submit to the exclusive jurisdiction of the Magistrates Court in any dispute arising from or in connection with this Contract.

#### **18. Alternative Dispute Resolution**

**18.1** The Principal and Contractor may agree to refer any dispute arising from or in connection with this Contract to arbitration, which arbitration shall be final and binding on both Parties 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 appealable to the High Court or any other appropriate body with requisite jurisdiction to hear such a matter.

**18.2** That arbitration shall be: (a) held as soon as is reasonably possible, (b) with only the Parties and their representatives present thereat (c) held in Johannesburg, South Africa, and (d) subject to the arbitration legislation for the time being in force in South Africa.

#### **19. Indemnity and Limitation of Liability**

**19.1** The Contractor shall keep the Principal indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Principal as a result of or in connection with:

- any claim made against the Principal for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the goods or services, to the extent that the claim is attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors;
- any claim made against the Principal by a third party for death, personal injury or damage to property arising out of or in connection with defects in goods, to the extent that the defects in the goods are attributable to the acts or omissions of the Contractor, its employees, agents or subcontractors; and/or any claim made against the Principal by a third party arising out of or in connection with the supply of the goods or services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Contractor, its employees, agents or subcontractors.

**19.2** The Principal's aggregate cumulative liability whether arising under contract, tort or any other legal theory shall be limited to the total purchase price of the goods or delivery to which such claim or event relates.

**19.3** The Principal shall not have any liability for indirect, special or consequential losses or any of the following losses, regardless of whether same may be classified as direct or indirect losses: loss of profit; loss of revenue, loss of use; loss of goodwill or reputation; loss of anticipated savings and loss of production.

**19.4** This clause 19 shall survive the termination of the Contract.

#### **20. Force Majeure**

**20.1** Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure result from an event, circumstance or cause beyond its reasonable control ("Force Majeure Event").

**20.2** The Contractor shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

**20.3** If a Force Majeure Event prevents, hinders or delays the



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Contractor's performance of its obligations for a continuous period of more than twenty (20) business days, the Principal may terminate the Contract immediately by giving written notice to the Contractor.

### **21. Broad Based Black Economic Empowerment**

The Contractor hereby confirms its commitment to its social economic obligations and undertakes to use its reasonable endeavors, in so far as it is within its power to do so, to promote compliance with black economic empowerment legislation in force in South Africa within its organisation.