

# STANDARD CONDITIONS OF SALE

These Standard Conditions of Sale apply from June 2013, and may be amended at any time without prior notice.

## 1. General

These Standard Conditions of Sale shall constitute the sole and exclusive conditions of sale regarding the products (each a "Product", and together, the "Products") of Haifa Chemicals Ltd. ("Seller") sold to Buyer, except to the extent expressly varied in writing and as long as the same are not inconsistent with the terms and conditions set forth in a specific supply agreement executed by and between Seller and Buyer. In the event that the provisions of these Standard Conditions of Sale are inconsistent with the terms and conditions of said supply agreement, the terms and conditions of said supply agreement shall prevail over any contrary terms in these Standard Conditions of Sale. No change to these conditions shall be valid unless made in writing and signed by Seller. These Standard Conditions of Sale constitute notification of Seller's rejection of (i) any standard terms and conditions referenced by Buyer and (ii) any other attempt by Buyer to modify these Standard Conditions of Sale.

## 2. Offer and Acceptance

**2.1** A purchase order by Buyer shall be subject to written acceptance by Seller. In case Seller's acceptance differs from Buyer's purchase order, such acceptance constitutes a new non-binding offer of Seller. Buyer's purchase order duly accepted by Seller shall be hereinafter referred to as an "Order."

**2.2** Orders that the delivery lead time exceeds twenty-eight (28) days from due acceptance of Buyer's purchase order by Seller, will entitle Seller, at its sole discretion, to modify the price, quantity and terms of payment related to such Order or to cancel any such Order.

**2.3** If Seller modifies the price of an Order, Buyer shall be entitled to withdraw such Order by giving written notice to Seller within five (5) days after notification of the price increase, provided that such Order has not yet been dispatched by Seller.

## 3. Cancellation

**3.1** Orders may not be cancelled or varied by Buyer without Seller's written consent and may entail, as a condition to such consent, the reimbursement to Seller of all costs incurred in performing such Order. If Buyer purports to cancel or vary an Order without Seller's consent or refuses to accept delivery of Products previously ordered, then, without prejudice to any other rights or remedies that Seller may have, Seller shall be entitled to charge Buyer any costs and fees incurred by Seller in respect of all Products ordered, supplied or manufactured for execution of such Order, as well as a cancellation fee equal to five percent (5%) of the market value of the Products under the Order so cancelled. In these circumstances, Seller shall be entitled to store the Products, at Buyer's cost, and to dispose of the Products to any third party on such terms as Seller may see fit. All costs and expenses incurred with respect to such disposal shall be reimbursed by Buyer to Seller upon Seller's first demand.

**3.2** Without derogating from any other rights or remedies available to Seller, Seller shall be entitled to cancel an Order and suspend all future deliveries in the event of filing by or against Buyer of any petition in liquidation or insolvency, or any petition for relief under the provisions of applicable law for the relief of debtors; or the appointment of a special manager, temporary liquidator, temporary receiver or trustee to take possession of any material assets of Buyer; or the placement of attachment on any of the material assets of Buyer which is not discharged within seven (7) days; or the adoption of a resolution by Buyer to voluntarily liquidate; or Buyer stops payment or ceases or threatens to carry on its business or to pay its debts as they fall due.

## 4. Prices and Payment Terms

**4.1** Prices and payment terms, including INCOTERMS, are as stated on the reverse side of the invoice and/or delivery note accompanying the Products purchased by Buyer.

**4.2** Unless otherwise stated on the reverse side of the invoice and/or delivery note accompanying the Products, payment shall be due in full thirty (30) days after the invoice date, in the currency stated on the invoice. Time of payment is of the essence.

**4.3** Regardless of the place of delivery of Products or documents, the place of payment for Orders shall be Seller's registered office.

**4.4** If Seller's prices or Seller's terms of payments are materially altered between the date of an Order and the date such Order is to be dispatched, Seller may apply the price or the terms of payment in effect on the date of dispatch. In the event of a price increase prior to the dispatch of an Order—but excluding any price increase that results from government measures—Buyer shall be entitled to withdraw such Order by giving written notice to Seller within five (5) days after notification of the price increase, provided that Buyer delivers such notice to Seller prior to the dispatch of such Order.

**4.5** Seller reserves the right to decline delivery of Products or to accept payment, unless payment is made by wire transfer in immediately available funds to Seller's designated bank account or against irrevocable confirmed letter of credit; provided, however, that in the event of payment by letter of credit, confirmation by an Israeli clearing bank is required. Such declination shall not give rise to any cause of action against Seller.

**4.6** Buyer undertakes to settle its payment obligations to Seller by their due date in accordance with the terms and conditions of this Clause 4. Failure to pay the price by the applicable due date shall constitute a material breach of Buyer's contractual obligations to Seller. In the event of a default in payment and unless otherwise agreed upon between the parties, Seller is entitled to charge default interest on all amounts due and outstanding from Buyer, commencing from their due date and continuing until the date all outstanding amounts have been fully paid, at an annual rate of interest of fifteen percent (15%). All amounts due and outstanding from Buyer and the interest accrued thereon shall be linked to the increase in the official exchange rate of the US\$ published by the Bank of England from the rate last known at the due date to the last known rate on the date of payment, unless the applicable invoice states a currency different than U.S. dollars.

## 5. Delivery; Shipping Dates; Packaging

**5.1** Delivery shall be effected as determined by Seller in its written acceptance of Buyer's purchase order. International shipping trade terms (such as CIF and FOB) shall be a specified on either the invoice issued to Buyer or the delivery note attached to the shipped Products, and these specified terms shall be interpreted in accordance with the INCOTERMS in force on the date the Order is dispatched, except to the extent those INCOTERMS are inconsistent with the terms and conditions of these Standard Conditions of Sale. If the invoice or attached delivery note fails to specify any INCOTERMS, then Seller's performance of such Order will be governed by Ex Works ("EXW"), except to the extent those EXW are inconsistent with the terms and conditions of these Standard Conditions of Sale.

**5.2** Seller shall not be obligated to dispatch any Products ordered by Buyer, unless Buyer has obtained all applicable government licenses, authorizations and other approvals. Buyer shall be solely responsible for obtaining all licenses, authorizations and other approvals that are required in accordance with the laws and regulations in the destination country for the delivery of any Product. If Seller is required to issue any particular documents to comply with such laws and regulations, Buyer must send written notification to Seller, specifying in reasonable detail what documents Seller is required to issue and the date(s) by which such documents must be provided (any such date must be a minimum of seven (7) days from the date Seller receives such written notification from Buyer).

**5.3** Unless specifically agreed otherwise, delivery times are best estimates only and shall not be of the essence. Seller will undertake all reasonable efforts to deliver the Products by the estimated delivery time. Seller reserves the right to change delivery dates for Products in accordance with available delivery options. Any expected delays in shipments will be notified to Buyer.

**5.4** In the event of bulk delivery, Seller shall use its best efforts to deliver to Buyer the exact amount of Products ordered. Notwithstanding the foregoing, Buyer shall be obligated to accept the delivery of an amount of Products varying by not more than five percent (5%) from the amount under the applicable purchase Order, and the invoice amount for such Order shall be adjusted accordingly, except where such adjustment may be impracticable in the event of an overseas Order.

**5.5** Buyer shall solely bear all responsibility for proper unloading of Products from containers or delivery trucks or any other means of transportation used for the delivery of Products, in order to avoid damage to Products upon delivery.

## 6. Product Quality; Inspection of Products

**6.1** Unless otherwise agreed, the quality of the Products is determined by Seller's Product specifications, which can be found on Seller's website at [www.haifa-group.com](http://www.haifa-group.com).

**6.2** Buyer undertakes to perform a reasonable inspection of all Products for visible defects and shortages promptly upon delivery of such Products. Claims regarding alleged defective Products or delivery shortages must be made in writing before such Products are used and must be received by Seller within ten (10) days of Buyer's receipt of such Products. Such notification must describe in detail the nature and extent of the alleged defects. Seller must be given reasonable opportunity to investigate such claims. Any defect of Products which would have been observable on reasonable inspection by Buyer or which was not notified to Seller in writing within ten (10) days of receipt of such Products, is hereby waived by Buyer, and Buyer shall have no right to bring any claims or suits against Seller with regard to such claims, nor shall Buyer be entitled to terminate its agreement with Seller or revoke its Order or acceptance of such Products based on such defect.

## 7. Suitability; Compliance with Legal Requirements; Warranties

**7.1** Buyer shall be solely responsible for determining and ensuring the suitability and fitness of Seller's Products for the purposes for which Buyer requires them and the circumstances in which they will be used. Any advice or information provided by Seller with respect to the suitability and application of the Products shall not relieve Buyer from undertaking its own investigation and testing, and making its own determination.

**7.2** Subject to Clause 7.8 below, if at any time following delivery of Products, Buyer claims that a Product is defective and that such defect could not have been detected on reasonable inspection promptly after Seller's delivery of such Product to Buyer, Buyer shall give written notice of such alleged defect (including reasonable details with regard thereto) within ten (10) days upon its discovery of such defect. Failure of Buyer to provide such notice, or to pay the entire purchase price when due, shall constitute a waiver by Buyer of all rights with regard to such claims, including the right to terminate its agreement with Seller or revoke its Order.

**7.3** Unless specifically agreed otherwise, Buyer is responsible for compliance with all laws and regulations regarding the import, transport, storage and use of the Products.

**7.4** Seller accepts no liability for any misuse or unreasonable use of the Products, or Buyer's failure to carry out its statutory or contractual obligations. Seller shall not be responsible for any defect or failure of a Product, or any damages whatsoever caused by a Product, which had been misused or modified by any person.

**7.5** In the event that Products are defective and notification of such defect has been duly made, Seller's only obligation shall be, at its sole discretion, to either supply Buyer with non-defective replacement Product, or to issue a credit to Buyer for the purchase price paid for such Product. Products returned to Seller in accordance with this Clause 7.5 shall be the property of Seller.

**7.6** Except as expressly provided in Clause 7.5 hereof, Seller shall have no further liability to Buyer in contract, tort or otherwise arising out of the supply of the Products. Seller's maximum liability is limited to the purchase price of the Product which gives rise to the claim. Under no circumstances shall Seller be liable (whether in contract, tort or otherwise) for any loss of profit (whether direct or indirect) or for any indirect, contingent, special or consequential loss, damage or injury to Buyer, even if such loss, damage or injury was foreseeable.

**7.7** THE CONDITIONS, WARRANTIES AND TERMS SET FORTH HEREUNDER ARE IN SUBSTITUTION FOR AND (TO THE EXTENT PERMITTED BY ENGLISH LAW) EXCLUDE ALL OTHER CONDITIONS, WARRANTIES AND TERMS AS TO SATISFACTORY QUALITY AND FITNESS, WHETHER EXPRESS OR IMPLIED, AND WHETHER PROVIDED BY STATUTE, COMMON LAW OR OTHERWISE.

**7.8** Notwithstanding the provisions of Clause 7.2, no suit or legal proceeding arising under these Standard Conditions of Sale shall be maintainable against Seller unless commenced or made by Buyer within one (1) year after Seller's (i) delivery of the relevant Product or (ii) failure to deliver the relevant Product.

**7.9** Seller shall not be liable to Buyer for any third party claims brought against Buyer. Buyer hereby undertakes and agrees to hold Seller harmless and indemnify Seller against any claim brought by a third party against Seller relating to the Products.

**7.10** Nothing in these Standard Conditions of Sale shall be deemed to exclude or limit Seller's liability for fraudulent misrepresentation or for death or personal injury caused by Seller's negligence.

#### **8. Set off**

Buyer may not set-off any obligation owed to it by Seller against any obligation it owes to Seller under any Order or these Standard Conditions of Sale. Seller may set-off any obligation owed to it by Buyer under any Order or these Standard Conditions of Sale against any obligation (whether or not due and payable) owed by Seller to Buyer, regardless of the place of payment or currency of either obligation, upon giving Buyer written notice of such set off.

#### **9. Security**

**9.1** Without derogating from any other remedies that may be available to it, Seller shall be entitled to withhold shipment of Products to Buyer under a contract for future shipments in the event that as of the proposed shipment date, Buyer has any due and unpaid obligations to Seller.

**9.2** Without derogating from the foregoing, if in Seller's reasonable judgment Buyer's credit becomes impaired, Seller may, at its sole option, revoke credit periods, suspend future deliveries, make further deliveries dependent on advance payment and/or request Buyer to provide it with reasonable guarantees and/or security.

#### **10. Title and Insurance**

**10.1** The Products (and title thereto) shall remain the property of Seller until the purchase price for such Products has been paid in full, at which point title shall pass to Buyer. The parties hereto agree that if Buyer breaches its payment obligations to Seller, Seller will be entitled to access the premises where the Products are situated and reclaim possession of any such Products, all without requiring Buyer's acceptance and/or judicial authorization of any kind (to the extent legally permissible in the relevant jurisdiction). Without derogating from the above, Buyer's Order of Product, and consequently its acceptance of these Standard Conditions of Sale, shall be construed as Buyer's irrevocable and unconditional authorization for Buyer to reclaim possession of Product in accordance with this Clause 10.1.

**10.2** At any time before title has passed to Buyer in accordance with Clause 10.1, Seller may reclaim possession of Products, regardless of whether or not the underlying contract has been terminated. Furthermore until the purchase price for any delivered Products has been paid in full, Buyer is prohibited from selling or using such Products, and if the Products are sold to any third party or incorporated or transformed into any other product due to services rendered by Buyer to any third party, Seller will be entitled to claim any pending payment before such third party takes possession of such Products. Without derogating from the above, Buyer's Order of Product, and consequently its acceptance of these Standard Conditions of Sale, shall be construed as Buyer's irrevocable and unconditional authorization for Buyer to reclaim possession of Product and claim any pending payment in accordance with this Clause 10.2.

#### **11. Arbitration**

Any dispute arising out of or in connection with these Standard Conditions of Sale, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA Rules, which Rules are deemed to be incorporated by reference into this clause. The number of arbitrators shall be one. The seat, or legal place, of arbitration shall be London, England. The language to be used in the arbitral proceedings shall be English. Except as provided herein, the governing law of the contract shall be the substantive law of England (excluding its conflicts of law provisions and excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods, dated 11 April 1980).

#### **12. Force Majeure**

In no event shall Seller be responsible or liable for any loss caused by (but not limited to) explosions, fires, riots, sabotage, war, expropriation or nationalization, acts of God, storm, disasters, laws and regulations of country of Buyer and/or Seller or the destination country for delivery of Product, strikes of port workers or vessel crew members, or any other cause beyond Seller's control ("Force Majeure"). Seller will inform Buyer of the occurrence of a Force Majeure event as soon as reasonably possible after becoming aware thereof, specifying the period for which such Force Majeure event is expected to continue. In such event, Seller shall be entitled to defer the shipment date, or, depending on the nature of the Force Majeure event, cancel Buyer's Order; provided that Seller will use its reasonable endeavors to remove or overcome such Force Majeure as quickly as practicable, and will use its reasonable endeavors to mitigate the impact of such Force Majeure on Buyer.

#### **13. Intellectual Property Rights**

No license or right under any patent, copyright, trademark, trade-name, logo or any other intellectual property rights of Seller, is either granted or implied to Buyer under these Standard Conditions of Sale.

#### **14. Separate Provisions**

Each of these conditions is to be construed as a separate provision surviving and applying even if one or more of the others is held void and unenforceable.

#### **15. Waiver**

Any waiver by Seller of any breach or default by Buyer of any of Buyer's obligations under an Order or these Standard Conditions of Sale, shall not be construed as a waiver of any other breach or default by Buyer or of Seller's right to enforce its rights in any other circumstances.

#### **16. Communication**

All notices, demands, claims, and other communications from one party to the other will be in writing and sent to such party's registered office. Any such communication shall be dated and shall be deemed to have been duly given (i) on the date of actual delivery, if delivered personally or by facsimile (with receipt confirmed), (ii) on the following business day, if delivered by a recognized overnight courier service, or (iii) seven (7) days after mailing, if sent by registered or certified mail, return receipt requested, postage prepaid.

#### **17. No Third Party Rights**

These Standard Conditions of Sale or any contract to which they apply shall in no event be construed to confer any rights to third parties.

#### **18. Taxes**

(a) Any and all payments made by Buyer hereunder or under any Order shall be made free and clear of and without deduction for any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, excluding taxes imposed on Seller's net income (all such non-excluded taxes hereinafter referred to as "Taxes"). If Buyer shall be required by law to make any such deduction from any payment hereunder or under any Invoice, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Clause 18) Seller receives an amount equal to the sum it would have received had no such deductions been made, (ii) Buyer shall make such deductions, and (iii) Buyer shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, Buyer agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies which arise from any payment made hereunder or from the execution, delivery or registration of, or otherwise with respect to, any Product delivered to Buyer by Seller ("Other Taxes").

(c) Buyer will indemnify Seller for the full amount of Taxes or Other Taxes (including without limitation any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Clause 18) paid by Seller or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted. This indemnification shall be made within thirty (30) days from the date Seller makes written demand therefor.

(d) Within thirty (30) days after the date of any payment of Taxes or Other Taxes Buyer will furnish to Seller, at the address of its registered office, the original or a certified copy of a receipt evidencing payment thereof. If no Taxes are payable in respect of any payment, upon Seller's request, Buyer will furnish to Seller a certificate from each appropriate taxing authority, or an opinion of counsel acceptable to Seller, in either case stating that such payment is exempt from or not subject to Taxes.

(e) Without prejudice to the survival of any other agreement of Buyer hereunder, the agreements and obligations of Buyer contained in subsections (a) through (d) of this Clause 18 shall survive the payment in full of all amounts owed hereunder and under any Order.