



## **TERMS & CONDITIONS OF NOVASOL N.V./S.A.**

**V5 – 24/05/2018**

### **1. Purchase and Sale**

**CUSTOMER**, irrevocably agrees to purchase from the supplier NOVASOL N.V./S.A. ("**NOVASOL**"), the products described on the Order confirmation (the "**Goods**"), subject to the terms and conditions of NOVASOL. NOVASOL upon execution of this Order confirmation, agrees to sell the Goods to CUSTOMER;

### **2. Delivery**

**2.1.** The Goods shall be delivered pursuant to the specific INCOTERMS stipulated on the Order confirmation;

**2.2.** NOVASOL shall use reasonable effort to adhere to the Delivery Date stated on the Order confirmation, but NOVASOL shall not be liable for any loss resulting from any delay in delivery (including, but not limited to, any loss of profit or business interruption), nor shall the CUSTOMER be entitled to cancel the Order confirmation by reason of failure to deliver by the Delivery Date;

**2.3.** The CUSTOMER acknowledges that the Goods may be delivered in partial shipments, each deemed as a separate sale by NOVASOL and each separate delivery shall not entitle CUSTOMER to repudiate, terminate or rescind the Order confirmation in respect of the remaining shipments;

### **3. Risk, Title and Security Interest**

**3.1.** Risk of loss or damage to the Goods shall pass to CUSTOMER upon Delivery, which is determined in accordance with the INCOTERMS stipulated on the Order confirmation;

**3.2.** The Goods shall remain the property of NOVASOL, unless and until NOVASOL receives all full payment due for the Goods delivered, including any additional costs or charges due. Until full payment to Novasol, CUSTOMER shall not remove or obscure any label or marking which may allow the Goods to be identified as belonging to NOVASOL. CUSTOMER, upon request of NOVASOL at any time and until such full payment is made, agrees to affix or permit NOVASOL to affix, in a clearly visible manner labels supplied by NOVASOL or its designated representative identifying the Goods as property of NOVASOL, and shall not alter, remove or make unreadable any such label from the Goods.

**3.3.** Before NOVASOL has received full payment of the invoice issued by Novasol, CUSTOMER shall not sell, lease or otherwise dispose of the Goods, shall take proper care of the Goods and shall keep the Goods free and clear from any and all liens, pledges, security interests, encumbrances and rights of any third party, except those created by NOVASOL. CUSTOMER shall give NOVASOL immediate notice of any judicial process or encumbrance affecting the Goods and shall indemnify and hold NOVASOL harmless against any loss or damage caused thereby, including but not limited to, court costs, legal fees and expenses.

### **4. Non-conformity**

**4.1.** All Goods are to be inspected within 24 hours of delivery of the Goods, and prior to unloading the Goods into CUSTOMER premises ("**Inspection**"). CUSTOMER shall have Inspection conducted, under supervision and responsibility of its quality control department, by a reputable firm verifying that the Goods conform to the agreed product specifications. . In the absence of Inspection and/or upon delayed, inconclusive, incomplete or insufficient Inspection and/or upon conform result of Inspection, CUSTOMER shall be deemed to have



accepted the Goods and CUSTOMER shall have no right to reject the Goods and/or shall have no right of claim.

**4.2.** Claims for defective Goods, shortage or failures in shipment or Delivery, shall be deemed waived and released by CUSTOMER, unless made in writing within 5 days following Delivery, provided, however, that under no circumstances NOVASOL shall be held liable (i) for consequential, indirect or any other damages, losses, or expenses, in connection with such defective Goods, (ii) for shortage or failures in shipment or Delivery, (iii) if the delivered Goods have been mixed with another product or (iv) by reason of the use of or inability to use Goods purchased for any purpose. In no case are Goods to be returned without first obtaining NOVASOL's written approval. Goods must be securely packed to reach NOVASOL without damage or loss;

**4.3.** In the event that following Inspection and verification by NOVASOL it is concluded that the Goods are defective or non conform, NOVASOL may, at its sole discretion, i) replace the defective or non-conform Goods within a reasonable period of time taking into account standard delivery times or (ii) authorise CUSTOMER to purchase replacement Goods, if such course of action shall be deemed the sole remedy available to the CUSTOMER. Parties agree that in case of replacement, each party undertakes to indemnify the other for any difference in price between the original and the replacement Goods. In such event CUSTOMER irrevocably undertakes to return the defective or non-conform Goods to NOVASOL, except otherwise agreed between parties..

## **5. Payments and Net Prices**

**5.1.** All Prices stated on the Order confirmation, are net and do not include withholdings and other taxes, VAT, levies, duties, surcharges, customs or deductions of any nature r, which shall be paid by CUSTOMER unless otherwise agreed by parties

**5.2.** Notwithstanding anything stipulated in these Terms & Conditions , CUSTOMER undertakes to pay in a timely fashion and shall indemnify and hold NOVASOL harmless against all duties, levies, taxes and other governmental charges of whatever nature and any interest or penalties thereon which may be levied, directly or indirectly, against the Goods or with respect to its ordering, purchasing, delivery, ownership, possession, use and return regardless of whether such taxes and fees are levied against CUSTOMER or NOVASOL;

**5.3.** CUSTOMER shall make payment in accordance with the terms stated on the Order confirmation and may not suspend its payment obligations or set-off or deduct any amount charged by NOVASOL for whatever reason;

**5.4.** If CUSTOMER is in default in respect of the payment of any sum payable under the Order confirmation, NOVASOL shall have any or all of the following rights, which CUSTOMER hereby irrevocably accepts and in respect of which CUSTOMER waives any claim; (a) all sums shall immediately become due and payable to NOVASOL, notwithstanding any credit conditions granted to CUSTOMER, (b) NOVASOL may delay or suspend delivery or cancel any or all Order confirmations or contracts with CUSTOMER, (c) NOVASOL may retain any amount already paid to it by CUSTOMER and CUSTOMER acknowledges that such amount shall be regarded as partial payment of damages due to NOVASOL, and (d) NOVASOL may demand, and CUSTOMER irrevocably undertakes to provide a satisfactory security for the payment of the remaining amount due, inclusive of amounts due for orders placed by customer and any and all other costs and/or expenses to be paid by customer to NOVASOL.

**5.5.** If CUSTOMER fails to fulfil any payment obligations hereunder and/or in connection with the Order confirmation, NOVASOL may, at its discretion, in addition to all other remedies provided in these Terms & Conditions or by law, charge interest at the rate prescribed by the Belgian Act dd. 2 August 2002 on combating late payment in commercial transactions (implementing the EU Directive 2011/7) or the applicable law and/or directive in force from either EU or the Belgian government at the moment of underwriting the Order. All overdue sums from the due date until the outstanding sums are fully paid without notice thereof. In



addition, NOVASOL may charge all recovery costs reasonably incurred due to CUSTOMER's late payment, with a minimum amount of EUR 300, which is due without prior notice;

**5.6.** CUSTOMER irrevocably waives any right of set-off, deduction or withholding for any reason whatsoever, against payment of the Price to NOVASOL.

## **6. Limited Warranty and Liability**

**6.1.** NOVASOL warrants, subject to Conditions 6.2 to 6.6 of this Order, that (a) the Goods shall conform with the agreed specification and (b) at the time of Delivery, the Goods shall be adequately contained, packed and labelled.

**6.2.** This warranty applies only if (a) NOVASOL has received a written notice from CUSTOMER giving details of the defective or non conformity of the Goods pursuant to Condition 4, (b) NOVASOL has been afforded a reasonable opportunity to inspect the Goods in question, (c) in cases of non conformity of quality or quantity of the Goods delivered, CUSTOMER has provided together with its notice all pertinent details and survey report by a reputable and recognised licensed surveyor, and (d) CUSTOMER has provided, at its expense, all assistance and support necessary for NOVASOL to fulfil its obligations under this warranty;

**6.3.** In case a defect that could not have been detected by the Inspection is subsequently detected in the Goods, the warranty of NOVASOL shall be limited to 6 months after Delivery, provided that the Goods have not been altered and have been stored according to the product's requirements and that CUSTOMER proves that the defect existed before Delivery;

**6.4.** Except for the warranty under condition 6.1, NOVASOL and its affiliates give no other warranties, whether explicit or implied.

**6.5.** To the maximum extent permitted by law, in no event shall NOVASOL its affiliates, suppliers, licensors or manufacturers be liable, in contract or in tort, for any special, incidental, indirect loss, cost or expense, including, but not limited to loss of business profits, business interruption, loss of information, loss of use, loss of or damage to data or records, damage to goodwill, and all other consequential or incidental damages incurred or that may be incurred by CUSTOMER arising from the Goods or non delivery of the Goods or non conformity of the Goods or otherwise;

**6.6.** NOVASOL's liability shall in any case not exceed the price attributed to the Goods on the Order confirmation.

## **7. Termination and Suspension**

**7.1.** Without prejudice to NOVASOL's other rights and remedies, NOVASOL is entitled, at its sole discretion and without prior notice of default to CUSTOMER, to immediately suspend the performance of its obligations under the Order confirmation or terminate the Order confirmation, in whole or in part, by a written notice, if (a) CUSTOMER breaches one or more of its obligations under the Order confirmation and such breach is not cured within three days from the day on which the obligation has to be performed or (b) CUSTOMER becomes insolvent, there is any act of bankruptcy regarding CUSTOMER, or any application is filed or resolution passed for the bankruptcy, dissolution, liquidation or insolvency of CUSTOMER, or the appointment of a receiver over the assets of the CUSTOMER, in whole or in part, any equivalent proceeding takes place under the laws in which the CUSTOMER is incorporated, carries on businesses or has assets;

**7.2.** Under any of the circumstances described in Condition 7.1 and without the need for NOVASOL's prior notice of default, all sums shall become immediately due and payable to NOVASOL, notwithstanding any credit conditions granted to CUSTOMER.

**7.3** NOVASOL shall be entitled to terminate or to suspend the Order confirmation without damages or liability to the extent resulting from any force majeure event, including but not limited to, acts of God, strike, riot, fire, explosion, flood, earthquake, natural disaster, terrorism, act of war, civil unrest, criminal acts of third parties, failure of the Internet, governmental acts,



orders or restrictions, failure of suppliers, shortage of suppliers, provided that NOVASOL uses reasonable efforts to notify the CUSTOMER of the circumstances causing the delay, non-delivery or non-execution of the Order confirmation.

## **8. Insurance**

Until title to the Goods has passed to CUSTOMER in accordance with Condition 3 above, CUSTOMER, at its own expense, shall maintain a standard "All Risk" property insurance with a reputable insurance company acceptable to NOVASOL, covering the Goods and, inter alia, the following risks: floods, earthquake, fire, storm, aircraft etc, for an amount of at least the NOVASOL's price of the Goods as per the Order confirmation. Such insurance shall name NOVASOL as beneficiary in respect of the Goods. The aforesaid insurance shall be primary cover, and in no event shall any insurance of NOVASOL be called upon to contribute to any loss relating to or arising out of the Order. The insurance shall be in effect and shall be evidenced by a certificate of insurance with all necessary endorsements as required pursuant to this Condition 8 delivered to NOVASOL on or prior to the Anticipated Delivery Date (as defined on the Order confirmation). The insurance shall provide for at least thirty (30) days' prior written notice to NOVASOL in the event of any cancellation, non-renewal or material change in coverage and upon request by NOVASOL, CUSTOMER shall provide a copy of any and all endorsements or other documentation relating to such insurance policies. Should CUSTOMER, at any time until transfer of title, be without sufficient insurance, as determined by NOVASOL in accordance with the provisions of this Condition, CUSTOMER appoints NOVASOL as its agent to obtain such coverage, and undertakes to pay to NOVASOL the entire cost of such coverage;

## **9. Miscellaneous**

### **9.1. Weight & Quantity.**

CUSTOMER acknowledges that the weight given in the Order confirmation shall be indicative only. Quantity of Goods shall be deemed conclusive and binding as indicated in the respective Bill of Lading and/or weight bill attached to the delivery documents and confirmed by the appointed Surveyor at loading point;

### **9.2. Storage & Finance Fee.**

CUSTOMER irrevocably undertakes to indemnify NOVASOL for any and all costs and expenses incurred by NOVASOL relating to and/or connected with storage of Goods after the confirmed Date of Delivery or Date of collection. CUSTOMER will reimburse NOVASOL for the costs incurred whereby the reimbursement shall not be less than the additional costs paid by NOVASOL to maintain and store the goods purchased by the CUSTOMER until such time as delivery can be made.

### **9.3. Allowed Discharge Time.**

CUSTOMER acknowledges that for DAP and/or DDP deliveries, a limited discharge time is included and specified on the Order confirmation. Discharge time starts on arrival of truck at destination within the agreed timeslot with CUSTOMER. CUSTOMER shall reimburse NOVASOL the additional costs incurred for the delivery time exceeding the agreed discharge time.

### **9.4. No Assignment**

CUSTOMER may not assign any of its rights or obligations hereunder to whatever other party without prior knowledge and agreement by NOVASOL. NOVASOL may delegate or assign any of its duties hereunder to any party that NOVASOL considers qualified to perform that duty;

### **9.5. Force Majeure.**

NOVASOL shall not be liable for any delay or failure in the performance of its obligations under the Order confirmation, when such delay or failure is caused in whole or in part by circumstances beyond its reasonable control or force majeure preventing or hindering performance;

### **9.6. Confidentiality.**



CUSTOMER shall keep confidential and not disclose to any other party all information, data, suppliers name or otherwise received from NOVASOL and undertakes to use such information and data solely in connection with the purpose of the Order confirmation. CUSTOMER shall not inform third parties of the contents of the Order confirmation, including the prices mentioned herein, without the prior written approval of NOVASOL.

#### **9.7 Privacy**

NOVASOL strives to protect the privacy and the confidentiality of personal Data that the company processes in connection with the services it provides to its customers in compliance with the GDPR.

#### **9.7. Conflict or Inconsistency**

In the event of any conflict or inconsistency between the Terms & Conditions of this Order confirmation and any terms or conditions set forth in any invoice, annex or other document relating to the transactions contemplated by the Order confirmation, the Terms & Conditions set forth in this Order confirmation shall prevail; No change or amendment to the Terms & Conditions set forth in the Order confirmation shall be binding on NOVASOL unless explicitly agreed upon and accepted in writing by NOVASOL ;

#### **9.8. No Waiver of Rights**

NOVASOL's failure at any time to require strict adherence to the terms of the present Terms & Conditions by CUSTOMER shall not constitute a waiver or diminish NOVASOL's rights to request strict compliance with any provision of the Order confirmation. Waiver by NOVASOL of any clause of these Terms & Conditions shall not constitute waiver of any other clause of these Terms & Conditions. No rights or remedies referred to in these Terms & Conditions shall be deemed to be exclusive, but shall be cumulative and additional to any other rights or remedies prescribed or warranted by law;

#### **9.9. Notices**

Any notice given by registered mail or email with confirmation of receipt to the parties stated in the Order confirmation will be deemed received by parties;

#### **9.10. Sole Agreement**

The Order confirmation represents the sole and entire agreement and understanding between the parties and supersedes and replaces all previous contracts or understandings, written or oral, with respect to the Order confirmation. No amendment of the terms and conditions will be binding unless in writing and underwritten by by CUSTOMER and by NOVASOL;

#### **9.11. Proper Law and Jurisdiction.**

The Order confirmation is governed by Belgian law and the conditions stipulated in the Order confirmation. All disputes in connection with the Order confirmation shall be subject to the exclusive jurisdiction of the competent courts of Brussels, Belgium, unless NOVASOL decides to act in another competent jurisdiction based on the domicile, business premises or location of assets of CUSTOMER, to safeguard any of its rights, including, but not limited to, re-possession of Goods or otherwise.

#### **9.13. Privacy**

NOVASOL takes the protection of CUSTOMER's privacy very seriously and complies with the EU GDPR. NOVASOL will only use personal information to deliver the services CUSTOMER has requested from them, and to meet their legal responsibilities. NOVASOL's detailed privacy policy is available on the website [www.novasolchemicals.com](http://www.novasolchemicals.com)