

Terms and conditions of sale - Nouryon Surface Chemistry LLC

1. **SCOPE:** As used herein, "Nouryon" means the Nouryon entity that sells goods to Buyer; "Buyer" means the purchaser of goods from Nouryon and "Products" means any and all goods sold by Nouryon to Buyer. Unless a detailed product sales agreement is in place between Nouryon and Buyer covering the sale of the Products, all Products sold or otherwise provided by Nouryon are sold or provided exclusively on the basis of these Terms and Conditions of Sale. No differing or supplemental terms or conditions shall be applicable unless expressly agreed to by Nouryon in writing.
2. **OFFER/ACCEPTANCE:** A quotation from Nouryon does not constitute an offer but an invitation to Buyer to make an offer. In all cases Buyer's offer shall be deemed based on these Terms and Conditions of Sale. An agreement comes into effect only when Nouryon accepts Buyer's offer.
3. **DELIVERY/TRANSFER OF RISK:** Delivery terms shall be interpreted in accordance with the latest INCOTERMS valid at the date the order is accepted. Unless otherwise agreed to by Nouryon in writing the delivery term is EXW and risk of loss in the Products will transfer to Buyer upon tender of the Products to Buyer or the carrier at Nouryon's shipping facility.
4. **QUANTITY VARIATIONS:** Buyer will pay for the quantity delivered and may not reject any delivery of Product on the grounds of variation of quantity where such variation is not more than 10% of the quantity ordered.
5. **PRICE AND PAYMENT:** Unless otherwise agreed by the Parties, the price for the Products will be the price quoted by Nouryon. All prices quoted by Nouryon are exclusive of value added tax and any other tax that may apply in respect of the Products. Nouryon will issue invoices to Buyer for all Products sold to Buyer. Buyer shall pay these invoices within 30 days from the invoice date in the currency indicated on the invoice at the address of Nouryon indicated on the invoice. Buyer may not withhold payment of any amount due to Nouryon because of any set-off, counter-claim, abatement or similar deduction. Upon demand Buyer will immediately reimburse Nouryon for any and all costs including fees for collection agencies and attorneys incurred or expended by Nouryon to collect any amounts due from Buyer.
6. **RETENTION OF TITLE:** Nouryon retains a security interest in all Products delivered to Buyer to secure payment in full of all amounts due to Nouryon and Buyer shall, upon Nouryon's request, execute such documentation as Nouryon deems necessary to perfect or maintain its security interest in the Products. Title to the Products passes to Buyer (subject to Nouryon's security interest) at the time risk of loss passes to Buyer. Buyer may sell the Products in the ordinary course of its business, but may not pledge, mortgage or otherwise encumber the Products prior to payment in full of the purchase price.
7. **WARRANTY/BUYER'S RIGHTS:** Nouryon warrants to Buyer that at the time of transfer of risk of loss the Products conform to Nouryon's standard Product specifications or such other specifications as Nouryon and Buyer have expressly agreed to in writing (the "Specifications"). **THIS WARRANTY IS THE SOLE WARRANTY GIVEN BY NOURYON. NOURYON MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, THE APPLICATION OR USE THEREOF, OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, EACH OF WHICH IS SPECIFICALLY DISCLAIMED.** In the event Products do not comply with the foregoing warranty, Nouryon will, at its option, repair or replace such Products or refund the Price of the Products and, having done so, will have no further liability. Buyer must notify Nouryon of any claim Products do not comply with the foregoing warranty within seven (7) days after Buyer becomes aware of such claim but in no event later than thirty (30) days after delivery of the Product to Buyer. Buyer's failure to notify Nouryon of any such claim within the time set out in the preceding sentence will constitute a waiver by Buyer of such claim. Nouryon makes no warranty of any kind with respect to any services provided to Buyer and shall have no liability with respect to such services.
8. **LIMITATION OF LIABILITY:** Nouryon will not be liable for any loss or damage caused by Buyer's failure to exercise effective quality control or the failure to store, use or otherwise handle the Products as advised or in accordance with instructions provided by Nouryon or industry standards. **NOURYON WILL NOT BE LIABLE TO BUYER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY LOSS OF PROFIT, LOSS OF BUSINESS, DIMINUTION IN VALUE, OR DEPLETION OF GOODWILL OR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGE. NOURYON'S AGGREGATE LIABILITY TO BUYER IN RESPECT OF ALL LOSSES ARISING UNDER OR IN CONNECTION WITH THE SUPPLY OF PRODUCTS WILL IN NO WAY EXCEED THE PRICE OF THE PRODUCTS PURCHASED, OR €200,000, WHICHEVER IS LOWER.** Nothing in this section will limit or exclude Nouryon's liability for any matter in respect of which it is unlawful for Nouryon to exclude or restrict its liability.

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9. **FORCE MAJEURE:** Nouryon will not be liable in any respect for failure to perform its obligations if hindered or prevented, directly or indirectly by war (declared or undeclared), national emergency, inadequate transportation facilities, machinery or equipment failure, Nouryon's inability to secure materials, supplies, fuel or power for the manufacture of Product on terms and conditions that are acceptable to Nouryon, fire, flood, windstorm or other act of God, strike, lockout or other labour dispute, order or act of any government, whether foreign, national or local, whether valid or invalid, or any other cause of like or different kind beyond the reasonable control of Nouryon (each a "Force Majeure"). Nouryon shall have no obligation to procure any Products from other sources and may allocate its available supply of Products among the members of the Nouryon Group (including itself) and their customers, buyers, distributors and resellers on whatever basis Nouryon may deem fair and practical. In the event that the duration of a Force Majeure exceeds six (6) months or is reasonably expected to exceed 6 months, Nouryon is entitled to withdraw from any obligation it may have to supply the Products to Buyer without the Buyer having any right to compensation.
10. **EXPORT CONTROL AND ECONOMIC SANCTIONS:** Buyer will not sell, export, re-export, license, transmit, divert or otherwise transfer, directly or indirectly, any Product or any information or technology related to the Product except in accordance with applicable laws and regulations, including without limitation applicable UN, US and EU export control and economic sanctions laws and regulations and the laws and regulations of the country where Buyer is resident. Buyer acknowledges that it will (i) take all steps necessary to comply with the above laws and regulations, including obtaining export and other licenses if necessary and (ii) not take any actions that would cause Nouryon to be in violation of the above laws.
11. **TERMINATION:** An agreement with Buyer to deliver Products on the basis of these Terms and Conditions will not oblige Nouryon for the future to take further orders. Nouryon will at all times be entitled to end the relationship. Such termination will never entitle Buyer to compensation.
12. **LAW AND DISPUTE RESOLUTION:** These Terms and Conditions and all disputes between Nouryon and Buyer are governed by the laws of the country and, if applicable, state or province, in which Nouryon's address is located, excluding the United Nations Convention of Contracts for the International Sale of Goods and any choice of law rules that direct the application of the law of any other jurisdiction. Any dispute between Nouryon and Buyer that the parties are unable to resolve by agreement will be resolved exclusively in the courts having jurisdiction over the subject matter of the dispute located in the city in which Nouryon's address is located (or if no such courts exist in such city in such courts as are located closest to such city) and those courts having appellate level review over the decisions and rulings of such courts. Each party consents and agrees to the jurisdiction and venue of such courts.