

# Seller's General Terms and Conditions of Sale

## Shell Chemicals Canada

**1. GENERAL.** Unless otherwise agreed in writing, these General Terms and Conditions of Sale together with all other terms of this Contract comprise the basis on which Seller sells Product and/or services related to such Product. Buyer's terms and conditions of purchase shall not apply. Buyer's terms and conditions of purchase shall not apply. A term defined in any part of this Contract shall have the same meaning throughout this Contract unless otherwise provided. Seller and the counter party to any Contract shall be referred to as "Seller" and "Buyer" respectively; each may also be referred to as "Party" and together as "Parties." Any abbreviation of an international commercial delivery in a Contract document shall be deemed to be a reference to Incoterms 2020 unless specified as the Uniform Commercial Code ("UCC") unless specified as the Uniform Commercial Code ("UCC").

"**Affiliate**" means in reference to a Person, any other Person which: (i) directly or indirectly Controls or is Controlled by the first Person; or (ii) is directly or indirectly Controlled by a Person which also directly or indirectly Controls the first Person; and for the purposes of this definition, a Person "Controls" another Person if such Person has the power to direct or cause the direction of the management and policies of the other Person, whether directly or indirectly, through one or more intermediaries or otherwise, and whether by ownership of shares or other equity interests, the holding of voting rights or contractual rights, by being the general partner of a limited partnership, or otherwise.

"**Change of Control**" occurs whenever a Person (other than an Affiliate of that Party) either ceases to have Control of a Party or acquires such Control.

"**Contract**" means the relevant sales contract (to which these terms are attached or incorporated by reference), Order Confirmation (if applicable), these General Terms and Conditions of Sale, any attachments whether physically attached to this Contract or incorporated by reference and any other terms agreed in writing and signed by the Parties.

"**Contract Period**" means the period for which this Contract is in effect, together with the period of all or any extensions of this Contract Period in accordance with the terms of this Contract.

"**Day**" means calendar day unless otherwise stated.

"**Dispute**" shall mean any dispute, controversy or claim arising out of or in connection with this Contract or its subject matter or formation, whether in tort, contract, under statute or otherwise, including any question regarding its existence, validity, interpretation, breach or termination, and including any non-contractual claim.

"**month**" means calendar month.

"**Order Confirmation**" means the automatically generated written confirmation from Seller to Buyer in relation to supply of Product.

"**Person**" means any individual, partnership, limited partnership, firm, trust, body corporate, government, governmental body, agency or instrumentality, unincorporated body of persons or association.

"**Price**" means the price for the Product as agreed between the Parties.

"**Product**" means product as specified in this Contract.

"**Specifications**" mean the specifications applicable to Product supplied whether attached to this Contract or incorporated by reference.

The parties agree that this Contract and all notices, correspondence and other documents ancillary thereto shall be drawn up in the English language only. Les parties conviennent que le présent contrat ainsi que tout avis, toute correspondance et tout autre document y étant accessoire seront uniquement rédigés en langue anglaise.

**2. DELIVERY.** Deliveries shall take place evenly spread over this Contract Period. Risk of loss or damage to Product shall pass to Buyer (i) as the Product passes Seller's (or its supplier's) last installed flange at the place of loading or (ii) when the Product first enters Buyer's or third party pipeline facilities in the case of pipeline deliveries or (iii) when Product exits the gate where Product was stored in Seller's (or its supplier's) tank trucks or containers as Seller's own inventory prior to shipment. Title to Product shall pass to Buyer simultaneously with risk except that where the place of loading is in a country other than the country of Seller's domicile, then title shall pass to Buyer (i) at that country's border for air, rail or truck shipments, or (ii) upon leaving that country's territorial limits for marine shipments, or (iii) at the border of the country from which the Product will be exported for pipeline deliveries. Notwithstanding anything to the contrary in this paragraph, where the place of loading is the United States, title and risk of loss or damage to Product shall pass to Buyer (i) at the border of the United States for air, rail or truck shipments or pipeline deliveries or (ii) upon the Product leaving the United States' exclusive economic zone for marine shipments. Buyer shall comply with the standard policies, rules and/or procedures applicable at the relevant site. A specific delivery condition of this Contract shall prevail if it is in conflict with any prescribed Incoterm.

**3. PRODUCT QUANTITY/QUALITY.** Seller may supply an excess or deficiency of Product of up to 5% of the weight or volume ordered and Buyer shall pay for the quantity so supplied. Only differences in net weight or volume, against invoiced quantity, in excess of 0.5% may be subject to quantity claims. Seller warrants that at loading, Product shall conform to the Specifications. Seller makes no other warranty or representation of any kind concerning Product, whether of satisfactory quality, merchantability, fitness for any particular purpose or otherwise, and none shall be implied. Seller (at its cost) shall measure, sample and test Product in its customary manner at the loading location to determine the quantity and quality of Product delivered. The results of such measurement, sampling and testing shall be treated, in the absence of fraud or manifest error, as conclusive and binding as to the quantity and quality of Product loaded.

**4. TAX.** Any tax (other than on income), duty or other governmental charge now or hereafter imposed on the Product or on any raw material used in manufacturing the Product (or on Seller, or required to be collected or paid by Seller, by reason of the manufacture, transportation, sale or use of such Product or raw material) ("Tax") will be paid by Buyer in addition to the sale price.

## **5. CREDIT AND PAYMENT.**

5.1 At Seller's request, Buyer shall submit financial performance data of Buyer and its guarantors and, prior to any assignment or novation, of any proposed assignees or novatees of Buyer. Buyer agrees to dialogue with Seller in sufficient detail as is necessary for Seller to form a clear judgment on the financial health of Buyer, its guarantors and any proposed assignee or novatee.

5.2 If Buyer's ability to pay is or may be impaired or should Buyer fail to promptly provide requested data or dialogue with Seller or the creditworthiness or financial capability of Buyer (or its guarantors or other providers of security where applicable) becomes unsatisfactory in the judgment of Seller (including but not limited to as a result of Change of Control), Buyer shall upon Seller's request provide advance cash payments or security for payment in the form requested by and satisfactory to Seller at Buyer's expense. Such security shall not constitute a change to the payment terms of this Contract and implementation of any requested security shall be a pre-condition to any assignment or novation by Buyer. If Buyer is unable or unwilling to implement the security requirements within 5 (five) days of written request of Seller, Seller may at its discretion postpone or withhold supply of Product or terminate this Contract with immediate effect without prejudice to its other rights and remedies.

5.3 Buyer shall pay each invoice when due in accordance with the prices and terms thereof. All payments shall be net of bank charges and without deduction, withholding or setoff. Where the last day for Buyer's payment falls on any day which is not a banking day in the place designated by Seller for payment, then any such payment shall be made on the nearest preceding banking day. Any late payment shall bear simple interest of 0.05% per day from the due date until the date of receipt of payment, but such rate shall be capped at the maximum rate allowed by the law governing this Contract.

5.4 If Buyer fails to pay any indebtedness to Seller in accordance with the terms for such indebtedness (whether or not under this Contract), Seller may, in addition to any other remedies, upon written notice to Buyer, immediately postpone or withhold the supply of Product, withhold any discounts, rebate, credit and/or price allowance (notwithstanding any other provision of this Contract), change payment terms and/or terminate this Contract. Buyer shall reimburse Seller for all costs and expenses related to Seller's claim for such failure (including any demurrage and/or deadfreight, reasonable attorney or other legal fees, costs and expenses related thereto).

## **6. LIABILITY AND CLAIMS.**

6.1. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS CONTRACT, SELLER'S AND ANY OF SELLER'S AFFILIATES' TOTAL LIABILITY FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT INCLUDING WITHOUT LIMITATION FOR BREACH OF THIS CONTRACT, BREACH OF WARRANTY, BREACH OF STATUTORY DUTY, OR TORT (INCLUDING SELLER'S OR ITS AFFILIATES' NEGLIGENCE), SHALL NOT EXCEED THE PRICE OF THE RELEVANT QUANTITY OF PRODUCT IF DELIVERED, OR IF LIABILITY ARISES FROM A FAILURE TO DELIVER, THE PRICE OF THE RELEVANT QUANTITY OF PRODUCT HAD IT BEEN DELIVERED.

6.2 Each Party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other Party (the "Indemnified Party") its Affiliates, and its and their respective directors, officers and employees against any liability (whether strict, absolute or otherwise) for any claim, loss, damage, cost and expense, including but not limited to reasonable legal fees or attorneys' fees and other costs of dispute resolution, on account of any injury, disease or death of persons or damage to property or the environment arising out of or in connection with (i) in the case Buyer is the Indemnifying Party, Buyer's unloading, storage, handling, purchase, use, sale or disposal of the Product; (ii) in the case Seller is the Indemnifying Party, Seller's loading, storage or handling of the Product; and/or (iii) any failure by the Indemnifying Party to disseminate safety and health information pursuant to this Contract. The indemnities above in this Clause 6.2 shall exclude liability to the extent caused by the Indemnified Party's negligence.

6.3 NO PARTY (EVEN IF NEGLIGENT) WILL BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL, OR PUNITIVE COST, EXPENSE, LOSS OR DAMAGE INCLUDING BUT NOT LIMITED TO LOSS OF PRODUCTION, USE, INDIRECT LOSS OF PROFIT, BUSINESS, GOODWILL OR REPUTATION, OR LOSS FROM BUSINESS INTERRUPTION OR WASTED EXPENDITURE, PROVIDED HOWEVER THAT THIS EXCLUSION OF LIABILITY SHALL NOT APPLY TO CLAIMS BY AN INDEMNIFIED PARTY TO RECOVER FROM THE INDEMNIFYING PARTY ANY SUCH DAMAGES PAID TO A THIRD PARTY (MEANING ANY PERSON OR ENTITY THAT IS NOT A PARTY, AN AFFILIATE, EMPLOYEE, OFFICER OR DIRECTOR OF A PARTY OR ITS AFFILIATE).

6.4 Any claim (including any relating to Product quality) by Buyer arising out of this Contract shall be provided to Seller by written notice setting forth fully the facts on which it is based as soon as reasonable after the date when the facts were discovered or reasonably should have been discovered, but in any event no more than 90 days after the loading date or month of delivery in the case of pipeline sales. Buyer unconditionally waives any and all claims that are not made during the requisite period required by this Contract and Seller shall not be obliged to accept any such claims made after such period.

**7. FORCE MAJEURE EVENT.** A Party affected by a Force Majeure Event ("Affected Party") shall not be in breach of this Contract or otherwise be liable to the other Party ("Non-Affected Party") for its failure to fulfil any term of this Contract, other than the obligation to pay any sum when due or to provide security, if and to the extent that such fulfilment has been delayed, hindered, curtailed or prevented by any circumstance or event outside the Affected Party's reasonable control or (a) any act of God, fire, explosion, landslide or earthquake; or (b) any storm, typhoon hurricane, flood, tidal wave or other adverse weather condition; or (c) any war (whether declared or not), revolution, act of civil or military authority, riot, blockade, embargo, trade sanction, terrorism, sabotage, or civil commotion; or (d) any epidemic or quarantine restriction; or (e) any strike, lock-out or labour dispute from whatever cause (whether or not Seller, Seller's supplier, Buyer or Buyer's supplier, as the case may be, is a party thereto or might be able to influence or procure the settlement thereof); or (f) any compliance with any law, regulation or ordinance or with any order, demand or request of any international, national, local or other port, transportation or governmental authority or agency or any body or person purporting to be or to act for such authority or agency or any corporation directly or indirectly controlled by any of them; or (g) any unavailability of or interference with the usual means of transporting Product; or (h) any malfunction, unplanned shutdown or shutdown in anticipation of or in response to a breakdown or to a malfunction affecting the plant; or (i) any inability by Seller to acquire from any one of its usual supply source(s) for this Contract, Product or any raw material, feedstock, labour, service, utility, equipment, machinery or facility necessary for manufacturing the Product (each a "Force Majeure Event"). When a Force Majeure Event results in a shortfall of Product available to meet all Seller's supply obligations, Seller shall apportion any reduced quantity of Product among itself and its customers and Affiliates in a manner it determines to be fair and reasonable. Seller shall not be required to acquire Product to replenish any shortfall in Product arising as a result of a Force Majeure Event.

Should Seller acquire any quantity of Product following a Force Majeure Event, Seller may use or distribute such Product at Seller's sole discretion. Buyer may acquire any shortfall quantity of Product from other sources at Buyer's own risk and cost. Any quantity of Product consequently not delivered will be deducted from any applicable remaining quantity obligation under this Contract unless the Parties agree otherwise in writing. The Affected Party shall promptly notify the other Party in writing with reasonable details of such event. The Affected Party shall give prompt notice to the other Party of the end of the Force Majeure Event, and shall resume full performance under this Contract as soon as reasonably possible. No Force Majeure Event shall have the effect of extending the term of this Contract or of terminating this Contract unless agreed by the Parties in writing.

**8. DISPUTED PAYMENTS.** Buyer may withhold payment of the portion of any amount that is disputed without incurring interest pending the final outcome of any applicable dispute resolution proceedings or settlement provided Buyer gives Seller immediate written notice of the dispute; however, if it is determined or agreed that any part of the disputed amount was properly due, Buyer shall pay the amount plus interest (as determined for late payments in this Contract) on that amount from the original due date.

**9. SDS** Where necessary, Seller will furnish Buyer with Safety Data Sheets ("SDS"), which include health, safety, security and environment ("HSSE") information on Product consistent with regulatory requirements. Buyer will comply with all applicable laws concerning the availability and use of the Product SDS and Buyer will disseminate appropriate HSSE information to all persons (including but not limited to Buyer's employees, contractors and customers) as required by applicable law or which Buyer foresees may be exposed to Product. When Buyer further processes, mixes or incorporates the Product into another material, resells, exchanges and/or transfers or otherwise deals with the Product, Buyer agrees to develop and use its own branded SDS and certificates of analysis consistent with the regulatory requirements of the jurisdiction(s) in which Buyer markets the Product, and Buyer shall not use any of Shell's trademarks, the Shell name, Shell contact numbers and emergency numbers or the Shell Branded SDS on Buyer's SDS or certificates or analysis for the Product without obtaining the prior express written consent of Seller. Buyer will take reasonable steps to obtain obligations similar to those in this paragraph from its customers to whom it sells the Products.

**10. LAW AND DISPUTES.** This Contract and any Dispute shall be exclusively governed by and construed in accordance with the laws of the province of Alberta. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Contract. The Parties irrevocably and unconditionally agree that the courts of the province of Alberta shall be the exclusive forum to settle and resolve any Dispute between the Parties.

**11. COMPLIANCE WITH LAWS.** In the performance of this Contract, each Party shall comply with all applicable laws and governmental decrees, rules, regulations and orders.

**12. ASSIGNMENT.** Either Party shall obtain the written consent of the other Party prior to and as a condition of the assignment, transfer or novation of any right, benefit and/or obligation under this Contract (including rights to receivables) except that, subject to the HSSE and credit provisions in this Contract, no consent shall be required where the novatee, transferee or assignee is either an Affiliate of a Party or is a purchaser of or other successor to a significant portion of the assets used to manufacture Product sold to Buyer.

**13. TERMINATION.** This Contract may be terminated immediately by a Party (without prejudice to its other rights and remedies) if the other Party (i) becomes insolvent, makes an assignment for the benefit of its creditors, or is placed in receivership, administration, liquidation or bankruptcy; or (ii) is in breach of any term of this Contract and fails to remedy such breach within thirty (30) days after its receipt of written notice of such breach from the non-breaching Party.

**14. NOTICES.** Notices by a Party shall be sent only by (a) fax, as confirmed by a transmission report; or (b) letter delivered (i) in person; (ii) by courier; or (iii) by registered mail; to the other Party's fax number or address (as appropriate) as set out in this Contract, or as amended with 14 days written notice. Seller may notify Buyer of price changes alternatively by email, effective at the time sent by Seller. Alternatively, Seller may notify Buyer of price changes by email effective at the time sent by Seller and/or by posting a price change in Buyer's "My Documents" folder on the "Customer Lounge" website, in which case the notification of the price change will be considered given and effective at the time of such posting.

**15. OTHER PROVISIONS.** No delay or omission by a Party in exercising any right or remedy under this Contract or law shall operate as a waiver. Any waiver shall take effect only if it is in writing and signed by the authorised representatives of the waiving Party. The provisions of this Contract are severable. Any provision held to be invalid or unenforceable shall not invalidate the remaining provisions. This Contract, including all addenda whether attached or incorporated by reference, contains the entire agreement of the Parties relating to the subject matter of this Contract, and supersedes and extinguishes any other documents or pre-contractual statements (whether oral or written) related to the same subject matter not expressly repeated in this Contract. No amendment of this Contract shall be valid unless it is in writing and signed by the authorized representatives of each of the Parties, and performance prior to such execution will not constitute a waiver of this requirement. All provisions with respect to payment rights and obligations, disclaimers of warranties, waivers of claims, indemnification, limitations of liability, notice of claims, tax, governing law and dispute resolution, assignment, no waiver, ethics and compliance, and entire agreement clause shall survive the expiration or termination of this Contract.

**16. ADDENDA.** Addenda, found at [www.shell.com/business-customers/chemicals/doing-business-with-us/terms-and-conditions-of-sale.html](http://www.shell.com/business-customers/chemicals/doing-business-with-us/terms-and-conditions-of-sale.html), as of the first day of this Contract Period, or if no Contract Period is defined then the day on which this Contract is made, relating to product application (by product); ethics and compliance clauses; transportation by land/pipeline/marine; and Seller's HSSE requirements, as applicable, are herein incorporated "by reference" (2020)