

Export Sale

Standard Terms and Conditions

1. The export sale of any of the goods produced by NCP Alcohols (Proprietary) Limited ("NCPA") ("the Goods") shall be subject to these standard terms and conditions and they shall take precedence over any terms of purchase which the purchaser of the Goods ("the Purchaser") may incorporate in the order for the Goods ("the Order"), but they shall be subject always to any additional terms expressly agreed upon in writing by NCPA and the Purchaser ("the Parties"). No variation or addition to the standard terms and conditions of sale shall be of any force or effect unless reduced to writing and signed by the Parties.
2. The Purchaser shall place written Orders with NCPA for the Goods and the Orders shall only become binding on NCPA if NCPA accepts the relevant Order in writing. Upon acceptance of an Order, NCPA shall issue an invoice for the Goods relating to such Order to the Purchaser ("the Invoice").
3. The purchase price of the Goods shall be exclusive of any transportation or carriage costs, insurance costs imposed pursuant to clause 12 and any taxes, levies and/or duties payable in the jurisdiction of the place for delivery of the Goods ("the Destination") stipulated in the Order referred to in clause 1 and such taxes, levies and duties shall be for the Purchaser's account.
4. Unless otherwise agreed to in writing by the Parties, the Purchaser shall within five business days of receipt of the Invoice pay the purchase price of the Goods set out in the Invoice in full or shall provide NCPA with an irrevocable letter of credit issued by the Purchaser's bank to the order of NCPA's bank in the Republic of South Africa ("the Confirming Bank") in a form agreed upon by the Parties. Upon receipt of an irrevocable undertaking from the Confirming Bank or payment of the purchase price in full, NCPA shall within 10 business days of such receipt deliver the Goods pursuant to clause 6.
5. NCPA may, at its sole discretion, grant credit facilities to the Purchaser in relation to the purchase of the Goods, provided always that NCPA shall be entitled to determine the terms of such credit facilities and NCPA shall be entitled to vary or restrict such terms or to terminate such credit facilities, without prior notice to the Purchaser, as NCPA deems fit, in relation to any Goods ordered by the Purchaser, but not yet despatched by NCP.
6. Where applicable, NCPA shall, at its sole discretion, determine the mode or modes of transport (as the case may be) of the Goods to the Purchaser and, in so doing, NCPA shall determine the point of despatch of the goods from the Republic of South Africa to the Destination.
7. Notwithstanding any of the provisions of these standard terms and conditions of sale, ownership of all Goods sold by NCPA to the Purchaser shall remain vested in NCPA until the purchase price of such Goods has been paid by the Purchaser or the Confirming Bank (as the case may be) to NCPA in full.

8. NCPA shall be entitled to deliver the Goods ordered by the Purchaser in more than one consignment and the Purchaser shall be obliged to take delivery of each such consignment. For the avoidance of doubt, each consignment shall be deemed to be a separate sale of goods and divisible from each other consignment. The Purchaser shall procure payment of the purchase price to NCPA in relation to each consignment in accordance with the provisions of clause 4 for each such consignment or in accordance with the terms of the credit facility granted to the Purchaser by NCPA in terms of clause 5.
9. The packaging of the Goods (including, but not limited to the drums and pallets), in which the Goods shall be suitably packaged by NCPA for the export sale) is sold to the Purchaser together with the Goods and, for the avoidance of doubt, the purchase price payable by the Purchaser for the Goods shall be inclusive of such packaging and ownership in such packaging shall be transferred together with ownership of such Goods.
10. Notwithstanding anything contained in the standard terms and conditions of sale, NCPA shall be entitled to delay the delivery of any goods ordered by the Purchaser or to cancel any Order (irrespective of whether NCPA has accepted such Order pursuant to clause 1), if the Purchaser is in default in relation to any amounts due and payable to NCPA in relation to the purchase of any Goods from NCP, irrespective of the cause of such default.
11. The Purchaser shall examine or procure the examination of the Goods upon delivery of the Goods by NCPA pursuant to clause 6. If NCPA has made delivery of defective Goods or of Goods that do not conform to the specifications of the relevant Order, the Purchaser shall give notice of such defective or incomplete delivery to NCPA within 7 days of delivery of the Goods ("the Notice") and the Purchaser shall be entitled to require NCPA:
 1. to take steps to remedy the defective or incomplete delivery of the Goods within 10 business days of receipt by NCPA of the Notice, it being the intention of the Parties that NCPA shall substitute defective Goods or complete the incomplete delivery; and to accept return of the defective Goods by the Purchaser to NCPA.
 2. For the avoidance of doubt, the performance by NCPA of its obligations referred to in this clause 11 is subject to the defect in the Goods occurring prior to delivery pursuant to clause 6 or as a result of NCPA's fault or negligence and NCPA shall only be obliged to make performance in accordance with this clause 11 if NCPA receives the Notice within the 7 days referred to in this clause 11.
 3. NCPA shall keep retention samples of each shipment for a period of 1 year (12 months) only, as proof that the product shipped meets the agreed specification. The expiry date of the product shall be 2 years from the date specified on the Certificate of Analysis (COA).
12. NCPA shall insure the Goods for the Purchaser's benefit against loss, damage, destruction and all other risks, excluding capture and seizure, at the Purchaser's cost for the duration of the transit of the Goods from the Transport Terminal to the Destination in an amount that reasonably represents the value of the Goods.
13. If the Purchaser refuses to or fails to take delivery of the Goods delivered by NCPA in terms of an Order in accordance with clause 6, NCPA shall be entitled to retain any amounts paid by the Purchaser in relation to such Order and /or to claim payment of 50% of the purchase price of such Goods, whichever is the greater.

14. The delivery time stipulated in any Order shall be deemed to be an indication of the Purchaser's preference only and NCPA shall not be liable to the Purchaser, and the Purchaser shall have no claim against NCPA, for any delay in delivery.
15. The purchaser shall have no claim against NCPA for any failure to deliver any of the Goods for any reason, including but not limited to NCPA's inability to carry out its obligations as a result of a force majeure or any other circumstances (whether foreseen or not) outside NCPA's control, the compliance with any applicable laws, regulations, orders or acts within the Republic of South Africa, the inability to obtain from the government of the Republic of South Africa ("the Government") or the relevant department of the Government any necessary license, permission, approval, consent, action or certification, or any civil or military authority, strikes, lock-out, labour unrest, insurrection, wars, riots, blockade, prohibition of export or shortage or non-availability of the relevant raw materials or appropriate modes of transport.
16. Either of the Parties shall be entitled to cancel this agreement, if NCPA fails to deliver the Goods ordered or such delivery is delayed as a result of any event referred to in clause 14 occurring and such failure or delay is not remedied by NCPA within 30 business days of such event occurring.
17. NCPA shall not be liable to the Purchaser for any special, indirect or consequential damages or loss of any kind whatsoever suffered by the Purchaser as a result of or in connection with the Agreement, including but not limited to, claims for loss of profit, damage claims against the Purchaser by a third party, claims for loss of or damage to property and damage or loss caused as a result of NCPA's negligence, irrespective of whether such damage or loss is foreseeable and whether it is claimed in contract or in delict.
18. Notwithstanding the provisions of clause 17, NCPA's aggregate liability for any claim for damage or loss arising out of or in connection with the Agreement, which the Purchaser may succeed in proving against NCPA, shall in no circumstance be greater than the amount of the purchase price of the Goods to which such liability relates.
19. If the Purchaser defaults in the payment of any amount due by the Purchaser to NCPA, interest shall accrue on such amount at 2% above the prime rate of interest quoted by ABSA Bank Ltd from time to time in the Republic of South Africa and expressed as a rate per annum, until such amount (and any accrued interest on such amount) has been paid in full.
20. In the event of a default by the Purchaser referred to in clause 19, any loss suffered by NCPA as a result of such default related to an exchange rate fluctuation in the currency of the Destination and the South African Rand, shall be borne by the Purchaser.
21. The Purchaser shall not cede, assign or transfer or purport to cede, assign or transfer to any person any of its rights or obligations in terms of this Agreement without the express prior written consent of NCPA.
22. The validity of this Agreement, its interpretation, implementation, enforcement, the respective rights and obligations of the Parties and all other matters arising in any way out of it, or its expiration or earlier termination for any reason shall be governed by and construed in accordance with the laws of the Republic of South Africa.
23. The Parties agree and record that any suits, actions or proceedings arising out of this Agreement shall be instituted by the Parties in the courts of the Republic of South Africa.