

# NYNAS GENERAL TERMS AND CONDITIONS OF SALES:

## DDP

### Bitumen Western Europe



#### 1. VALIDITY OF OFFERS, ORDERS AND AGREEMENTS

- 1.1 These NYNAS General Terms and Conditions of sales (below "Agreement") are applicable for all sales and deliveries of bitumen and/or services (hereinafter referred to as "Product") from NYNAS AB (publ) or a company Controlled by NYNAS AB (publ) or directly or indirectly under common Control by NYNAS AB (publ) (hereinafter jointly referred to as "NYNAS" or "Party") to buyer (hereinafter referred to as "Buyer" or "Party") (NYNAS and the Buyer may jointly be referred to as "Parties"), including sales and deliveries which do not involve a separate sales agreement. The term "Group" shall (for the Buyer) include the Buyer and any corporation, company or other entity, which directly or indirectly Controls, is Controlled by, or is under common Control by the Buyer and shall (for NYNAS) include NYNAS. The term "Control" means the right to designate the management through 50% or more of the voting rights or any other ownership interest.
- 1.2 This Agreement becomes an integral part of the agreement once a sale is accepted. Deviating conditions of sale and purchase, such as terms enclosed with the Buyer's offer or the Buyer's confirmation of an order, do not apply. All deviating conditions apply only if and insofar as they are expressly confirmed by NYNAS in writing.
- 1.3 It shall be noted that the offer is binding only under the condition that the offered price can be applied without legal impediments. NYNAS retains the right to, at its sole discretion, cancel any offer in the event that NYNAS, of any reason and again at its sole discretion, is unable to deliver the Product.

#### 2. TERMS OF DELIVERY

- 2.1 Unless otherwise agreed in writing, deliveries are made in accordance with Incoterms 2020 and the transport mode is DDP.
- 2.2 Unless a specific delivery date is agreed in writing, NYNAS should, upon written request and as soon as the circumstances permit, inform the Buyer of an expected delivery date. All delivery dates under this Agreement are indicative and non-binding

#### 3. QUANTITY

- 3.1 NYNAS intends to sell and deliver Product volume as agreed in writing. The forecasting volume is non-binding and intended for guidance only. NYNAS has no responsibility or obligation under this Agreement or any related agreement to obtain, sell or produce a certain volume or quality of Product

#### 4. QUALITY

- 4.1 All Products will meet specifications as described in the relevant NYNAS Product data sheets and safety data sheets as published on [www.nynas.com](http://www.nynas.com) or available from Nynas Customer Service Centre [salesandlogisticsgroup@nynas.com](mailto:salesandlogisticsgroup@nynas.com) or +32 2 709 68 35.

#### 5. CLAIM

- 5.1 Buyer shall immediately and no later than seven (7) days after completion of delivery date, notify NYNAS in writing of any inaccuracies or shortages in quality or quantity Buyer has, or should have, noticed at receiving the Products, if practicing adequate carefulness.
- 5.2 Buyer must file a claim to NYNAS of any defect in the Product not detectable under clause 5.1 without undue delay once the defect has been observed, and in any case no later than six (6) months following the receipt of the Products. The claim must include a specification of the complaint including the delivery identification of the Product as well as the specific defects and the total amount claimed from NYNAS, due to any cost or damages incurred by Buyer. If a fully documented claim is made later than six (6) months after receiving the Products, the claiming Party will be deemed to have waived its claim.
- 5.3 Any claim will not be recognized unless a claim is filed with NYNAS in accordance with clause 26 of the Agreement.

#### 6. DELIVERY SITE

- 6.1 Opening hours for NYNAS depots and Product availability are available from the Nynas Customer Service Centre [salesandlogisticsgroup@nynas.com](mailto:salesandlogisticsgroup@nynas.com) or +32 2 709 68 35.

#### 6.2

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For Penetration Grade bitumen, call-off shall be made preferably 48 hours prior to the desired delivery date. For PMB, Emulsions or other non-Penetration Grade products call-off shall be made at least 48 to 72 hours prior to the desired delivery date.

Call-off shall include Product, required volume, desired delivery time, the delivery address, invoice coding and any other information of relevance for the delivery. After the call-off, NYNAS will provide information on whether or not NYNAS is able to deliver the Product.

Buyer is required to provide NYNAS' Customer Service Centre information on new delivery sites, or changes in information of existing sites, at least three days in advance or delivery may not be possible.

- 6.3 The site must be available for delivery at hours stated in the call-off. It is the responsibility of the Buyer to ensure the site is compliant with the NYNAS Safety Requirements.

#### 7. PAYMENT

Unless otherwise agreed, invoices shall be paid at the latest 30 days after invoice date. Without limitation to NYNAS' other rights under the Agreement or otherwise, NYNAS shall have the right to require, in respect of any payment not made in full by the due date, the payment by Customer to NYNAS of interest on any unpaid undisputed amount calculated at an annual rate (360 day per year basis) of 9 percentage, such interest to run from the day immediately after the due date until the date payment is received by NYNAS' bank.

#### 8. RETENTION OF TITLE

Any Product sold shall remain the property of NYNAS until payment has been made in full, to the extent that such retention of title is valid.

#### 9. TRADEMARKS AND PRODUCT NAMES

The Buyer does not have the right to use NYNAS trademarks and/or product names unless authorized to do so in a separate written Agreement.

#### 10. PRICE CLAUSE

- 10.1 The offered price is valid only for delivery in the stated amounts, delivery mode and packaging. If the Buyer wants delivery in different amounts, in a different delivery mode, to a different site or in alternative packaging NYNAS reserves the right to amend the price.
- 10.2 If, after Agreement has been entered into, raw material costs for the Product, export and import fees, export, import and delivery taxes and similar fees are increased due to decisions by suppliers, authorities or other third parties or new taxes and fees are imposed on the Product or its transportation, the price shall be adjusted accordingly.
- 10.3 In case delivery is postponed to a later month than what was first agreed the price will be amended to reflect Nynas new list price for the month of delivery.

#### 11. TAX, DUTIES AND LEVIES

- 11.1 All taxes, duties or other levies arising in connection with the sale and delivery by NYNAS to the Buyer shall be borne by the Buyer, except for any tax, duty, or levy measured by the net income of NYNAS.
- 11.2 In particular, without limitation, all prices under this Agreement and any associated agreements, are exclusive of VAT/GST, excise duties, import VAT/GST, sales tax and all other indirect taxes or fees.

- 11.3 If any sale under this Agreement, or any associated agreements, to the Buyer would be subject to VAT/GST, excise duties, import VAT/GST, sales tax or any other indirect tax or fees, NYNAS has the right to invoice the Buyer an amount corresponding with the imposed VAT/GST, excise duties, import VAT/GST, sales tax and any other indirect tax or fees and the Buyer is obliged to pay the current and applicable VAT/GST, excise duties, import VAT/GST, sales tax and any other indirect tax or fees to NYNAS.

- 11.4 Upon request from NYNAS the Buyer shall, at its own expense, be obliged to provide NYNAS with transport documentation, customs records, warehouse records, import documentation, certificates or authorizations, bookkeeping, accounting and any other documentation or information that NYNAS may need to verify that a transaction under this Agreement is exempt or otherwise not liable to VAT/GST, excise duties, import VAT/GST, sales tax and all other indirect taxes or fees.

#### 12. DELAY

- 12.1 Time of delivery is not of the essence, but the Buyer shall ensure that delivery can take place without undue delay.
- 12.2 NYNAS shall be entitled to compensation for any incurred additional costs if there is a delay in delivery, or if there is a delay in returning the transportation mode used for delivery to NYNAS' sub-contractor and such delay is attributable to the Buyer or the Buyer's sub-contractor or representative. NYNAS' right to compensation shall include but not be limited to costs or fees for transport or storage of the Products during the period from the agreed time of delivery until the time of the actual delivery.
- 12.3 The Buyer is responsible for adequate and suitable storage for the ordered quantity being available at the agreed place of delivery. Damages on the Product delivered, property of the Buyer or a third party that occurs as a consequence of such storage not being available at the time of delivery shall be compensated in full by the Buyer.

#### 13. INSURANCE

The responsibility for securing insurance for loss or damage to the Products shall rest with NYNAS as stated in the agreed Incoterm. If applicable: if NYNAS credit insurance company do not fully accept and cover the needed Buyer credit allowance, or if Buyer fails to provide another agreed security, the delivery date as stated by NYNAS may be postponed corresponding to Buyer's delay to provide such security.

#### 14. HARDSHIP

In the event that full adherence to this Agreement, or any associated agreements, due to circumstances reasonably unforeseeable at the time this agreement was completed, or due to circumstances reasonably outside of NYNAS control including taxes, custom duties, fees or other cost increasing circumstance would result in NYNAS apparently suffering unreasonable hardship in the performance of its obligations, the Parties shall amend this agreement to reflect the circumstances. If no unanimity is reached in these negotiations within one (1) week from the date when such negotiations were first requested by NYNAS, NYNAS shall have right to terminate this agreement with immediate effect.

#### 15. TRADE SANCTIONS

The Parties agree that any Products delivered under this Agreement, or any associated agreements shall not be imported directly or indirectly to any destination which at the time of such importation is subject to international sanction by the United Nations, European Union or any other government body or otherwise applicable law, regulation, rules or directive prohibiting importation. The Parties shall keep themselves informed as to such laws, regulations, rules or directives and shall ensure that they are complied with.

Customer undertakes to ensure that any Products to be delivered under this agreement are not exported, sold, supplied to any natural or legal person, country, state, territory or region against which there are sanctions imposed by the United Nations, European Union or any other governmental body.

In the event of any failure to comply with the above stated undertakings, or if a Party has reasonable grounds for believing that such undertaking will not be complied with, the Party may by notice to the other Party, at its sole discretion, terminate or suspend obligations under this agreement until further notice.

#### 16. FORCE MAJEURE

- 16.1 Neither of the Parties shall be liable for any delay or default in the execution of its obligations under this Agreement, or any associated agreements, if the delay or default is provoked by a case of Force Majeure.
- 16.2 Force Majeure are events which includes, but is not limited to, Acts of God, fires, floods, earthquakes, heavy storms, lightnings and other exceptional bad weather conditions, explosions, riots, civil commotions, war and acts of authorities, state agencies or state owned companies, strikes, lockouts, accident to machinery, shortage of raw material including crude oil, delays en route or any other events, pandemics and other outbreaks of infectious diseases, omissions or accidents of any kind of character reasonably beyond the control of the Party, affecting the Parties, their suppliers, sub-contractors or their customers ("Force Majeure"). Force Majeure events shall for their duration and to the extent resulting there from, release the Parties hereto from their respective obligations pursuant to this Agreement, except the obligation to make payment for the Products already delivered.
- 16.3 If a Party is or most probably will be prevented by Force Majeure from performing its agreed obligations, the Party affected shall be obligated to notify the other Party immediately of the precise circumstances constituting the Force Majeure, the estimated timing implications as well as the consequences of it for the execution of the Party's agreed obligations. The Parties shall make every reasonable effort to prevent or limit the detrimental effects of such contingencies. The Party invoking Force Majeure shall be obliged to resume fulfilling its obligations under this Frame Agreement immediately following the expiry of the Force Majeure.
- 16.4 The fulfilment of the obligations shall be suspended exclusively for the time during the period of Force Majeure. When the period of Force Majeure has ended, the Party who was unable to fulfill its obligations due to this Force Majeure, shall give notice of this ending to the other Party as soon as the circumstances permit. Notwithstanding the provisions above, either Party is entitled to rescind the Contract if the performance of a material obligation is delayed for more than two (2) months.

- 16.5 Each Party will bear its own expenses, damages and losses caused by any event of Force Majeure.

- 16.6 For year 2021 and in the wake of the ongoing Covid-19 pandemic, the consequences following thereof and notwithstanding anything else stated in this Agreement, the Parties have agreed and confirm the following:

In relation to confirmed purchase volumes and purchase orders, if the Seller is not able to obtain, sell, deliver or produce a certain quantity or quality of the Product, the Seller may suspend or cancel deliveries and/or redistribute available Products among its contractual customers on the grounds which the Seller considers to be reasonable and fair. The Seller shall have no liability for breach or non-performance of its obligations under this Agreement or for damages, losses or costs of whatever nature to the extent directly or indirectly caused by the Covid-19 pandemic.

#### 17. ALLOCATION

If, according to NYNAS' own assessment, NYNAS is unable to obtain, sell or produce a certain quantity of Product sold hereunder or if the supplies of such Products are not sufficient for NYNAS own purposes or for those of its subsidiaries and affiliated companies and its requirements for sales to other customers of all kinds, NYNAS may, at its sole discretion or according to law, allocate its available supplies among its customers at its sole discretion.

#### 18. INTELLECTUAL PROPERTY RIGHTS

All intellectual property rights generated or created under this Agreement, or as a result of the Agreement, shall rest with NYNAS unless otherwise agreed in writing. The Buyer expressly waives all claims or rights to compensation for such intellectual rights in favour of NYNAS.

#### 19. WARRANTIES

- 19.1 NYNAS warrants that Products are supplied according to the NYNAS specifications as stated in clause 4.1, as amended from time to time, and that the chemical composition of the Product as such according to said

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specification (unrelated to any specific use, function mixture or production method, for which NYNAS takes no responsibility) does not infringe any third party's intellectual property right. The aforementioned warranties shall not apply to:

- (a) any Product which has been altered or changed after receipt by Buyer without NYNAS' authorisation;
- (b) any failure of the Product to conform to such warranties as a result of improper maintenance, installation, service, operation or use.
- (c) the storage of such items exceeding reasonably expected storage shelf time, or the storage was in any other way incorrect; or
- (d) any abuse, misuse, neglect, or negligence of Buyer or its End-users.

19.2 THESE WARRANTIES ARE BUYER'S EXCLUSIVE WARRANTIES AND REPLACE ALL OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTY OR CONDITION OF NON-INFRINGEMENT.

#### 20. LIABILITY

20.1 It is understood between the Parties that in no event, except in the case of breach of confidentiality, infringement of intellectual property rights, gross negligence or willful misconduct, shall either Party be liable to the other, under this Agreement or otherwise related to it, for tort, breach of statutory duty, any indirect or consequential, special or punitive damages, losses or expenses of whatever nature (which shall include but not be limited to: anticipated profit, plant shut-down, reduced production, derivative losses or loss of goodwill, use, market reputation, business, Agreements or commercial opportunities (whether foreseeable or not)), caused to the other Party or third parties as a result of performance or non-performances of this Agreement.

20.2 NYNAS' liability under this Agreement shall be limited to a maximum of 1 000 000 SEK per occurrence and the aggregated liability shall furthermore be limited to and can under no circumstances exceed a maximum of 5 000 000 SEK.

20.3 If Buyer adds other materials to the Product, NYNAS shall have no liability whatsoever for the blended or mixed product.

20.4 The Party that suffered damage is obliged to do its best to prevent and restrict further damage.

#### 21. SUSPENSION OR EARLY TERMINATION OF THE AGREEMENT

NYNAS has the right to, at its sole discretion and in addition to any other legal remedies it may have, without advance written notice and without any action before a judge being necessary suspend all deliveries under the Agreement and/or terminate the Agreement if:

- (a) the Buyer becomes, or is in NYNAS' reasonable opinion expected to become, the subject of a dissolution, bankruptcy, liquidation or receivership procedure or a procedure which is likely to lead to a cessation of payments, or formal default for a bill of exchange;
- (b) the Buyer commits illegal acts;
- (c) trade sanctions, as detailed in clause 15 above, are imposed against the Buyer, against the country in which the Buyer is registered or operates or are imposed in way that affects the Buyer's ability to perform its duties as agreed;
- (d) the Buyer is in breach of the Agreement and does not rectify such a breach, given 30 days written notice;
- (e) the Buyer is in material breach of the Agreement; or
- (f) because of sustained Force Majeure in accordance with clause 16.4.

#### 22. ASSIGNMENT

The Buyer is not allowed to assign or transfer any of its rights, benefits or obligations under this Agreement, or any associated agreements, to a third party without NYNAS prior written consent thereto, unless otherwise expressly stated herein.

This does not, however, prevent the Parties from transferring the rights and obligations under this Agreement in whole or in part within their respective Group. For the avoidance of any doubt, in case of transfer of the rights and obligations under this Agreement in whole or in part to the Group of the Parties, the original Parties remain liable for the fulfillment of all rights and obligations under this Agreement.

#### 23. NO WAIVER

The failure of NYNAS to insist, in any one or more instances, upon strict performance of any one or more of the provisions, terms and conditions of this Agreement, or to exercise any right or rights hereunder, shall not be construed as a waiver thereof, and any and all such provisions, terms, conditions and rights shall continue and remain in full force and effect.

#### 24. SEVERABILITY

Each and every provision of this Agreement, or any associated agreements, is severable from any and all other provisions of this Agreement. Should any provision or provisions of this Agreement be for any reason unenforceable, the balance shall nonetheless be of full force and effect. In the event, any one or more of the provisions of this Agreement should for any reason be held by any arbitrator, court or authority having jurisdiction over this Agreement or either of the Parties to be invalid, illegal or unenforceable, such provision or provisions shall be validly reformed by such court or authority to as nearly approximate the intent of the Parties as possible and, if not revocable, shall be divisible and deleted in such jurisdiction only.

#### 25. CONFIDENTIALITY

25.1 The Buyer undertakes without time limitation not to disclose confidential information (as defined below) received under or in connection with entering into in this Agreement to any third parties without NYNAS prior written consent.

25.2 "Confidential Information" shall mean all information, in whatever form or format which:

- (a) relates to the Agreement, including the Agreement and its appendices itself.
- (b) is designated as confidential by NYNAS; or
- (c) relates to the business, affairs, networks, customers, products, developments, trade secrets, know-how or personnel of NYNAS.

25.3 The foregoing restriction shall not apply to information which:

- (a) is public knowledge or becomes public knowledge through no breach of any confidentiality Agreement,
- (b) is disclosed to the Buyer and was known by the Buyer prior to the disclosure by NYNAS and such fact can be proven by written evidence,
- (c) is received by the Buyer in good faith from a third party other than NYNAS' affiliates or owner and is free of any obligation of confidentiality towards the third party, or
- (d) is developed by the Buyer independently of information disclosed by NYNAS pursuant to the Agreement.

25.4 In the event that any authority, entity or agent of competent jurisdiction requires disclosure of Confidential Information, in whole or in part, the Buyer shall promptly give written notice of the requirement to NYNAS, so that it may adopt such measures as it considers appropriate to safeguard its rights.

#### 26. NOTIFICATIONS

26.1 Any notice, claim, request, consent and/or other communication to be given by a Party shall, unless otherwise agreed in writing, be in the English language and deemed to be valid and effective if sent in accordance with what is stated in this clause. A notice, claim, request, consent and/or other communication shall be deemed to have been given:

- (a) in the case of delivery in person: at the time of service, provided receipt is confirmed by an authorized representative of the other Party,
- (b) in the case of prepaid registered mail: at the latest four days after the date of mailing,
- (c) in the case of e-mail: on the date a receipt-acknowledged e-mail is sent; and

(d) in the case of telefax: on the date the telefax is sent, provided receipt is confirmed by the other Party.

26.2 Notifications shall be given to the Parties' registered addresses.

#### 27. SURVIVING TERMS

The following clauses together with agreed changes and additions to these stated in this Agreement shall survive the Agreement regardless of the reason for its termination:

- (a) Defect in deliveries, Warranties
- (b) Insurance
- (c) Confidentiality
- (d) Liability
- (e) Dispute resolution
- (f) Applicable Law; and
- (g) Force majeure
- (h) Surviving terms (this clause)

#### 28. RELATIONSHIP BETWEEN THE PARTIES

This Agreement shall not form a joint venture or partnership or similar business arrangement between the Parties hereto and nothing herein shall make a Party the agent of the other Party for any purpose. A Party has no authority or power to bind, to contract in the name of, or to create a liability for the other Party in any way or for any purpose.

#### 29. ANTI-CORRUPTION

29.1 Each Party shall comply with all applicable anti-corruption laws in connection with this Agreement and shall maintain policies and procedures designed to promote and achieve compliance with such anti-corruption laws.

29.2 Either Party shall not, directly or through any other person or firm, promise or give to the other Party's employee, or to any third party, any benefit that she or he is not legally entitled to.

29.3 In the event of a Party's breach of this clause, the other Party has the right to immediately terminate this Agreement. The breaching Party must reimburse the other Party for all costs incurred as a result of such breach and termination.

#### 30. DISPUTE RESOLUTION, GOVERNING LAW AND LANGUAGE

30.1 This Agreement shall be governed by Swedish law. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply and that it is strictly excluded.

30.2 In the event that any dispute arises out of this Agreement the Parties shall try to settle it amicably. The Parties agree that prior to any action being filed the Parties will attempt to resolve any dispute through consultation. The dispute shall first be submitted to nominated senior NYNAS and Buyer executives within the department where the dispute arose. If they are unable to resolve the dispute within 21 calendar days of it being submitted to them then it shall be escalated to NYNAS' and Buyers' Finance Director or equivalent for resolution within 21 calendar days.

30.3 Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, not solved as set out above, shall be referred to and finally resolved by arbitration under the Rules of the Arbitration Institute of the Stockholm Chamber of Commerce, whose rules are deemed to be incorporated by reference into this clause. The tribunal shall consist of three arbitrators and the procedure shall be held in Stockholm. The language of the arbitration shall be English.

30.4 Notwithstanding the foregoing arbitration clause, NYNAS shall always have the right to institute legal proceeding in court in the country of the Buyer in order to collect payments due.

30.5 The Parties expressly acknowledge that the English version of this Agreement is considered to be the authentic text and English shall be used in the communications between the Parties in relation to this Agreement and/or the execution thereof.