

亨斯迈销售条款与条件

1 总则

- 1.1 本销售条款与条件适用于就亨斯迈向买方销售及交付货物所订立的合同（“合同”），并取代买方约定或参考的任何其他条款或条件。买方下订单并接受货物的行为即构成其受本销售条款与条件的约束。
- 1.2 除亨斯迈以书面形式明确规定、同意或确认外，任何对本销售条款与条件的修改均不生效。
- 1.3 任何原因导致本销售条款与条件任何部分的无效或不可执行不妨碍或影响其余条款的效力或可执行性。
- 1.4 非经亨斯迈事先书面同意，买方不得将任何合同或合同权利全部或部分转让给任何第三方。

2 要约、订贷及合同

- 2.1 除另有明确的书面约定外，亨斯迈提供的任何目录、手册、价目单及通讯不视为要约，不构成承诺。
- 2.2 仅当亨斯迈书面接受订单或开始履行订单时，该订单方对亨斯迈具有约束力。订单接受与否取决于货物的供应能力。

3 价款和支付

- 3.1 除另有书面约定外，所报价格不含所有应征税款，并以 2000 年国际贸易术语解释通则为准。
- 3.2 在不损害第 9 条规定的亨斯迈权利的前提下，在货物交付前，亨斯迈有权通知买方：由于原材料、燃料、设施和运输的短缺或价格上涨等已超越亨斯迈的合理控制，按照卖方和买方原先约定的货物价格交付货物对亨斯迈而言是异常困难或在商业上是不可行的。在此情形下，在亨斯迈通知买方后的三十(30)天之内，亨斯迈和买方应善意地共同评审并协商修改包括交付费用在内的货物价格。若协商不成，买方有权与亨斯迈终止合同。买方同意，买方无权就合同的终止而向亨斯迈提出任何索赔或其他救济请求。
- 3.3 除另有书面约定外，付款应以转账方式用发票载明的货币支付到发票上指定的其中一个银行账户。
- 3.4 买方应在亨斯迈通知买方的期限内支付价款，且不得对价款作任何扣减或扣除。但亨斯迈有权要求于交付前支付全部或部分价款，或就付款取得担保。除亨斯迈书面明确同意外，买方不得因任何索赔而抵销或预扣任何款项。
- 3.5 无须亨斯迈事前书面通知或要求，按照适用法律，逾期付款应按照每月 1% 的利率计息并按年累计。此外，买方收到催款函后一（1）个星期内未支付逾期款项的，则买方应支付相当于亨斯迈追收到期款项而发生的费用（包括律师费）或逾期款项的 10% 两项金额中较高者作为违约金。

4 交付

- 4.1 交付应根据 2000 年国际贸易术语解释通则 在亨斯迈与买方约定的地点进行。
- 4.2 如果亨斯迈负责交付，当亨斯迈将以桶装、IBC 或其方式包装的货物置于承运人的卡车（或其他车辆）上以供买方卸载时，或对于散装货物而言，承运人的容器阀门开启时，视为交付。
- 4.3 如果买方负责收取货物，当货物以桶装、IBC 或其方式包装在亨斯迈工厂交于买方控制装载之时，或对于散装货物而言，在承运人的容器阀门开启时，视为交付。
- 4.4 交付条款仅作参考，不构成亨斯迈的承诺、保证或责任。延迟交付不免除买方遵守合同及/或本销售条款与条件约定的义务。
- 4.5 亨斯迈有权分批交付，为本销售条款与条件目的，每次部分交付应视为一次独立的交付。
- 4.6 如亨斯迈以散装方式交付货物的，则对任何一份订单而言，亨斯迈交货可比预订的重量和数量发生 15% 范围内的变动。亨斯迈将按实际交付的数量向买方开具发票，并在发票中载明该数量。如以一定载货数量的容器供货，货物只能以容器所载数量的整数倍供应。任何订单中的数量应上浮到最接近的前述整数倍，并按此数量开具发票。
- 4.7 如果买方未能在货物抵达目的港后合理时间内卸载货物的，承运人可按当时有效的承运人的滞纳金费率向买方收取滞纳金。如果延迟交付货物是由于买方未能在充分的时间内提供所有必需的指示和方式、许可、保证、付款及将货物运抵约定的目的港可能需要的所有帮助和信息，买方应赔偿亨斯迈与该延迟交付有关的一切费用和支出。

5 风险及所有权转移

- 5.1 所交付货物的风险自交付（定义见 4.1 条）后转移至买方。
- 5.2 买方付清合同规定亨斯迈有权收取的所有价款（包括任何赔偿金、费用、利息及关税）前，亨斯迈保留对所有售出货物的所有权。
- 5.3 货物所有权转移至买方前，买方应确保：
- (i) 保持货物处于良好状态且无需亨斯迈承担相关费用；
 - (ii) 为方便辨认货物为亨斯迈所有，单独存放货物或标示货物；
 - (iii) 货物上不存在任何抵押、质押或留置；并
 - (iv) 以货物的全部更换价值投保一切险。
- 5.4 买方应遵守所有一切适用的进/出口管制及贸易禁运的法律法规（包括但不限于美国出口管理条例）。在未获得所有必需的书面同意、许可和授权，并完成任何前述法律法规要求的手续前，买方不得直接或间接地处理、转售、进口、出口、转口、分销、转让或以其他方式处分货物。如买方未能遵守该法律法规，则构成本协议项下的严重违约。买方进一步同意在其与第三方就货物订立的合同中规定同样的合规要求。

6 包装

- 6.1 如果亨斯迈用桶装或其他不能退还的容器供货，除法律规定或书面约定外，该容器清空时无须归还。允许买方归还容器的，则买方需自行承担费用和 risk 将容器归还予亨斯迈，并且容器应保持干净、清空、安全关闭及状态良好。
- 6.2 诸如 IBC's, isotainers, demounts 等容器属于亨斯迈的财产。买方应按照亨斯迈的指示使用该等容器，未经亨斯迈书面同意，不得将该等容器用于存放或装入其他任何物质（包括亨斯迈以散装或容器提供的货物）。买方占有或控制期间内发生的容器损失或损害应由买方负责并由买方承担后果。

7 保证

- 7.1 亨斯迈向买方保证所供货物符合约定的规格。除亨斯迈的重大疏忽或故意外，本条款与条件排除任何其他为货物而作出的质量或适用性的条件或保证。本保证仅限于更换瑕疵或不符合约定的货物，或由亨斯迈自行决定是否对买方贷记有关货物的全部或部分发票金额。
- 7.2 买方应在交付后立即检验货物，且可以对其主张的货物损失、短缺或缺陷而要求索赔，但前提是 a) 买方在承运人文件中指出其主张的缺陷且 b) 在交付后三天内将该事项书面通知亨斯迈。如果买方在满足下列规定的时间内书面通知亨斯迈，则买方可对所交货物的内部缺陷要求索赔：
- (i) 发现该缺陷后八（8）天内；且
 - (ii) 产品数据单载明的保质期结束之前；且
 - (iii) 无论本条款与条件中有何其他规定，交付后三十（30）天内。
- 7.3 如果买方根据上述 7.2 条提出货物损害或缺陷的索赔，则买方不得进一步使用货物，应保留货物以供亨斯迈检验。未经亨斯迈书面同意，买方不得将货物归还亨斯迈。
- 7.4 买方可享有的任何索赔权因下列情形而丧失：
- (i) 未适当储存或使用亨斯迈交付的货物；
 - (ii) 买方未能在 7.2 条规定的期限内将其主张的缺陷书面通知亨斯迈，也未允许亨斯迈按货物交付时的状态检验货物；或
 - (iii) 买方未能向亨斯迈适当及时地履行其在合同项下的义务。
- 7.5 双方理解：作为供货商，如果亨斯迈自行决定向买方提供关于货物使用的建议或帮助或推荐，亨斯迈不因提供该建议或帮助或推荐而对所交付货物因使用而产生的后果承担任何义务或责任，但亨斯迈有重大疏忽的情形除外。
- 7.6 买方应根据亨斯迈安全手册中的建议或推荐处理货物。如果买方还未收到该安全手册或要求得到安全使用产品的建议时，其应当立即联系亨斯迈。
- 8 责任和赔偿**
- 8.1 在相关国家法律允许的最大范围内，亨斯迈不对买方或任何第三方遭受的收益损失或间接的损害。
- 8.2 尽双方所知，买方因亨斯迈的重大过失或违约而遭受的损失不应超过争议货物的发票金额。鉴此，如果亨斯迈依法有义务支付赔偿金，该等赔偿金不应超过造成损害的货物的发票金额或（如货物已投保）保险公司实际支付给亨斯迈的金额两者中的较低者。
- 9 不可抗力**
- 9.1 如果因下列任何原因而直接或间接致使亨斯迈延迟交货或履行不能，则亨斯迈不承担责任：自然灾害、流行疾病、战争、恐怖主义行为、意外事件、爆炸、核事故、设备或机器故障、蓄意破坏、罢工或其他劳资纠纷（无论劳工要求是否合理）、任何政府机关法律上或事实上的作为或不作为、港口拥堵、因未交付或其他原因导致的供给、劳力、设施、燃料及电力短缺、运力不足或任何其他亨斯迈无法合理控制或致使其义务履行不能或异常困难的原因（无论与前述原因是否相似）。因上述原因妨碍亨斯迈供货时，其有权自行决定以何方式将可供货物公平地分销给其客户。如因上述情形持续二十一（21）天以上而导致的交付延迟，任何一方有权书面通知对方就届时尚未交付的货物终止履行合同。
- 10 合同终止**
- 10.1 如果某份发票在付款到期之日仍未被足额或部分付款，或买方未遵守亨斯迈安全方面的劝告，或买方未适当或及时遵守任何其他合同义务，或买方进入清算或接管程序的，无论之前订立的合同如何规定，也不影响亨斯迈依据合同或法律可享有的其他任何权利或赔偿的情况下，亨斯迈按法律规定、无需通知或法院判令即有权推迟履行所有订单，或以立即生效的方式终止与买方的所有协议，并可以请求买方立即清偿所有债务，包括未到期债务。
- 10.2 合同终止之后，亨斯迈有权进入买方场地，搬走其保留所有权的货物，买方应对此提供相应的协助。
- 11 争议及管辖法律**
- 11.1 本合同的管辖法律为 中华人民共和国实体法，并明确排除适用联合国国际货物销售合同公约。
- 11.2 因本合同引起的或与其有关的争议，包括其成立、效力或终止等问题，只能提交在上海的中国国际经济贸易仲裁委员会（“**仲裁委员会**”），按照其当时有效的仲裁规则进行仲裁（且排除法院管辖）。
- 11.3 仲裁庭由一位仲裁委员会主任指定的仲裁员组成。
- 11.4 仲裁语言应为英语。
- 12 可分割性**
- 如果本销售条款与条件中的任何条款违法、违反公共政策或者不可执行，则该等条款应从本销售条款与条件中删去，使本销售条款与条件其它条款合法、有效和可执行。
- 13 语言**
- 本销售条款与条件以中英文两种文字书写。两个版本具有同等效力。

HUNTSMAN TERMS AND CONDITIONS OF SALE

1 General

- 1.1 These Terms and Conditions of Sale shall apply to the contract with Buyer for the sale and delivery by Huntsman of Goods (the "**Contract**") and supersede any other terms or conditions stipulated or referred to by Buyer. Buyer's placing an order and taking in the Goods shall constitute acceptance of these Terms and Conditions of Sale.
- 1.2 No variation of these Terms and Conditions of Sale shall be effective unless expressly stipulated, agreed or confirmed in writing by Huntsman.
- 1.3 The invalidity or unenforceability for any reason of any part of these Terms and Conditions shall not prejudice or affect the validity or enforceability of the remainder.
- 1.4 Buyer shall not assign any Contract or any rights hereunder in whole or in part to any third party without the prior written consent of Huntsman.

2 Offers, Orders and Agreements

- 2.1 Any catalogues, brochures, price-lists and communications cannot be considered as offers and are provided without any commitment from Huntsman, unless otherwise explicitly agreed in writing.
- 2.2 Huntsman shall be bound only if an order has been accepted in writing by Huntsman or if Huntsman has started performing the order. Orders are accepted subject to the availability of the Goods.

3 Price and Payment

- 3.1 Prices are quoted exclusive of all applicable taxes, and are subject to Incoterms 2000, unless otherwise agreed in writing.
- 3.2 Without prejudice to Huntsman's rights under Clause 9, Huntsman may, prior to delivery, notify Buyer that it has become unusually onerous and/or no longer commercially viable to supply the Goods to Buyer at the price of the Goods first agreed as a result of, among others, shortages or rapid increase in the cost of raw materials, fuel, utilities or transportation beyond the reasonable control of Huntsman. In the event of the aforesaid, Huntsman and Buyer shall in good faith mutually review and agree upon a revised price, including delivery cost, of the Goods within thirty (30) calendar days of Huntsman's notification to Buyer, failing which Buyer has the right to terminate the Contract with Huntsman. Buyer agrees that it shall not be entitled to claim any damages or other remedy in respect of such termination.
- 3.3 Payment shall be made in the currency stated on the invoice by transfer to one of the bank accounts identified thereon, unless otherwise agreed in writing.
- 3.4 Payment shall be due, without deduction or discount within such time period as notified by Huntsman to Buyer. Huntsman, however, shall be entitled to request payment in advance of delivery, either in full or in part, or obtain security for the payment. The setting off or withholding of any payment by Buyer in respect of any claim shall not be allowed unless expressly agreed in writing by Huntsman.
- 3.5 Any late payment shall bear interest at a rate of one per cent (1%) per month accrued annually by operation of law and without prior written notice or demand. In addition if any overdue amount is not paid within one (1) week of Buyer's receipt of a written demand for payment, Buyer shall be liable for liquidated damages equal to the costs of collecting the amount due from Buyer including legal costs or ten percent (10%) of said overdue amount, whichever shall be higher.

4 Delivery

- 4.1 Delivery of the Goods shall be per Incoterms 2000 at such point as shall be agreed between Huntsman and Buyer.
- 4.2 If Huntsman undertakes delivery, delivery will take place when the Goods in drums, IBC's or other packages are placed at the disposal for offloading by Buyer on the truck (or such other vehicle) of the carrier or, for Goods in bulk when the valves of the tank of the carrier have been opened.
- 4.3 If Buyer undertakes to collect the Goods, delivery will take place when the Goods in drums, IBC's or other packages have been placed at Buyer's disposal at Huntsman's premises for loading or, for Goods in bulk when the valves of the tank of Huntsman have been opened.
- 4.4 Terms of delivery are for information only and without any commitment, guarantee or liability of Huntsman. A delay in delivery will not give Buyer the right not to comply with his obligations as laid down in the Contract and/ or these Terms and Conditions of Sale.
- 4.5 Huntsman shall have the right to perform partial deliveries. For the purpose of these Terms and Conditions of Sale, each partial delivery shall be regarded as an independent delivery.
- 4.6 In case of Goods supplied in bulk, Huntsman may deliver against any order a variation of up to fifteen per cent (15%) of the weight or volume ordered. The Buyer will be invoiced for the quantity actually delivered which will be stated in the invoice. In case of Goods supplied in containers of a certain quantity, the Goods will only be supplied in multiples of such quantity. Any order will be grossed up to the nearest of such multiple and invoiced as such.
- 4.7 If Buyer fails to unload the Goods within reasonable time after it has arrived at its destination, Buyer may be charged demurrage at the carrier's demurrage rate in force at that time. Buyer shall indemnify Huntsman against any and all charges and expenses in respect of any delay in delivery of the Goods where such delay is due to Buyer's failure to provide in sufficient time all necessary instructions and means, licenses, guarantees, payments and all such assistance and information as may be required for delivering the Goods at the agreed destination.

5 Transfer of Risk and Title

- 5.1 The risk with regard to the Goods to be delivered shall pass to the Buyer upon delivery as defined in Clause 4.1.
- 5.2 All Goods sold by Huntsman shall remain the property of Huntsman until it has received from Buyer all payments it is entitled to on the basis of the Contract, including any damages, costs, interest and duties.
- 5.3 Until such time as property in the Goods has passed to Buyer, Buyer shall ensure that the Goods:
 - (ii) are kept and maintained in good condition at no cost of Huntsman;

- (ii) are stored separately or marked so that they may be readily identified as the property of Huntsman;
 - (iii) are not subject of any charge, pledge or lien; and
 - (iv) are insured for their full replacement value against all risks.
- 5.5 Buyer shall comply with all applicable import / export control and trade embargo laws, rules and regulations (including but not limited to the U.S. Export Administration Regulations), and shall not deal with, resell, import, export, re-export, distribute, transfer or otherwise dispose of the Goods, whether directly or indirectly, without first obtaining all necessary written consents, permits and authorizations and completing such formalities as may be required by any such laws, rules and regulations. Failure by Buyer to comply with such laws, rules and/or regulations shall constitute a material default under the Contract. Buyer further agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Goods.

6 Packages

- 6.1 Where Huntsman supplies in drums or other non- returnable containers, such containers are not returnable when empty, unless provided by law or agreed upon otherwise in writing. Where Buyer is allowed to return these containers, they shall be returned at Buyer's cost and risk and shall be clean, empty, securely closed and in a good condition.
- 6.2 Containers which remain as Huntsman's property such as IBC's, isotainers, demounts etc. shall be used in compliance with Huntsman's instructions and shall not be used for storage or shipment of any other material including the Goods supplied by Huntsman in bulk or containers without Huntsman's written consent. Loss or damage to containers whilst in Buyer's possession or control shall be Buyer's responsibility and for the account of Buyer.

7 Warranty

- 7.1 Huntsman warrants to Buyer that the Goods supplied will conform to agreed specifications. Any other condition or warranty as to the quality or fitness for purpose of the Goods is hereby excluded except in the event of gross negligence or intent on the part of Huntsman. This warranty is limited to replacing defective or non-compliance Goods or at the discretion of Huntsman, crediting the Buyer, in full or in part, for the amount of the invoice for the Goods concerned.
- 7.2 Buyer shall inspect the Goods immediately on delivery and may claim alleged loss, shortage or defect of such Goods which could have been detected on such inspection provided that (a) Buyer indicates such alleged defect on the carrier's documents and (b) gives written notice thereof to Huntsman within three (3) days of delivery. Buyer may claim alleged intrinsic defects of delivered Goods provided that Buyer gives written notice within:
- (i) eight (8) days of discovery of such defect(s); and
 - (ii) within the expiration of the shelf life as indicated in the product data sheets; and
 - (iii) notwithstanding any other provision herein, within thirty (30) days of delivery.
- 7.3 If Buyer claims alleged damage or defects of the Goods as aforesaid in Clause 7.2, Buyer shall not further use the Goods and shall retain the Goods for inspection by Huntsman. Buyer shall not be entitled to return the Goods to Huntsman without Huntsman's written consent.
- 7.4 Any claims Buyer may have shall be forfeited if:
- (i) the Goods delivered are stored or used improperly;
 - (ii) Buyer fails to give written notice of the alleged defect within the terms as referred to in Clause 7.2 and fails to allow Huntsman to inspect the Goods in the state they were upon delivery; or
 - (iii) Buyer does not comply, or not properly or not in time, with any of its obligations towards Huntsman as laid down in the Contract.
- 7.5 It is understood by both parties that Huntsman is a supplier and if Huntsman, in its discretion, provides Buyer with advice or assistance or recommendations in reference to the use of the Goods, such advice or assistance shall not subject Huntsman to any obligation or liability in respect of the results obtained from usage of the Goods delivered except in the event of gross negligence on the part of Huntsman.
- 7.6 Buyer shall handle the Goods in accordance with such advice or recommendations given by Huntsman in Huntsman's safety literature. If Buyer is not already in the possession of such literature or requires any such advice in connection with the safe use of the products Buyer shall immediately contact Huntsman.

8 Liability and Indemnity

- 8.1 To the largest extent permitted by the relevant national laws, Huntsman shall not be liable for loss of income or for any consequential or indirect damage caused to Buyer or any third party.
- 8.2 If Huntsman is liable to pay damages, these damages shall not exceed the lower of the amount of the invoice for the Goods that caused the damage, or, if the damage is covered by insurance, the amount actually paid by the insurance company to Huntsman.

9 Force Majeure

- 9.1 Huntsman shall not be liable for any delay in delivery or failure in performance resulting (directly or indirectly) from any of the following causes: natural disasters, epidemic, war, terrorism, accidents, explosions, nuclear incidents, breakdown of equipment or machinery, sabotage, strikes or other labour disturbances (regardless of the reasonableness of the demands of labour), acts or omissions of any governmental authority (de jure or de facto), port congestions, shortage of supplies, labour, facilities, fuel or power in consequence of non- delivery or any other cause, want of transport or any other cause (whether similar or dissimilar to the foregoing) which is either beyond Huntsman's reasonable control or which makes the performance of the obligations either impossible or unusually onerous. If Huntsman's supply of Goods should be limited as a result of any such cause, Huntsman shall have the right to fairly distribute any available Goods among its customers in such manner as Huntsman may determine. If the delay resulting from any such case shall continue for more than twenty-one (21) days, either party shall be entitled, on written notice to the other party, to terminate the contract with respect to Goods undelivered at the time of termination.

10 Termination

10.1 Huntsman is entitled, if an invoice is not paid in whole or in part upon due date or if Buyer does not comply with Huntsman's safety recommendations or if Buyer does not properly or not in time comply with any other obligations under the Contract or enters into liquidation or receivership, ipso iure and without notice, to postpone the performance of all orders or to terminate all agreements concluded with Buyer with immediate effect, without any notice or judicial orders being necessary and to claim immediate payment of all debts, including those not yet due, notwithstanding any agreement entered into beforehand and without prejudice to any other right or compensation of which Huntsman could benefit under the Contract or the law.

10.2 Upon such termination Huntsman shall be entitled to enter into Buyer's premises in order to remove any of the Goods to which Huntsman retains title. The Buyer shall assist Huntsman in relation thereto .

11 Disputes and Governing Law

11.1 The governing law of the Contract shall be the substantive law of the People's Republic of China excluding expressly, the United Nations Convention on Contracts for the International Sale of Goods

11.2 Any dispute arising out of or in connection with the Contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved in Shanghai by the China International Economy and Trade Arbitration Commission ("**CIETAC**") (in exclusion of the competent jurisdiction) in accordance with the Arbitration Rules of CIETAC as then in force.

11.3 The tribunal shall consist of one arbitrator to be appointed by the Chairman of CIETAC.

11.4 The language of the arbitration shall be English.

12 Severability

In the event that any clause in these Terms and Conditions is illegal, contrary to public policy, or otherwise unenforceable, then such a clause shall be deleted from these Terms and Conditions leaving the remainder legal, valid and enforceable.

13 Language

These Terms and Conditions of Sale are written in both English and Chinese. Both versions are equally authentic.