

## CONDITIONS OF SALE

NOTICE: The sale of any Optimix Product of OPHK is expressly conditioned upon application of these Conditions of Sale. Any additional or different terms or conditions proposed by Buyer are hereby expressly objected to and will not be binding upon OPHK unless specifically agreed to in writing provided, however, that no pre-printed form shall modify these Conditions of Sale even if signed by OPHK. Any oral or written representation, warranty, course of dealing or trade usage not contained in these Conditions of Sale shall not be binding on either party. Any order to perform work and/or OPHK's performance of the work shall constitute Buyer's agreement to these Conditions of Sale.

1. Definition
  - A) "OPHK" means Optimix (Hong Kong) Limited.
  - B) "the Buyer" means the person to whom this quotation is addressed and includes the Buyer's employees, agents and sub-contractors for the time being.
  - C) "the Quotation" means the quotation set out overleaf or the quotation previously supplied to the Buyer.
  - D) "Buyer" means the entity to which OPHK is providing Optimix Product under the Quotation.
  - E) "Product" means Optimix Product.
2. Acceptance

The Quotation will be accepted by the Buyer either:-

  - A) signing in the space provided and returning the Quotation to OPHK; or
  - B) requesting OPHK to commence delivery of the Product pursuant to the Quotation at which moment the Quotation and these conditions shall constitute the Quotation between OPHK and the Buyer.
3. Withdrawal of Quotation

OPHK may withdraw or vary the Quotation after the expiration of 30 days from the date of the Quotation.
4. Pricing & Price Changes

Notwithstanding the provisions of Condition 3 above, OPHK reserves the right to vary any quoted price on or at any time prior to delivery in order to take account of any increase in the cost of raw materials, fuel or labour, fluctuation of currencies.
5. Delivery

In respect of each deliver the Buyer shall ensure that an authorized person signs the delivery note on its behalf in order to -

  - A) Acknowledge receipt of such delivery.
  - B) Acknowledge that the Product description set out on the delivery note describes the Product required by the Buyer that set out in the Quotation and upon acknowledgement of receipt of such delivery, the Buyer shall be deemed to have confirmed and accepted the Product so delivered or arrived at its designated premises.
  - C) The Buyer shall be responsible to take all necessary action protect the Product delivered to site and provide suitable storage to avoid product contamination. The suggested storage conditions have been listed clearly in the <Product Information & Guideline> of the Product.
6. Delivery Particulars
  - A) Forty-eight hours notice is required for delivery. Orders placed are accepted subject to prior orders and availability of material and all delivery dates are estimate only and the time of delivery shall not be of the essence of the Quotation.
  - B) Without prejudice to the generality of sub-paragraph (A) above OPHK shall not be liable for breach or default of the Quotation or any loss, liability, damage, claim, cost or expense incurred by the Buyer arising out of a delay in delivery caused by act of god, force majeure, war, riot, civil commotion, military, usurped power, machinery breakdown, Government order direction or legislation, fire accident, strike, industrial action (short of strike by lock-out), adverse weather conditions delays to transport, or any other cause whatsoever beyond the control of OPHK. OPHK reserves the right to charge the Buyer for any additional costs incurred specifically for the delivery or attempted delivery of an order.
  - C) Subject to section on Termination below, in the event of such delay or failure, there shall be no termination of the Quotation, and the time of delivery or of performance shall be extended for a period equal to the time lost by OPHK by reason of the delay or failure. If OPHK is delayed by any acts of Buyer, or by the prerequisite work of Buyer's other contractors or suppliers, OPHK shall be entitled to an equitable price adjustment.
7. Product Performance
  - A) OPHK confirms the performance of the supplied Product can meet the properties listed in the <Product Information & Guideline> tested under the stated testing conditions.
  - B) If any Product does not meet the above Product Performance, Buyer shall promptly notify OPHK in writing within fourteen (14) days from the date of such occurrence and, if applicable, make the Product available to OPHK, per Seller's specifications, for inspection. In the event OPHK determines that the Product or part thereof, failed to meet the foregoing Product Performance set forth, Buyer's sole remedy, and OPHK's sole obligation, shall be limited to: at OPHK's sole option, repair or replacement of the defective Product, any such failure shall not be cause for an extension of the Warranty Period as provided in the individual Warranty letter for specific Product, and any replaced Product shall have warranty coverage equal to the time remaining on the initial warranty of the failed Product, as applicable. OPHK shall have no liability for any defect that arises after the Warranty Period has expired. In no event shall OPHK be responsible for removal and costs associated with the repair or replacement of the Product. If any Product or part thereof fails to meet the foregoing warranty as to title, OPHK shall remedy any defects in title promptly.
  - C) OPHK may, as it deems necessary and/or from time to time, make specification changes with respect to the Product. If the specification change does not constitute a material change in form, fit or function, OPHK is authorized to deliver the Product as changed or modified, without notice to or consent from Buyer.
8. Limitation of Liability
  - A) The liability of OPHK to Buyer on any claim, whether in Quotation, warranty, tort (including, without limitation, negligence or patent infringement) or otherwise, arising out of, connected with, or resulting from the performance or non-performance of any agreement resulting herefrom or from the manufacture, sale, delivery, resale, repair, replacement or use of any Product shall not exceed the purchase price (or in the absence of a purchase price, the fair market value) allocable to the Product that gives rise to the claim. Further, the total liability of OPHK for all such claims shall not exceed the price of defective Product. The foregoing shall constitute the sole remedy of Buyer and the sole liability of OPHK. **NO IMPLIED OR STATUTORY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.**
  - B) OPHK shall not be liable for loss of profit or revenues, loss of product, loss of use of the Product or any interruption of business, cost of capital, cost of cover or replacement, downtime costs, increased operating costs, claims of Buyer's customers for such damages, or for any special, consequential, incidental, indirect, punitive, speculative, treble or exemplary damages.
9. Liability
  - A) OPHK shall not be liable for any failure at job site due to the improper handling, preparation, application, workmanship, storage that outside the control of OPHK. OPHK shall not liable for any loss, liability, damage, claim, cost or expense incurred by the Buyer as a result, directly or indirectly, of the addition by the Buyer, of any water, chemical or any other unapproved or incompatible substance, for use during mixing, application, placing or curing of the Product.
  - B) The Buyer shall provide true evidence to prove the Product is defective or sub-standard. Such proof shall be performed on the uncontaminated samples taken from the same batch in question and tests shall be conducted under proper manner with full witness by technical representatives from OPHK.
  - C) OPHK shall not be liable for any loss of profit, indirect or consequential damage or loss suffered by the Buyer allegedly arising out of a breach of these conditions.
10. Payment
  - A) Except as otherwise agreed to by OPHK, in writing, and upon approved credit, payment shall be made by the Buyer, without right of set-off, in accordance with the terms of the Quotation or otherwise stipulated by OPHK in writing.
  - B) Regardless of the manner of shipment or delivery, OPHK shall retain a security interest in the Product until Buyer makes payment to OPHK of the full purchase price thereof. Further, in the event that at any time Buyer has failed to pay OPHK for any the Product provided in accordance with the provisions of the Quotation or any other agreement to which these conditions of sale apply, Buyer expressly consents to Seller's termination of supply of the Product as applicable.
11. Termination
  - A) Buyer may terminate the Quotation (or any portion thereof) for cause if OPHK: (a) substantially breaches a material obligation which does not otherwise have a specified contractual remedy, provided that Buyer provides OPHK written notice of the breach and OPHK has failed, within sixty (60) days after receipt of the notice (or such extended period as is considered reasonable by the parties), to either: (i) commence and diligently pursue cure of the breach, or (ii) provide reasonable evidence that the breach has not occurred; or (b) becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws.
  - B) If Buyer terminates the Quotation as provided in Section 11(A) Buyer shall pay to OPHK the applicable purchase price for any completed or partially completed Product performed before the effective date of termination, and any costs and expenses including but not limited to storage costs and delivery costs incurred.
  - C) OPHK shall have the right to suspend performance or terminate the Quotation (or any portion thereof) immediately for cause if: (i) Buyer becomes insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for the benefit of its creditors, or files for protection from creditors under any bankruptcy or insolvency laws; (ii) there is an excusable delay (as per Section above) lasting longer than 120 days; (iii) any representation or warranty made by Buyer herein or in any document or certificate furnished by Buyer in connection herewith proves to be incorrect in any material respect; (iv) Buyer materially fails to comply with any terms of the Quotation, including but not limited to, failure to make any payment when due or to fulfill any payment conditions; or (v) Buyer commits an anticipatory breach of the Quotation.
  - D) Subject to Section 11(A), above, Buyer may not terminate, suspend or cancel the Quotation (or any portion thereof) without the prior written consent of OPHK, which consent shall be at OPHK's sole discretion. Notwithstanding the foregoing, in no event shall OPHK consent to the termination, suspension or cancellation of any Product for which OPHK has already begun production or performance, as applicable.
12. Ownership of Product

The ownership of the Product shall pass to the Buyer upon the arrival of the deliver truck at or about the Buyer's site, or at its discharge from OPHK's warehouse into any vehicle provided by the Buyer, as the case may be.
13. Delivery Surcharge

OPHK reserves the right to make a delivery surcharge for the value of the Product which is less than the minimum order amount required which is set out in the Quotation for each truck delivery.
14. Quantity

The Quotation is based on the sale of the approximate quantity of the Product which the Buyer has informed OPHK for the purposes of obtaining OPHK's Quotation, OPHK reserves the right to claim compensation from the Buyer in the event that the quantity actually delivered substantially falls short of the quantity indicated to OPHK by the Buyer for purposes of obtaining OPHK's Quotation.
15. Conflicting Terms

Subject to the provisions of this Conditions of Sale, any other terms or conditions which the Buyer may seek to introduce whether before or after the date of this Quotation shall be of no effect and an order for or an acceptance by the Buyer of a delivery to which the Quotation refers shall be deemed to be on the terms of the Quotation and not otherwise.
16. Notices

Any notice required to be served hereunder shall be given in writing by telex, facsimile, email or letter and shall in the case of a letter be deemed to be served on OPHK or the Buyer (as the case may be) within two days of posting it set by post to the address of OPHK or the Buyer (as the case may be) shown on the Quotation.
17. Governing Law

This Conditions of Sale shall be construed and interpreted in accordance with the laws, excluding the rules on the conflict or choice of laws, of the Hong Kong Special Administrative Region ("Hong Kong"). The Parties acknowledge that in the event that these Conditions of Sale are inconsistent with any applicable provisions of the Sale of Goods guidelines and regulations, these Conditions of Sale shall prevail.
18. Dispute Resolution

Any dispute arising from, or in connection with, the Quotation which cannot be resolved through friendly consultation, shall be referred to and finally administered through arbitration by Hong Kong International Arbitration Centre ("HKICA") in accordance with its administered rules in force when the notice of arbitration is submitted according to those rules. The decision of the arbitrator(s) shall be final and binding the Parties.