

Terms and Conditions of Sale

1. **Acceptance of Orders.** If Buyer's order is made under an existing written contract between Buyer and Seller, Buyer's order is accepted subject to the terms of that written contract. If there is no such written contract, Seller hereby accepts Buyer's order, provided that the terms stated herein shall prevail over any terms that are in conflict with or additional to those stated herein. Unless otherwise expressed in writing, acceptance by Buyer of any goods or services provided hereunder shall constitute acceptance by Buyer of the terms stated herein. If this document is construed as an offer to sell, then acceptance by Buyer is limited to the terms stated herein and Buyer is hereby notified of Seller's objection to any terms additional to or different from those stated herein, all of which are to the fullest extent permitted by law excluded from any offer Seller makes. Any services by Seller are rendered only in connection with the sale of such goods as are the subject hereof. The term "Seller" means the entity identified as seller on the order confirmation or invoice accompanying these terms and conditions or its duly authorized representative. The term "Buyer" means the person or entity purchasing goods thereunder.

2. **Prices.** All prices are firm and are in U.S. dollars unless otherwise indicated on the face hereof provided that Seller may increase prices, in its sole discretion for any reason, upon 30 days' prior written notice. Seller additionally reserves the right to make corrections to prices quoted or agreed upon due to incomplete or inaccurate information from Buyer. Seller's weights, count and/or measurements shall govern, except in case of manifest error.

3. **Shipping and Delivery.** Unless otherwise indicated on the face hereof all goods sold hereunder shall be sold Ex Works Seller's facility in accordance with INCOTERMS 2010 (or any replacement or modification thereof in force at the date of this contract), which is hereby incorporated into this contract save where inconsistent with its express terms, and all expenses and risk of loss for any damages incurred in the transportation of goods from Seller's facility shall be the responsibility of Buyer. Buyer shall notify and file a claim against carrier for any goods lost or damaged in transit. If this contract pertains to goods to be shipped upon Buyer's release orders, unless other arrangements have been agreed to in writing, Buyer shall take delivery of such goods under a delivery schedule that is reasonable under the circumstances. If Seller determines in its sole discretion that Buyer's credit has become unsatisfactory to it at any time, Seller shall have the right to decline to make further deliveries hereunder except for cash until such time as said credit has become re-established to Seller's satisfaction.

4. **Rail Car Shipments.** If agreed in writing by the parties, Seller shall supply tank cars to Buyer for shipment of the goods. If any rail cars provided by Seller arrive at destination in damaged condition, Buyer shall immediately notify railroad agent and Seller of such damage. If damages or injury to rail cars provided by Seller for the shipment of goods under this contract occur at Buyer's facility, Buyer shall bear all risks for said damage or injury, reasonable wear and tear excepted and Buyer hereby agrees to indemnify Seller and hold seller harmless in respect of all such damage and injury, including all reasonable legal expenses that Seller incurs in defending any claim asserted against Seller by any party in respect of such damage and injury. Except as otherwise agreed in writing by Seller, Buyer shall not reassign or refill any rail cars provided by Seller hereunder, or have any right in or to such tank cars except to retain possession thereof at Buyer's place of business pending the unloading thereof. Buyer shall unload and make all rail cars provided by Seller available for return to Seller's facility, at the place of shipment, no later than seven (7) working days (holidays excepted) after the railroad has offered the rail cars for delivery. In the event that such rail cars are not unloaded and made available for return to Seller's facility within such seven (7) day period, Buyer shall pay Seller Fifty Dollars (\$50.00) per rail car for each additional calendar day or part thereof, Saturdays, Sundays and holidays included, that said rail car is detained. Buyer shall in addition be responsible for demurrage and/or detention charges on Seller's delivery equipment.

5. **Containers.** If the goods sold hereunder are to be shipped to Buyer in tanks, drums, cylinders, or other containers excluding rail cars, tank trucks, or other rolling stock or totes (collectively the "containers"), all such containers are non-returnable. Buyer is responsible for proper and lawful disposal of all containers and shall not in any way re-use containers without Seller's prior written permission. Buyer shall indemnify Seller for, and hold seller harmless from, all costs, damages and liability arising out of or in connection with Buyer's disposal or re-use of containers.

6. **Payment.** Payment is due from Buyer on the terms set forth on the face hereof. Title to the goods shall remain with Seller until Buyer has paid the price of the goods without set-off, deduction or counterclaim, whereupon title to the goods shall pass to the Buyer. In addition to other

remedies upon delay or default in payment, Buyer shall pay (a) interest on past due amounts at the rate of 1-1/2% (one and one-half percent) per month, and (b) all costs of collection, including court fees, out of pocket expenses, and reasonable legal expenses of Seller. In addition to the rights afforded to Seller under Section 3, Seller has the right to suspend shipments under this contract or any other contract between Seller and Buyer without penalty or liability to Seller if any payment under this contract or any other contract between Seller and Buyer is past due. Seller may set-off any sums due under any contract with Buyer against any sums due from Seller to Buyer under this, or any other contract, between them.

7. **Allocation of Goods.** Seller at its sole discretion may allocate its available supply of goods among itself and its customers on such a basis as Seller deems reasonable, without obligation to purchase similar goods from other sources. This Section 7 shall not operate to eliminate any other rights or remedies available to Seller under this contract, in equity or by law.

8. **Rejection of Nonconforming Goods.** Buyer agrees to inspect and test the goods upon delivery at the place of destination, prior to co-mingling with any other material, and shall have one (1) day after such delivery to either accept or reject such goods. Any such rejection shall be in writing and shall identify each alleged nonconformity of the goods and describe that portion of the shipment being rejected. Seller shall respond with instructions as to the disposition of the goods. Buyer's failure to give such notice shall constitute Buyer's acceptance of the goods and waiver of any claims that may arise out of any defect or non-conformity. If any part of a consignment of goods is co-mingled with any other material, Buyer shall be deemed to have accepted the whole quantity of that consignment.

9. **Limited Warranty and Limitation of Remedy and Damages.** Seller warrants that the goods delivered to Buyer hereunder shall conform to the specifications of this contract, if any; otherwise, they shall conform to Seller's standard specifications. Seller's entire liability and Buyer's exclusive remedy for any and all losses and damages for any cause of action arising out of or in connection with this contract, whether based on contract, negligence, or otherwise, with respect to such goods or delivery of such goods shall be limited, at Seller's option, to replacement of the nonconforming or defective goods or payment to Buyer in an amount to not exceed the purchase price of such goods. Any claim arising from a nonconformity of the goods with the specifications of this contract or from any other defect affecting the goods shall be deemed waived and shall be barred unless made in writing within thirty (30) days of Buyer's receipt of such goods. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, CONTINGENT, SPECIAL OR INCIDENTAL DAMAGES OR EXPENSES WHATSOEVER OR HOWSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, WHETHER USED ALONE OR IN COMBINATION WITH OTHER GOODS. THIS WARRANTY IS EXPRESSLY MADE IN LIEU OF ANY AND ALL OTHER WARRANTIES, GUARANTEES AND CONDITIONS EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED TERMS AS TO MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. This contract excludes to the fullest extent permitted by law any liability whatsoever or howsoever arising to any purchaser from Buyer or to any other third party. Employees and sales representatives are not authorized to make warranties and any oral or written statements made by them shall be of no effect. Without prejudice to the above with respect to claims arising from nonconformity of the goods with the specifications of this contract or from any other defect affecting the goods, any claim by or on behalf of Buyer or its successors or assigns arising out of or in connection with this contract shall be deemed waived and shall be barred unless Buyer commences proceedings no later than one (1) year after the [date on which delivery was effected or, if no such delivery was effected, after the date on which delivery should have been effected.

10. **Indemnification by Buyer.** Buyer shall defend, indemnify, and hold harmless Seller, its affiliates and their respective directors, officers, employees and agents from any claims, damages, or expenses, including reasonable legal expenses, arising or alleged to arise from (a) the infringement of any valid patent due to the use of any of the goods supplied hereunder, (b) the sale of any goods purchased hereunder which are produced according to Buyer's specifications, (c) the use, handling, treatment, storage, disposal, transportation, maintenance, or re-sale by Buyer of any goods purchased hereunder, (d) any asserted deficiencies or defects in the goods supplied hereunder caused by any alteration thereof made by Buyer with or without Seller's consent, (e) Buyer's failure to adequately mark the goods or containers for the goods with any warnings

or other notices required by any federal, state, or local law or administrative rule or regulation, (f) Buyer's breach of any terms or conditions stated herein, (g) the special marking of goods or containers in accordance with Buyer's instruction, or (h) any act or omission of Buyer; irrespective of whether such claim, damage or expense is caused, or alleged to be caused, in whole or in part by the joint, comparative, or several but not sole negligence or other breach of duty by Seller, or whether such claim, damage, or expense is asserted under a strict or other product liability theory or any other legal theory. The foregoing indemnification shall not be construed to eliminate or in any way reduce any other indemnification or right which Seller has by law.

11. **Taxes and Duties.** Stated prices do not include taxes or duties of any nature. Buyer shall pay all taxes, duties, and other governmental charges on or related to the goods sold hereunder, imposed by any governmental authority, including all after-imposed taxes that Seller or Buyer is required to pay or bear, whether directly or indirectly through Seller's or Buyer's supply chain, as the result of any domestic or foreign legislative, judicial, or administrative action taking effect after the date of this contract, including, but not limited to, any new or increased Federal, State or local tariff, excise tax or duty (except taxes on income to Seller), unless tax exemption certificates in a form satisfactory to Seller are supplied by Buyer to Seller. If Seller is required to pay any such taxes and/or charges (other than taxes on income to Seller), Buyer shall promptly reimburse Seller for such taxes and/or charges.

12. **Cancellation.** An order placed with and accepted by Seller can be cancelled by Buyer only with Seller's written consent and upon terms that indemnify Seller against all loss. Seller may cancel all or any part of this contract and discontinue its performance hereunder without liability to Buyer in the event (a) Buyer materially breaches this contract, becomes insolvent files or is the subject of a bankruptcy, or is the subject of a receivership liquidation, administration, dissolution or similar proceeding, or (b) a significant portion of Buyer's assets necessary for the conduct of its business becomes subject to attachment, embargo or expropriation.

13. **Buyer's Representations and Duty to Warn.** Buyer represents, acknowledges and agrees at the time of this contract and on a continuing basis that:

(a) it understands the nature and characteristics of the goods, is aware that goods may now or in the future be designated as hazardous materials, and is familiar with any health, safety, or environmental hazards arising out of or resulting from use, storage, transportation, maintenance, handling treatment and disposal of such materials;

(b) it is accustomed to handling materials similar to goods sold hereunder and to materials designated as hazardous and that it has the necessary expertise, equipment, personnel, and facilities to conduct safely and lawfully all of its activities involving goods and that it will so conduct its activities;

(c) it has read and understands all information relating to goods which is contained in any material safety data sheet (or other documents) provided with such goods;

(d) all technical advice, recommendations and services of Seller are intended for use only by persons having skill and at their own risk, and Seller assumes no responsibility therefor and Buyer hereby waives all claims against Seller for results obtained and damages incurred from the use of Seller's advice, recommendations or service;

(e) goods sold hereunder are for commercial use only and will not be resold, donated or otherwise made available to individuals for personal use;

(f) Buyer shall provide all information supplied to it by Seller with respect to the goods to any subsequent purchasers of such goods, and if goods sold hereunder are to be relabeled by Buyer, such relabel must, at a minimum, include all health, safety, and environmental information in Seller's label and be labeled in accordance with all applicable laws;

(g) it will comply with all applicable laws and regulations governing the use, possession, storage, transportation, maintenance, handling, treatment, disposal and sale of the goods, and will warn all persons (including but not limited to Buyer's employees, contractors and customers) who may become exposed to the goods of the hazards associated therewith and to take all action necessary to protect such persons from said hazards; and

(h) it will comply with all applicable export and sanctions laws, including but not limited to U.S. antiboycott laws, embargos, and laws that prohibit resale, diversion or re-export of U.S. origin goods and

technology to any destination that is subject to an OFAC sanctions program (as described at: <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>) or to any party on any of the "Lists to Check" that are available at: <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>, provided that this representation shall not extend to compliance with any export law where such representation is unenforceable by reason of breach of any provision of Council Regulation (EC) No 2271/1996 of 22 November 1996 (or any law or regulation implementing such Regulation in any member state of the European Union or the United Kingdom) or any similar blocking or anti-boycott law applicable in any member state of the European Union or the United Kingdom.

14. **Environmental Laws, including REACH.** Unless specifically agreed otherwise, Buyer shall be responsible for compliance with all laws and regulations regarding import, transport, storage and use of the goods (including, if required, registration approval and/or authorisation of any chemical substance constituting or contained in goods). Unless specifically agreed otherwise in writing, Seller shall have no obligation respecting its compliance or the goods' conformance with any applicable laws, rules, regulations, ordinances and executive orders of any governmental authority of any nation ("Laws"), including but not limited to Regulation (EC) No. 1907/2006 ("REACH"), and it is understood that Buyer shall be responsible for compliance with Laws regarding import, transport, storage, handling and use of the goods.

15. **Force Majeure.** Seller shall not be liable to Buyer in respect of any delay or default in the performance of any obligation by Seller hereunder if Seller's performance is prevented, hindered or delayed by any matter beyond Seller's control, including, but not limited to: acts of nature; governmental action or inaction or restraint; domestic or international disturbances, such as war or insurrections; strikes; fires; floods; work-stoppages; embargoes; unavailability or breakdown of equipment; and/or lack of materials. The performance of Seller's obligations hereunder shall be suspended for so long as, and to the extent that, Seller's performance is so prevented, hindered or delayed.

16. **Severability.** In the event any provision hereof is found to be invalid or unenforceable, Seller may elect to either (a) terminate this contract if not fully performed by it, or (b) consider this contract severable as to such provisions and such provisions shall thereafter be deemed deleted from this contract without affecting or impairing any other part hereof. In such latter event, the remainder of this contract shall be in full force and effect as if such severed provision were never a part of the same.

17. **Governing Law; Venue; Jurisdiction.** This contract shall be governed by and construed in accordance with English law to the exclusion of any other law. The United Nations Convention on Contracts for the International Sale of Goods, signed in Vienna on 11 April 1980 shall not apply to this contract. All disputes arising under or in connection with this contract, whether contractual or uncontractual, shall be subject to the exclusive jurisdiction of the English courts.

18. **Complete Agreement; Amendments.** These terms and conditions, together with the terms on the face hereof and in any other written agreement between Seller and Buyer relating to the same subject matter, constitute the entire agreement between the parties with respect to the subject matter hereof, and no amendments, modifications or revisions to this contract shall have any force or effect unless the same are in writing and executed by the parties hereto. No modification shall be effected by the acknowledgment or acceptance of documents containing different terms.

19. **Assignment and third parties.** Buyer may not assign, transfer or sell all or any of its rights or delegate all or any of its obligations hereunder without the prior written consent of Seller. Subject to these restrictions, this contract shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Save for the rights of the Seller's affiliates, directors, officers, employees and agents pursuant to clause 10, no person who is not a party to this contract shall have or acquire any rights under it, whether by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

20. **Waiver.** Failure or delay of Seller in the enforcement at any time of any right, irrespective of any previous action or proceeding taken by it, shall in no way be considered (a) a waiver of such right, (b) to affect the validity of that right or this contract, or (c) to preclude or prejudice the Seller from exercising that right or this contract or any other rights it may have under the contract, at law or in equity.

21. **Buyer's Solvency.** By placing an order with Seller or by accepting goods delivered by Seller, Buyer represents that it is not "insolvent" as that term is defined under any applicable laws. In the event

that Buyer becomes insolvent before delivery of the goods, Buyer shall immediately notify Seller. A failure to so notify Seller shall be construed as a reaffirmation by Buyer of Buyer's solvency at the time of delivery.

22. **Anti-Bribery and Corruption.** It is a condition of this contract that Seller and Buyer shall, in their performance of this contract, comply at all times with, and act in a manner consistent with, all applicable anti-bribery and corruption laws including without limitation the Bribery Act 2010.

23. **Confidentiality.** Buyer shall keep the existence and terms of this contract confidential and shall make no disclosure of or relating to the same to any third party, save that disclosure may be made where the same is required by any applicable law or to comply with any applicable regulation or authority and that Buyer may make disclosure to its auditors or other professional advisors provided they undertake on terms materially the same as this clause to keep the above matters confidential.