

## Terms and Conditions of Sale

1. **Acceptance of Orders.** 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. Any services by Seller are rendered only in connection with the sale of such goods. 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 10 days' prior written notice. Seller 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, unless proved to be in 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. Unless otherwise indicated on the face hereof, title to the goods shall transfer from Seller to Buyer at the same point as risk of loss and damage transfers from Seller to Buyer under the agreed delivery term specified on the face hereof. 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 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. 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) days 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 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 all costs, damages and if liability arising out of Buyer's disposal or re-use of containers.
6. **Payment.** Payment is due from Buyer on the terms set forth on the face hereof. In addition to other remedies upon default in payment, Buyer shall pay (a) interest on past due amounts at the rate of 2% (or the maximum rate allowed by applicable law) per month, and (b) all costs of collection, including court fees, out of pocket expenses, and reasonable attorneys' fees of Seller. Seller has the right to suspend shipments without penalty or liability if any payment is past due. In addition, in the event that Buyer fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of Buyer to Seller against any outstanding payment obligations or other indebtedness that Seller may owe Buyer.
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 equitable, 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 ten (10) days after such delivery to either accept or reject such goods; provided, however, that Buyer shall have three (3) days after such delivery to contest Seller's weights, count and/or measurements. 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.
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 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 shall be waived 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 WHICH MAY ARISE AS A RESULT OF THIS CONTRACT OR OTHERWISE, 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 EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE HEREBY DISCLAIMED. This warranty is afforded by Seller only to Buyer. If Buyer elects to afford any warranty to its customers, Seller shall have no liability whatsoever in connection therewith. Employees and sales representatives are not authorized to make warranties; oral or written statements by them do not constitute warranties and shall not be relied upon. Any action by or on behalf of Buyer or its successors or assigns for breach of this Contract must be commenced within one (1) year after the cause of action has accrued.
10. **Indemnification by Buyer.** Buyer shall defend, indemnify, and hold harmless Seller and its directors, officers, employees and agents from any claims, damages, or expenses, including reasonable attorneys' fees, 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 Effective Date, 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, 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. Acceptance by Seller of less than the full amount due shall not be a waiver of any of Seller's rights under the Contract or applicable law. Notwithstanding any provision in the Contract, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations under the Contract.

13. **Buyer's Representations and Duty to Warn.** Buyer represents, acknowledges and agrees 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 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/complianceandenforcement/liststocheck.htm>.

14. **Environmental Laws, including REACH.** Seller represents that all goods produced hereunder shall be produced in accordance with the applicable provisions of the Toxic Substance Control Act of 1976, and regulations promulgated pursuant thereto. Any clause required to be included in a contract of this type by any applicable law or regulation having the effect of law shall be deemed to be incorporated by under this Contract. 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 by REACH pre-registration or registration 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 other 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.** Buyer shall not be entitled to damages and shall not have the right to terminate this Contract because of any delay or default in the performance of any obligation by Seller hereunder, if such delay or default is caused by conditions beyond Seller's control, including, but not limited to: (a) fire, storm, flood, strike, lockout, accident, act of war or terrorism, riot, civil commotion, embargo, (b) any regulation, law, order or restriction of any governmental department, commission, board, bureau, agency, court, or other similar government instrumentality ("Governmental Authority"), or (c) inability of Seller to obtain any required raw material, energy source, equipment, labor or transportation, at prices and on terms Seller deems practicable from Seller's usual sources of supply. Any suspension of performance by reason of this section shall be limited to the period during which such causes of failure exist. Without limiting the generality of the foregoing, under no circumstances shall Seller be obligated to purchase product from a third party for delivery to Buyer in the event of a force majeure.

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. These terms are confidential, with the understanding that Buyer will not disclose such terms to any third party. The headings used herein are intended for convenience of reference only and shall not be considered in interpreting the Contract. Nothing in the Contract shall be construed as creating any direct or beneficial right in or on behalf of any third party. Any clerical errors are subject to correction.

17. **Governing Law; Venue; Jurisdiction.** This order shall be governed by and construed in accordance with the laws of the State of New York, United States of America without giving effect to the conflict of laws provisions thereof to the extent such principles or rules would require or permit the application of the laws of any jurisdiction other than those of the State of New York. The United Nations Convention on contracts for the International Sale of Goods shall not apply to this Contract. In the event that Seller elects to institute litigation against Buyer pertaining to directly or indirectly to any transaction between or to the business relationship of Seller and Buyer, any such action shall be filed and maintained only in Seller's jurisdiction, and Buyer consents irrevocably to the jurisdiction of the courts of that jurisdiction. In such event, service of process shall be considered effective if served in person, by registered airmail or by express courier to the recipient's address.

18. **Complete Agreement; Amendments.** These Terms and Conditions of Sale (the "Terms"), together with all other sales terms, if any, agreed to by Buyer and Seller in a writing ("Sales Terms"), contain the entire and exclusive agreement between the parties regarding each Product and any services involved along with the Product and no amendments, modifications or revisions thereof 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. The Terms, together with the Sales Terms, if any, are referred to herein as the "Contract". If there is a conflict between the Terms and the Sales Terms, the Sales Terms shall govern.

19. **Assignment.** 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.

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

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 applicable state and federal 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. **Security Interest.** To secure payment of the purchase price for goods sold hereunder, Buyer hereby grants to Seller a purchase money security interest (or a similar lien or security interest under local law) in all such goods and proceeds thereof as collateral for payment of the purchase price. Buyer hereby authorizes Seller to file any financing statements or similar documents and take such other action as may be necessary or desirable to perfect or validate Seller's interest in the collateral.

23. **Cylinders.** Empty cylinders may be returned to Seller collection points at no charge for up to 18 months after invoice date. Buyer is responsible for all freight costs and insurance charges to the collection point. Empty Cylinders returned AFTER 18 months are subject to service & handling charges. All returns must follow Seller's Cylinder Return Procedure. Buyer may only return empty cylinders, i.e. empty below dip tube with the following residual allowed:

18L Cylinder:  $\leq 0.7$  kg  
90L Cylinder:  $\leq 3.0$  kg  
400L Cylinder:  $\leq 1.5$  kg

Returns of any type exceeding these amounts must be approved in writing in advance by Seller. Seller reserves the right to charge handling and/or disposal costs associated with the return of cylinders or product made without such Seller approval. Title to cylinders transfers to the Buyer upon sale of the goods, and the Buyer assumes all liabilities and obligations associated with such cylinders. Title to empty cylinders returned to Seller for recycling will transfer back to Seller upon receipt and inspection. Buyer shall not return cylinders used for any purpose other than the reasonable storage of the goods originally delivered therein. Buyer shall maintain and/or dispose (at its option) the cylinders subject to and in accordance with applicable local laws and regulations and shall indemnify, defend and hold harmless Seller, its agents, servants and employees (collectively, "Seller Indemnitees") from and against any and all losses, expenses, demands and claims, including attorney's fees (collectively, "Losses") made against Seller Indemnitees arising out of, resulting from or in any way relating to, or connected with, the cylinders which are under Buyer's ownership or custody, including but not limited to any Losses caused by or associated with the possession, use, transportation or disposal of the cylinders or the Products by Buyer or any other person. statements or similar documents and take such other action as may be necessary or desirable to perfect or validate Seller's interest in the collateral.

24. **Intellectual Property.** Since Seller has no control over Buyer's (or others') processing, sale, use or disposition of any Product (or any product containing Product), including, without limitation, the admixing, reacting or combining of any Product with other products, chemicals or materials, Buyer assumes the entire liability and responsibility therefor and agrees to defend, indemnify and hold harmless Seller from and against all Claims arising out of or related to infringement of any third party's intellectual property rights, patents on processes practiced by Buyer or patents on products made by Buyer. Buyer hereby acknowledges and agrees that Seller is the owner of the entire right, title and interest in the Seller Intellectual Property (as defined below). Buyer further acknowledges and agrees that: (i) Seller has exclusive rights to use the Seller Intellectual Property and that any unauthorized use of the Seller Intellectual Property is and shall be deemed an infringement of Seller's rights; (ii) Buyer acquires no right, title or interest therein; and (iii) any and all goodwill associated with the Seller Intellectual Property shall inure exclusively to Seller's benefit. For purposes of this Article 24, "Seller Intellectual Property" shall mean: (a) any commercial trademarks, service marks, trade names, slogans, designs, insignia, emblems, symbols, brand names, market identities and other proprietary business identifying characteristics now used or hereinafter used by Seller; and (b) any patents, copyrights, trade secrets, technology, product designs or ideas, or other intellectual property rights owned by Seller. Under no circumstances will Buyer acquire any right, title, or interest in any of such Seller Intellectual Property by virtue of the purchase or sale of Products under this or any other Contract. All work product or other technology or inventions developed by Seller, either alone or with others, under or in connection with this Contract or the Product will remain the property of

Seller, and will not be assigned to or constitute property of the Buyer (whether as work product, "work-made-for-hire," or otherwise).