

GENERAL TERMS AND CONDITIONS

1. **Acceptance.** Seller's performance is conditioned on Buyer agreeing to each of these General Terms and Conditions ("Terms and Conditions") and the other provisions contained in or incorporated by reference into the sales agreement form to which they are attached (collectively, the "Agreement"). Seller objects to and rejects any and all terms or conditions that are additional to or different from those set forth in the Agreement, whether such additional or different terms arise from prior, contemporaneous or subsequent oral or written communications, course of performance, course of dealing or usage of the trade, or otherwise.
2. **Invoice; Payment and Credit.** Seller will invoice Buyer upon shipment (or upon tender of delivery of Product in the case of a F.O.B. Origin delivery term). If Buyer fails to make payment in strict accordance with the Payment terms set forth in the Agreement, then Seller may, in addition to all other remedies, (a) immediately withhold shipments of any additional Product until the delinquent amounts plus interest, transportation and storage are paid; (b) repossess Product which has not been paid for; (c) charge interest at 1.5% per month or the maximum legal rate, if lower, for each month or part thereof on which payment is not timely made; (d) declare breach and terminate the Agreement in accordance with the terms hereunder and/or (e) recover all costs of collection, including reasonable attorneys' fees, disbursements and litigation costs. Seller may, in its discretion, require Buyer to pay cash on delivery if Seller determines that Buyer's creditworthiness is impaired. Seller may recover for each delivery as a separate transaction without reference to any other delivery. Buyer shall pay any undisputed amounts. Buyer may not set off amounts claimed against Seller in a different transaction or against one of Seller's affiliates.
3. **Buyer's Obligations.** Buyer is responsible for selection, use, handling, transportation (if applicable) and disposal of Product. Seller's price excludes, and Buyer is responsible for, all governmental taxes (including without limitation sales, use, excise, value-added and other similar taxes), duties and fees in connection with the purchase, sale, transportation, storage or disposal of Product or otherwise resulting from Seller's performance of the Agreement, whether now or hereafter imposed, levied, collected, withheld or assessed. If Seller is required to impose, levy, collect, withhold or assess any such taxes, duties or fees on any transaction under the Agreement, then Seller will invoice Buyer therefor, unless at the time of order placement, Buyer furnishes Seller with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or fees. Buyer will (a) review handling or safety information Seller provides; (b) promptly convey such information to persons potentially exposed to the Product; and (c) follow safe handling, use, storage, transportation, and disposal practices. Seller may terminate the Agreement immediately if Seller believes Buyer is breaching this provision.
4. **Volumes and Delivery.** Each delivery shall stand as a separate contract and the failure of any delivery is not a breach of the Agreement as to others. In the case of an F.O.B. Origin delivery term the word "delivery" under the Agreement shall include tender of delivery of the Product to Buyer. Unless otherwise specified, Product will be delivered F.O.B. Seller's plant in accordance with Seller's standard lead times then in effect; *provided, however*, that unless otherwise expressly provided in the sales agreement, ownership of (including title to and risk of loss for) any Product exported from the United States will pass from Seller to Buyer at the time immediately after the goods first leave the territory of the United States (including its borders if shipped by ground or its territorial waters or airspace if shipped by sea or air). If the price includes freight, Seller may increase the price on 15 days notice to Buyer to reflect increased transportation and handling costs. Notwithstanding any other provision to the contrary, failure to provide forecasts by the specified dates will relieve Seller of any obligation to deliver Product during such period. In addition, Seller may discontinue deliveries of any Product, the manufacture, sale or use of which in its opinion would involve patent infringement. Upon delivery, Buyer assumes full responsibility and liability for compliance with government laws, rules and regulations relating to the Product, including without limitation those relating to unloading, discharge, storage, handling use and/or disposal of the Product. Seller shall not be required to deliver in any month more than the amount expressly specified herein or more than the pro rata amount of Seller's maximum obligation. If Buyer fails to take the stipulated or minimum pro rata quantity in any month, Seller may, at its option, cancel the shortfall or include it in subsequent deliveries. If this Agreement expires or terminates without Buyer having taken delivery of its minimum purchase obligation, Seller may within 30 days thereafter ship, and Buyer shall receive and purchase, any shortfall to the extent not otherwise reduced pursuant to the terms hereof.
5. **Packaging.** Seller may, in its sole discretion, agree to special packaging, handling, transportation (including expediting) and/or insurance requested by Buyer, and if so, they shall be for Buyer's account and added to the invoice. Buyer shall: (a) properly dispose of all disposable containers; (b) return to Seller within the free unloading time allowed empty, non-disposable containers and equipment provided by Seller ("Equipment") in the condition received, normal wear and tear excepted; and (c) be responsible for and promptly pay Seller's customary demurrage or detention charges for Equipment returned after the applicable free unloading period. Seller shall neither use Equipment for any other purpose nor re-use, re-consign, or transfer it.
6. **Inspection and Claims.** Any claims (including without limitation for shortage or because of nonconformities) ascertainable upon inspection, must be particularized and made in writing to Seller within 30 days of delivery to Buyer; otherwise, the Product shall be deemed to have been accepted by Buyer. Any revocation of acceptance of all or any part of the Product on the basis of any latent non-conformity or other reason must particularize each non-conformity or other reason and be made in writing to Seller within 6 months of delivery of the Product to Buyer. Claims or revocations of acceptance that are not particularized, or which are made later than the applicable period specified in this section, will be deemed waived by Buyer. Upon Seller's request, Buyer must promptly make available to Seller for inspection and testing any Product upon which Buyer has made a claim. Any action for breach by either party, other than for non-payment, is time barred if not commenced within 1 year after the date of delivery, or due date of delivery in the event of non-delivery, of the particular shipment upon which such claim is based. Buyer shall accept delivery of quantities within 10% of those ordered, but need only pay for quantities actually delivered. Seller's Product measurements shall govern unless proven in error. No weight claims or credits will be allowed unless gross shipment weight discrepancies exceed 0.5% for packaged Product or 1% for bulk Product. No heel credits will be given.
7. **Limited Warranty.** SELLER'S WARRANTIES ARE EXCLUSIVELY LIMITED TO THE FOLLOWING: (A) BUYER SHALL OBTAIN GOOD TITLE TO PRODUCT SOLD HEREUNDER; (B) AT DELIVERY SUCH PRODUCT WILL CONFORM TO SELLER'S SPECIFICATIONS ATTACHED TO THE SALES AGREEMENT FORM; AND (C) PRODUCT DELIVERED HEREUNDER DOES NOT INFRINGE THE CLAIM OF ANY U.S. PATENT EXTANT AS OF THE DATE OF THE AGREEMENT COVERING PRODUCT ITSELF, BUT SELLER DOES NOT WARRANT AGAINST INFRINGEMENT WHICH MIGHT ARISE BY THE USE OF SUCH PRODUCT ALONE OR IN ANY COMBINATION WITH OTHER MATERIALS, BY THE OPERATION OF ANY PROCESS OR OTHERWISE. SELLER MAKES NO OTHER REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AND IN PARTICULAR, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF THAT PURPOSE IS KNOWN TO SELLER, AND DISCLAIMS ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF THE TRADE. ANY APPLICATION INFORMATION OR ASSISTANCE WHICH SELLER MAY FURNISH TO BUYER IS GRATUITOUS AND SHALL IN NO WAY BE DEEMED PART OF THE SALE OF PRODUCT HEREUNDER OR A WARRANTY OF THE RESULTS OBTAINED THROUGH USE OF SUCH PRODUCT.

- 8. Limitation of Liability and Remedy.** SELLER'S TOTAL LIABILITY UNDER ANY THEORY OF RECOVERY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL PRICE PAID (OR PAYABLE) TO SELLER FOR THE SHIPMENT IN QUESTION. BUYER'S EXCLUSIVE REMEDY WILL, AT SELLER'S OPTION, BE THE REPLACEMENT OF NON-CONFORMING PRODUCT OR THE REFUND OF THE PARTICULAR SHIPMENT'S PURCHASE PRICE. UNDER NO CIRCUMSTANCES WILL SELLER BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, BUSINESS INTERRUPTION, LOST PROFITS, REVENUE OR OPPORTUNITY OR FOR INJURY TO PERSONS OR PROPERTY, OR FOR ANY OTHER INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND OR NATURE.
- 9. Force Majeure.** Seller shall have no liability for any delay or failure in performance hereunder, in whole or in part, if such delay or failure arises from (a) compliance in good faith with any foreign or domestic governmental regulation or order, whether or not later shown invalid or inapplicable; (b) the occurrence of any contingency the nonoccurrence of which was a basic assumption at the time the Agreement was made, including without limitation, acts of God, fire, accident, riot, war, terrorism, sabotage, equipment failure, embargo, or labor trouble from whatever cause arising and whether or not the demands of the employees involved are reasonable and within said party's power to concede; (c) Seller's inability to obtain any required raw material, energy, equipment, labor or transportation at prices and on terms deemed acceptable by Seller; (d) any reduction of demand for one product produced on a co-product plant basis resulting in a limited supply of the second product; (e) increased costs for compliance with environmental protection, health or safety regulations; or (f) any other event or occurrence not within Seller's reasonable control. If any such circumstances affect only a part of Seller's capacity, Seller may allocate production and deliveries among its customers and its own requirements as Seller may fairly and reasonably determine. Quantities affected by this paragraph may, at the option of either party, be eliminated from the Agreement without liability, but the Agreement shall remain otherwise unaffected. If the circumstances of this paragraph continue for more than 90 days, either party may terminate the Agreement without penalty upon written notice to the other party.
- 10. Manufacturing Hardship.** If Seller's total cost of production and transportation of the Product increases by more than 5% over Seller's costs on the Effective Date, Seller may, on 15 days notice ("Hardship Notice") increase prices to maintain its original economic return. These changes will be considered accepted unless Buyer objects before the effective date of the Hardship Notice. Within 5 days of Buyer's objection, if any, Seller will advise whether (a) Seller will continue to sell on the previous terms or (b) Seller wishes to negotiate a mutually acceptable price with Buyer. Either party may terminate the Agreement immediately by notice if the negotiations have not been finalized within 20 days of the Hardship Notice; *provided, however*, that Seller may during such 20 day period agree to sell on the previous terms. The Price in effect prior to the Hardship Notice will prevail during such negotiations.
- 11. Termination.** In addition to the rights of termination under the Force Majeure and Manufacturing Hardship provisions above, either party may terminate the Agreement upon written notice if: (a) if the other party is in material breach of the Agreement and does not cure such breach (i) within three (3) days of notice in the event of a payment delinquency or (ii) within thirty (30) days of notice for any other material breach; or (b) if the other party (i) ceases to function as a going concern, (ii) makes an assignment for the benefit of creditors, or (iii) becomes the subject of any proceeding under applicable bankruptcy, receivership, insolvency or similar laws instituted by or against such party, which proceeding is not dismissed within 45 days after commencement. In addition, Seller shall have the right to terminate its obligations hereunder on reasonable prior written notice to Buyer (except as to obligations in respect of Product already delivered to Buyer) in the event Seller should withdraw from the business of commercially producing or selling the Product. Termination shall not affect any debt, claim or cause of action accruing to any party against the other before the termination and the rights of termination provided in this clause are not exclusive of other remedies to which either party may be entitled.
- 12. Notices.** All notices must be in writing, addressed to the party's contact noted on the sales agreement form and shall be delivered by one of the methods referenced in this provision. Notice shall be deemed given on the date of (a) the applicable confirmation if delivered by fax, by hand or by overnight courier or (b) receipt or rejection, if sent certified mail, return receipt requested.
- 13. Confidentiality.** Buyer will keep confidential the terms and conditions of the Agreement and the parties' performance hereunder, as well as any preceding negotiations.
- 14. Governing Law and Arbitration.** NEW JERSEY LAW (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES) GOVERNS THE AGREEMENT. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, 1980 (OR ANY SUCCESSOR) SHALL NOT APPLY. Any controversy or claim arising out of or relating to the Agreement, or the breach thereof, shall be resolved by arbitration conducted by an arbitrator selected by the parties from the Center for Public Resources (CPR) Institute Panels of Distinguished Neutrals, and pursuant to the Expedited Procedures of the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association, and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The location of any arbitration shall be Morristown, New Jersey. Each party shall be responsible for its own attorneys' fees, filing and other arbitration related fees, expenses and costs, and will share equally the arbitrator's pre-hearing and hearing fees.
- 15. General.** The Agreement is binding upon and inures to the benefit of the parties and their permitted successors and assigns. Any assignment without the written consent of the other party shall be void except for an assignment to an affiliate of the Seller or if in connection with the sale or transfer of all or a substantial portion of Seller's business to which the Agreement relates. The Agreement constitutes the complete, exclusive agreement of the parties for the sale and purchase of Product and supersedes all prior and contemporaneous oral or written communications relating to its subject matter. Any modification must be in a writing signed by each party's duly authorized representative. No failure to exercise any right hereunder shall be deemed a waiver. If any provision of the Agreement is unenforceable, the surviving provisions will be unaffected and there will be substituted one or more provisions as similar in terms as may be enforceable under applicable law. All provisions which by their nature should apply beyond the Term will remain in force after expiration or termination of the Agreement, including but not limited to the sections dealing with Invoice, Payment and Credit; Inspection and Claims; Limited Warranty; Limitation of Liability and Remedy and Governing Law and Arbitration.

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