



TERMS & CONDITIONS OF SALE:

These Terms & Conditions of Sale are an integral part of a Purchase Order which has been transmitted by Buyer to Seller for acceptance by Seller which acceptance shall be made in accordance with these Terms & Conditions of Sale.

- 1 **PRODUCT AVAILABILITY.** Product supply is subject to availability.
- 2 **STANDARD PAYMENT TERMS.** All payments due Seller hereunder shall be made to Seller at the location indicated on the invoice. All invoices are payable net 30 days. The timely payment by Buyer of all amounts due and owing to Seller hereunder is an express condition to the performance by Seller. All claims of Buyer relating to any invoice hereunder must be made in writing within 30 days of receipt. Failure to give such notice constitutes a waiver of all claims related to such invoice.
- 3 **CHANGES IN DESIGN OR CONSTRUCTION.** Seller reserves the right to make changes in the design or manufacturing process of any Product, provided that any Product so changed shall continue to meet Seller's standard specifications.
- 4 **WARRANTY AND SPECIFICATIONS.** Seller warrants that the Product delivered to Buyer conforms to the specifications incorporated in these Terms & Conditions of Sale, or, if no such specifications are incorporated, then to Seller's standard specifications for the Product purchased, in each case for 30 days or the period specified therein; provided that, in each case, the Product is used under normal conditions and in accordance with all instructions which accompany the Products. Seller also warrants that, at the time of time of delivery, Seller shall have good title and right to transfer the same and that the same shall be delivered free of encumbrances. Any services performed by Seller will be performed in a good and workmanlike manner. Seller will modify or correct any such services which have not been so performed if written notice of any such failure is given to Seller within 30 days of the date such service is performed. **THE FOREGOING WARRANTIES ARE THE SOLE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY LAW, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**
- 5 **OWNERSHIP OF CYLINDERS AND CONTAINERS.** Except as otherwise agreed, all cylinders and other containers, including tank trucks and tube trailers, in which the Products are delivered hereunder shall be and remain the property of Seller and are returnable, at Buyer's risk and expense and in good condition, promptly after being emptied. Buyer agrees to pay the Seller's demurrage and other applicable container charges in effect at time of delivery unless a different provision with respect to use and retention of such container expressly appears on the face of the accepted Purchase Order or in Seller's quotation.
- 6 **NO RESALE.** Buyer represents and warrants that Product(s) sold hereunder are solely for Buyer's use and consumption and not to be resold or otherwise redistributed or made available to any other party.
- 7 **TAXES.** The price for the Product does not include any excise, sales, privilege, or use tax or taxes which are payable by Seller because of the execution of any agreement resulting herefrom, or the sale or delivery of the Product, and Buyer shall reimburse Seller for any such tax or taxes where applicable.
- 8 **Limitation of Liability.**
 - 8.1 Buyer acknowledges that there are hazards associated with the use of the Product, that it understands such hazards, and that it is the responsibility of Buyer to warn and protect its employees and others exposed to such hazards through Buyer's storage and use of the Product. Seller shall provide Buyer with copies of Material Safety Data Sheets relating to the Product for Buyer to make such warnings, and Buyer shall hold harmless, indemnify and defend Seller from and against any liability incurred by Seller because such warnings were not made. Buyer acknowledges its responsibility to comply with all applicable federal, state and local laws and regulations, including but not limited to legal notification, reporting and permit requirements which may be associated with the storage or use of Product. Buyer assumes all risk and liability for loss, damages or injury to persons or to property of Buyer or others arising out of the presence or use of the Product after delivery by Seller to Buyer.
 - 8.2 No claim of any kind with respect to nondelivery of Product shall be greater than the Price payable hereunder for the Product in respect to which such claim is made, and Buyer's sole and exclusive remedy (except for the remedy of cancellation for material default) for delivery of nonconforming Product shall be replacement by Seller of a like quantity of conforming Product at no additional cost to Buyer.
 - 8.3 Seller shall not be liable in contract or tort (including negligence and strict liability) for any direct damages except as expressly set forth in these Terms & Conditions of Sale, or for any indirect, special, incidental or consequential damages arising out of its performance or non-performance.
- 9 **FORCE MAJEURE.** Seller shall not be considered in default in the performance of its obligations, or be liable in damages or otherwise for any failure or delay in performance which is due to strikes, lockouts, concerted acts of workers or other industrial disturbances, fires, explosions, floods or other natural catastrophes, civil disturbance, riots or armed conflict

whether declared or undeclared, curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, energy, or utilities, accidents, epidemics, restraints or delays affecting carriers, Acts of God, delays of subcontractors or vendors, sufferance of or voluntary compliance with acts of government and government regulations, embargoes or any other similar or dissimilar cause which is beyond Seller's reasonable control. Neither party shall be required to make any concession or grant any demand or request to bring to an end any strike or other concerted act of workers. If a force majeure event only partially reduces Seller's ability to produce or deliver Product, Seller may allocate its available supply in its discretion among Buyer and Seller's other customers in a fair and equitable manner.

- 10 **INDEMNITY.** Buyer shall promptly notify Seller if Buyer receives an actual or a threat of third party legal proceedings that the Product infringes a third party patent and, then Seller shall, at its own expense and its option: (a) procure for Buyer the right to continue purchasing said Product from Seller, (b) replace the same with a non-infringing substitute, (c) remove the Product and refund the purchase price paid by Buyer, or (d) to the extent hereinafter stated defend and hold Buyer free and harmless in any proceeding insofar as the same is based on a claim that the Product furnished hereunder constitutes an infringement of any third party patent, provided Buyer permits Seller through its counsel to defend the same, and gives Seller all necessary information, assistance and authority to enable Seller to do so. The foregoing states the entire liability of Seller for patent infringement and such entire liability shall in no event exceed the purchase price made on the Product furnished hereunder, nor shall such liability include consequential damages of any kind including but not limited to those based upon loss of buyer's product. The provisions of this Section shall not apply to any Products modified by or customized for Buyer, nor shall it apply to the use of the Product by Buyer. As to such modification, customization or use of the Product, Seller assumes no liability whatsoever for patent infringement.
- 11 **CONFIDENTIALITY AND NO PRODUCT ANALYSIS.** Buyer agrees it will not analyze or allow others to analyze the Product(s), either as supplied to Buyer or any derivatives thereof, in an attempt to determine any Product or Product derivative's chemical composition or manufacturing method or to otherwise attempt to reverse engineer any Product or Product derivative, without written authorization from Seller. If, in order to satisfy the Buyer's bona fide environmental, health and safety or regulatory compliance obligations, Buyer must disclose a Product's compositional information, then Seller may disclose that information to Buyer if (a) Buyer provides to Seller the written opinion of Buyer's legal counsel that such information must be disclosed to meet such compliance obligations, and (b) Buyer enters into a written confidentiality agreement acceptable to Seller that limits disclosure of such information to those of Buyer's employees that need access to it for purposes of such compliance and that restricts the disclosure and use of such information to regulatory compliance purposes only. Otherwise, product samples, information regarding the composition and manufacture of Product, Certificates of Analysis, and related data, and any other intellectual property contained or incorporated in Product, as well as the specific terms and pricing in Seller's Quotation, are the property of Seller and Seller's confidential information. Seller grants to Buyer a nontransferable, nonexclusive license to use such information limited to the narrow purposes of this Agreement. Buyer shall not (and shall not have others) reverse engineer, copy or distribute such information.
- 12 **ACCEPTANCE.** Unless accepted in writing by an executive officer of Seller, any terms or conditions in Buyer's acceptance of Seller's Quotation whether in the form of a purchase order, acknowledgment, confirmation or otherwise, which purport to add to, modify, supersede or otherwise alter the terms and conditions contained in these Terms & Conditions of Sale, shall not be binding on Seller nor have the effect, in construing any agreement resulting from Buyer's acceptance of Seller's Quotation, of canceling or otherwise leaving open any terms or conditions and are objected to by Seller. The failure of Seller to respond to any terms or conditions in Buyer's acceptance, nor the commencement by Seller of any work relating to supply of the Product described in Seller's Quotation shall not be construed as Seller's assent to any additions to, modifications, or alterations of these Terms & Conditions of Sale.
- 13 **INTERPRETATION.** Any agreement between Seller and Buyer resulting from Seller's quotation shall be governed by and construed according to the laws of the Commonwealth of Pennsylvania without giving effect to its conflicts of laws provisions.
- 14 **DISPUTE RESOLUTION.** Any dispute between the parties which cannot be resolved with reasonable promptness shall be referred to each party's senior manager in an effort to obtain prompt resolution. Neither party shall commence any action or arbitration against the other until the expiration of 60 days from the date of referral to such senior managers. Nothing in this section shall preclude a party from instituting an action seeking injunctive relief to prevent irreparable damage to such party.
- 15 **ASSIGNMENT.** This Agreement is not assignable or transferable by Buyer, in whole or in part, except with the prior written consent of Seller.
- 16 **TERMINATION.** Seller may terminate its obligation to supply Product under a Quotation at any time by providing not less than 30 days' written notice to Buyer.
- 17 **WAIVER.** A waiver by Seller of strict performance with any of the terms and conditions of this Agreement shall not be a waiver of any subsequent failure to comply with such terms and conditions.