



GENERAL TERMS AND CONDITIONS

- Entire Agreement.** These Terms and Conditions of Sale (the "Terms"), together with an agreed and signed written agreement, if any, between Buyer and Seller ("Agreement Terms"), contain the entire and exclusive agreement between the parties regarding the sale of each Product. The Terms, together with the Agreement Terms, if any, are referred to herein as the "Contract". If there is a conflict between the Terms and the Agreement Terms, the Agreement Terms shall govern. All terms and conditions contained in any prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in Buyer's purchase order, which are different from or in addition to the Contract are hereby rejected and shall not be binding on Seller, and Seller hereby objects thereto. No addition to, or alteration or modification of, the Contract shall be valid unless made in a writing signed by an authorized representative of each party specifically referring to the Contract. Any action by Buyer in furtherance of a sale or purchase of Product shall constitute acceptance of the Contract.
- Payment and Credit.** The price for Product is the price in effect on the date of shipment, unless otherwise agreed by the parties. Payment for the full amount of each invoice shall be made to Seller, addressed as indicated on the invoice and in the currency stated on the invoice. The terms of payment are net thirty (30) days from date of invoice, unless otherwise agreed in writing by both parties. All claims by Buyer shall be made by written notice to Seller in accordance with the provisions of Section 13 of these Terms, and no offset or deduction from any invoice is permitted. Acceptance by Seller of bank draft, cheque, or other media of payment is subject to immediate collection of the full face amount thereof. If at any time the financial responsibility of Buyer or the credit risk involved shall become unsatisfactory to Seller, Seller reserves the right to a) require cash or satisfactory security prior to subsequent shipments or deliveries; and/or b) change the payment terms; and/or c) stop shipments; and/or d) reduce Buyer's available credit limit and/or e) terminate this agreement. The election by Seller to exercise any of its options shall not affect the obligation of Buyer to take and pay for the contracted Product. Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum payable by Buyer to Seller. Seller shall be entitled to interest on any overdue sum at the maximum rate allowed by applicable law.
- Taxes.** In addition to the purchase price, Buyer shall pay Seller any and all governmental taxes, charges or duties of any kind that Seller may be required to collect or pay upon sale, transfer or shipment of Product ("Tax").
- Weights.** Seller's weight and/or measurements shall govern unless proven to be in error.
- Containers.** If shipment requires use of returnable containers, title to such containers shall remain with Seller and a deposit in an amount determined by Seller shall be made at the time the shipment is ordered. Such containers and tote bins shall be returned in good condition within sixty (60) days from the date of shipment, freight charges collect. Upon such return, Seller shall refund the deposit.



6. **Breach and Termination.** If Buyer breaches any term of the Contract or any other contractual obligation in favor of Seller, (a) Seller may choose to defer any or all further shipments or other performance under the Contract and performance of any other contractual obligation in favor of Buyer until Buyer cures its breach, or (b) Seller may immediately terminate the Contract if Buyer fails to cure such breach within ten (10) days after receipt of written notice from Seller describing such breach. In the event of a termination, all outstanding payment obligations or other indebtedness of Buyer to Seller shall be due and payable no later than fifteen (15) days after delivery of notice of termination. 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 and any other contractual obligation in favor of Seller. 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 or any of its affiliates may owe Buyer.
7. **Force Majeure.** Either Party affected by a Force Majeure Event ("Affected Party") shall not be liable for its failure to fulfill any term of this Contract, other than the obligation to pay any sum when due or to provide security, if and to the extent that such fulfillment has been delayed, hindered, curtailed or prevented by any circumstance or event outside its reasonable control, or by fire, explosion, strike, plant malfunction, unplanned shutdown, shutdown in anticipation of a breakdown, or Seller's inability to acquire from its usual supply source(s) Product, materials or services ("Force Majeure Event"). When a Force Majeure Event at one or more of Seller's supply sources results in a shortfall of Product available to meet its supply obligations, Seller shall apportion any reduced quantity of Product amongst Seller, its customers and its Affiliates in a manner it determines to be fair and reasonable. Seller shall not be required to acquire Product to replenish any shortfall in Product arising as a result of a Force Majeure Event. Should Seller acquire any quantity of Product following a Force Majeure Event, Seller may use or distribute such Product at Seller's sole discretion. Buyer may acquire any shortfall quantity of Product from other sources at Buyer's own risk and cost. The affected Party shall promptly notify the other Party in writing with reasonable details of such event.
8. **Laws and Compliance.** Seller shall provide or make available to Buyer a Material Safety Data Sheet (MSDS) for each Product. The MSDS contains Product information and describes precautions, if required, associated with such things as transportation, delivery, unloading, discharge, storage, handling and use of the Product. Buyer will familiarize itself with all such information and precautions, including but not limited to safety and health information contained in MSDSs or otherwise transmitted to Buyer by Seller at any time. Buyer will instruct its personnel, agents, contractors, customers or any third party who may be exposed to the Product about such information and precautions, and make copies available to such parties. Buyer assumes full liability and responsibility for compliance with the MSDS. In addition, Buyer shall comply with all applicable laws, statutes, ordinances and regulations of any Governmental Authority.



Seller assumes no liability for Buyer's failure to comply with Buyer's obligations arising under any and all applicable laws, statutes, ordinances and regulations of any Governmental Authority. Buyer shall defend, indemnify and hold harmless Seller from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments (each, a "Claim") arising out of or related to (i) Buyer's (or others') processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any Product (or any product containing Product) or (ii) Buyer's violation of any Applicable Laws. Seller assumes no liability for failure of discharge implements or unloading equipment used by Buyer, whether or not supplied by Seller.

9. **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.
10. **Confidentiality.** Neither party shall disclose, release or publish to any third party, whether orally or in writing, any terms and conditions of this Contract, any discussions and negotiations between the parties relating to this Contract, or any confidential and/or proprietary information protected by agreement between the parties, without the prior written consent of the other party.
11. **Product Suitability.** Determination of the suitability of the product for the uses and applications contemplated by Buyer and others shall be the sole responsibility of Buyer. Buyer assumes all risks and liabilities for results obtained by the use of the product, whether used singly or in combination with other material, except those relating solely to the use of product not conforming to the contracted specifications, which non-conformity is not known to Buyer and is not discoverable by Buyer, by testing or otherwise, prior to the use thereof by Buyer or others. Any suggestions or recommendations made by Seller concerning uses or applications of the product are believed to be reliable, but Seller makes no warranty or guarantee of the results to be obtained since the conditions of the use and application by Buyer and others are beyond Seller's control.
12. **Warranties.** SELLER WARRANTS THAT AT THE TIME OF DELIVERY (I) PRODUCT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND SECURITY INTERESTS; AND (II) PRODUCT COMPLIES WITH SELLER'S PUBLISHED SPECIFICATIONS (OR AS OTHERWISE REFERENCED IN THE CONTRACT). SELLER MAKES NO OTHER WARRANTY OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. ANY TECHNICAL SUPPORT, ASSISTANCE OR ADVICE FURNISHED OR RECOMMENDATION MADE BY SELLER OR ITS REPRESENTATIVE CONCERNING ANY USE OR APPLICATION OF ANY PRODUCT IS BELIEVED TO BE RELIABLE AND IS AT NO CHARGE AND AN ACCOMMODATION TO BUYER.



SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ITS ACCURACY OR COMPLETENESS OR OF THE RESULTS TO BE OBTAINED WITH REGARD TO ANY HANDLING OF ANY PRODUCT. BUYER ASSUMES FULL RESPONSIBILITY FOR QUALITY CONTROL, TESTING AND DETERMINATION OF SUITABILITY OF PRODUCT FOR ITS INTENDED APPLICATION OR USE.

13. **Claims.** BUYER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. EXCEPT WITH RESPECT TO QUANTITY CLAIMS, ANY CLAIM ASSERTED BY BUYER RELATING TO THE QUALITY OR SPECIFICATIONS OF THE PRODUCTS, SHALL BE MADE IN WRITING, WITH SUPPORTING DOCUMENTATION, TO SELLER WITHIN TEN (10) DAYS AFTER RECEIPT OF THE SHIPMENT OF PRODUCT THAT IS THE SUBJECT OF THE CLAIM, OR SUCH CLAIM SHALL BE DEEMED TO BE BARRED AND TO HAVE BEEN WAIVED BY BUYER WITH RESPECT THERETO. ONLY DIFFERENCES IN NET WEIGHT OR VOLUME, AGAINST INVOICED QUANTITY, IN EXCESS OF 0.5% MAY BE SUBJECT TO QUANTITY CLAIMS. QUANTITY CLAIMS MUST BE RECEIVED BY SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF PRODUCTS. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INSPECT ANY SHIPMENT SUBJECT TO A QUANTITY CLAIM.

14. **Limitation of Liability.** SELLER'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE CONTRACT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. SUCH EXCLUDED INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES INCLUDE LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF USE, OR ANY OTHER INDIRECT DAMAGE OR LOSS OF ANY KIND OR CHARACTER TO BUYER, ITS CUSTOMERS, OR OTHER PERSONS OR ENTITIES. ANY ATTEMPT TO REMEDY OR CORRECT A CLAIMED DEFECT BY PERSONS OR ENTITIES NOT AUTHORIZED TO PERFORM SUCH WORK BY SELLER OR CONTINUED USE OF SUCH PRODUCT SHALL VOID THE PRODUCT WARRANTY SET FORTH IN SECTION 8(II) ABOVE AND BUYER IS DEEMED TO HAVE ACCEPTED THE PRODUCT AS IS, WITH NO FURTHER OBLIGATION OF SELLER TO BUYER. IF REQUESTED BY SELLER, BUYER SHALL RETURN THE NONCONFORMING PRODUCT TO SELLER STRICTLY IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS CONCERNING SHIPPING, HANDLING, INSURANCE, AND OTHER MATTERS AS TO WHICH SELLER ISSUES INSTRUCTIONS. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL INVALIDATE ANY CLAIM BY BUYER FOR BREACH OF WARRANTY. BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO THE PRODUCT OR OTHERWISE ARISING UNDER THE CONTRACT WITHIN ONE YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.



15. Title; Risk of Loss. Unless otherwise provided in the Contract, if Buyer arranges carrier, title and risk of loss to Product shall pass from Seller to Buyer at the time Product is loaded onto carrier's equipment at Seller's shipping point. If Products are shipped in Seller's vehicle or Seller arranges a third party carrier, title and risk of loss transfers to Buyer when the vehicle first enters Buyer's property. In addition, unless otherwise provided in the Contract, title to Product shall transfer to Buyer simultaneously with risk of loss.

16. Returned Product. Product requested to be returned to Seller for reasons other than product non-conformance or Seller's error will be accepted only with prior written authorization by an authorized representative of the Seller. Such authorization may be withheld at Seller's sole discretion. Returned product must be in unopened original packaging and be suitable for resale as determined by Seller at its sole discretion. Returned product shall be subject to a restocking charge. The amount of the restocking charge is at the sole discretion of the Seller and shall be no less than twenty five percent (25%) of the original selling price. Freight for returned product is for Buyer's account.

17. Assignment; Survival. Buyer shall not assign all or any portion of the Contract without Seller's prior written consent. The Contract shall bind and inure to the benefit of the successors and permitted assigns of the respective parties. In order that the parties may fully exercise their rights and perform their obligations arising under the Contract, any provisions of the Contract that are required to ensure such exercise or performance (including any obligation accrued as of the termination date) shall survive the termination of the Contract.

18. Governing Law. The Contract and any dispute or claim arising out of or in connection with it shall be governed by the laws of the province of Ontario without regard to conflict of laws principles. The UN Convention on Contracts for the International Sale of Goods is excluded. Any disputes or claims arising out of or in connection with the Contract shall be exclusively referred to and finally resolved by the courts of the province of Ontario. The Parties waive any objection to such proceedings on the grounds of venue or that the proceedings have been brought in an inappropriate forum and each stipulates that such courts shall have in personam jurisdiction over them for the purpose of litigating any dispute or claim. In the performance of this Contract, each Party shall comply with all applicable laws and governmental decrees, rules, regulations and orders.

19. Miscellaneous. Failure of either party to exercise any right it has under the Contract on one occasion shall not operate or be construed as a waiver by such party of its right to exercise the same right on another occasion or any other rights it has. Any waiver must be in a writing signed by the waiving party. If any provision of the Contract shall be adjudicated to be invalid or unenforceable, it is the parties' intent that the remaining provisions of the Contract will remain in full force and effect, and the affected provision or portion thereof will be deemed modified so that it is enforceable to the maximum extent permissible to reflect as closely as possible the intentions of the parties as evidenced from the provisions of the Contract. The section 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.