

# Terms and Conditions of Sale

**Terms To Govern:** Except as set forth below, the terms and conditions of this Order Confirmation ("Confirmation") set forth the entire understanding between the Seller and Buyer and supersede all other prior agreements with respect to the subject matter of this Confirmation and any additional or inconsistent terms contained in Buyer's purchase order or other documents. If Buyer has completed a credit application, the terms and conditions of that credit application are incorporated herein. If this Confirmation is ordering goods and/or services from an existing sales agreement between Buyer and Seller that expressly overrides the pre-printed terms and conditions in this Confirmation, the terms and conditions in that sales agreement will control this sale. The terms and conditions in this Confirmation may not be changed except with the written agreement of the Buyer and Seller and may not be waived except with the written consent of the waiving party.

**Warranties and Disclaimers:** Seller represents and warrants that, as of the time and at the place of delivery, (i) Seller has the right to convey good title to the goods and/or services and (ii) the goods and/or services delivered will conform to agreed-upon specifications. EXCEPT FOR THE FOREGOING, SELLER DISCLAIMS, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

**Seller's Intellectual Property:** Buyer may not use Seller's trade names, trademarks, logos, service marks, or other proprietary marks.

**Limitation of Liability:** Any claim by Buyer (i) that any goods or services do not conform to the agreed-specifications or (ii) made otherwise with respect to the goods or services must be made promptly and will be deemed to be waived unless received, in writing, by Seller within thirty (30) days after the delivery of the goods or services. Buyer's exclusive remedy and Seller's exclusive liability for delivery of nonconforming goods or services or for breach of warranty is expressly limited to, at Seller's option, (i) replacement of the nonconforming goods or services or (ii) refund of the purchase price to the extent already paid. All nonconforming goods must be returned to Seller or, at Seller's direction, disposed of by Buyer in a manner acceptable to Buyer and Seller. IN NO EVENT WILL SELLER BE LIABLE TO BUYER, OR TO ANY THIRD PARTY, FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES OF WHATSOEVER NATURE.

**Buyer Indemnity and Breach:** Buyer agrees to indemnify Seller from any and all liability that may arise from the delivery, use, storage, transportation, or resale of the goods and/or services. If Buyer breaches any of its obligations hereunder, Seller has the right to immediately terminate this Confirmation, in whole or in part, and pursue any other remedy available to Seller under this Confirmation or applicable law.

**Price Increase and Changes and Cancellations:** Prices quoted are for standard products and services only, based on volumes, timing, and locations set forth in this Confirmation. Any advance in applicable freight rates, fuel, energy and transportation surcharges, taxes, duties or other assessments or fees on this Confirmation or the production, processing, sale, delivery, storage, shipment, transportation or use of the goods, services and/or the raw materials sold hereunder, taking effect after the date of this Confirmation but before the fulfillment of this Confirmation may, at Seller's option, be added to the Price(s) set forth in this Confirmation. Seller will also have the right, at Seller's option, to add to the Price any increase in the cost of production because of any legislation passed or regulations issued after the date of this Confirmation. Additionally, any and all orders placed on less than five (5) days lead time, or that request delivery outside the standard delivery times of 8:00 a.m. and 5:00 p.m. Monday through Friday, and/or all change orders or cancellations, including those in which Buyer requests a change in the products, delivery schedule, or delivery time, or any other changes to a purchase order requested on less than five days' notice before the scheduled date of delivery may, at Seller's option, be subject to additional charges.

**Orders:** Your receipt of an order confirmation from us does not signify our acceptance of your order, nor does it constitute confirmation of our offer to sell. We reserve the right at any time after receipt of your order to accept or decline or cancel your order (in whole or in part) for any reason. We may also require additional verifications or information before accepting any order. Your order is not accepted until it is shipped and your account will not be charged until shipment has been made. If you require a firm delivery schedule, please contact your sales representative to discuss a supply agreement.

**Risk of Loss/Transfer of Title:** Except as otherwise specifically stated in this Confirmation, Buyer will assume title to the goods at the same time Buyer assumes risk of loss in

accordance with the applicable INCO/Delivery Term set forth on page 1 of this Confirmation. **Failure to Take Timely Delivery:** If Buyer fails to take timely delivery of any goods and/or services, Seller may, in addition to its other remedies, (i) extend the delivery period and/or (ii) assess Buyer carrying charges, demurrage, detention and/or other charges or penalties.

**Financial Condition:** If Buyer fails to make timely payment of any obligations or if Seller determines that there are reasonable grounds for insecurity concerning Buyer's performance, Seller may require immediate payment of all sums owed by Buyer; or demand adequate assurance of due performance. Seller may, in addition to its other rights or remedies, treat Buyer's failure to make immediate payment or provide adequate assurance of performance as a total breach of this Confirmation

**Force Majeure:** A party will be excused from a failure to perform or a delay in performance caused by events beyond its reasonable control if that party (i) takes reasonable efforts to remove the cause of its inability to perform or its delay in performance and (ii) gives prompt notice to the other party of the particulars of its inability or delay. In the event Seller is unable to supply the total requirements of its customers, Seller may allocate its available supply among its customers in a manner determined by Seller to be fair and equitable. Seller will have the right to terminate this Confirmation, without any liability to Buyer, if either party's performance is excused for more than twenty (20) calendar days.

**Right to Offset:** Without limiting Seller's other rights and remedies, Seller has the right to set off and/or net its obligations under this Confirmation against any debts, claims or obligations owed by Buyer to Seller.

**Weights and Analysis:** Unless otherwise stated in this Confirmation Seller's weights, analysis and condition, at origin, will govern.

**Confidentiality:** Buyer agrees to keep confidential the terms and conditions of this Confirmation

**Destination Control Clause:** The goods, services and/or intellectual property subject to this Confirmation, if intended to be exported (or re-exported) from the United States, will be exported (or re-exported) in accordance with the U.S. Export Administration Regulations. Diversion contrary to U.S. law is prohibited. The goods, services, and/or intellectual property may not be resold to, disposed of, or transported on or by a carrier owned, flagged, leased, or chartered by, any country (including Cuba), person or entity which would cause Seller to be in violation of or be penalized by United States or other applicable economic sanctions laws. Additional information is available from Seller upon request.

**Governing Law:** The laws of the jurisdiction of the address of the Seller on page 1 of this Confirmation will govern this Confirmation.

**Exclusion of Conventions:** The following international conventions will NOT apply to this Confirmation: (i) the Uniform Law on the Sale of Goods and the Uniform Law on the Formation of Contracts for the International Sale of Goods, (ii) the United Nations Convention on Contracts for the International Sale of Goods of 1980 and (iii) the United Nations Convention on the Limitations Period in the International Sale of Goods, concluded in New York on 14 June, 1974, and the Protocol Amending the Convention on the Limitations Period in the International Sale of Goods, concluded in Vienna on 11 April, 1980.

**Assignment:** Buyer may not assign any of its rights or obligations hereunder without Seller's prior written consent. This Confirmation will be binding upon and inure to the benefit of the parties and their heirs, administrators, executors, successors and permitted assigns.

**Severability:** If any provision of this Confirmation is held to be invalid, illegal or unenforceable, either in whole or in part, that holding will not affect the validity, legality or enforceability of the remaining provisions of this Confirmation.

**BULK/TANK FULL RETURNS.** If Buyer rejects all or any portion of Materials that comply with specifications, (including but not limited to rejection due to Buyer's bulk tank being full at the time of delivery of the Material) Buyer will be liable for (i) handling costs in the amount of 25% of the price of the returned Material (ii) actual freight charged by Seller's carrier for the return of the Material; and Seller reserves the right to reduce the quantity of Material ordered by Buyer on future purchase orders for recurring incidents.