

GENERAL TERMS AND CONDITIONS

1. **COMPLETE AGREEMENT:** This contract constitutes the final, entire, and exclusive understanding of the agreement between the parties with respect to the goods covered hereby, superseding and discharging all contracts, agreements, statements or other sales arrangements between the parties made prior to or at the signing of this agreement, except as to amounts due or to become due from Buyer hereunder. Acceptance of this contract is expressly limited to and conditioned upon Buyer's acceptance of the terms and conditions herein. Any attempted modification of this document by Buyer, and/or any additional or different terms submitted in accepting this contract, or in issuing Buyer's purchase orders, releases, shipping instructions or other documents shall not apply unless expressly assented to in writing by Seller. The terms and conditions herein may only be modified by an amendment, expressly stated as such, and signed by both parties.
2. **GOVERNMENTAL CONTROLS:** If any law, regulation, or governmental action substantially affects Seller's right to maintain or change the price, or revise the transportation terms, terms of payment, or minimum requirement per shipment, Seller shall have the right to terminate this contract without liability upon thirty days written notice. Rather than terminate, Seller may by written notice elect to postpone the effective date of any price increase or proposed change during the period such governmental action is in effect. By electing to postpone rather than terminate, Seller will not waive its right to terminate thereafter.
3. **TRANSFER OF TITLE:** Irrespective of any provision concerning delivery or price herein, title to and the risk of loss or damage of all the goods delivered hereunder shall pass to Buyer upon delivery to any carrier at shipping point, except a motor vehicle operated by Seller at Seller's plant or other shipping point.
4. Seller may recover for each delivery hereunder as a separate transaction without reference to any other delivery. If Buyer shall be in default with respect to any of the terms or conditions of this or any other contract with Seller, Seller may, at its option, defer further deliveries hereunder until such default be remedied (in which event, if Seller so elects, the contract period shall be deemed extended by a time equal to that during which deliveries shall be so deferred), or, without prejudice to any other legal remedy, Seller may decline further performance hereof.
5. Seller shall not be required to deliver in any month more than the monthly quantity herein specified, or, if no monthly quantity is specified, more than a pro rata amount of the entire quantity. In the event that Buyer fails to take said specified or pro rata quantity in any month, Seller, at its option, and in addition to any other remedy, may cancel such quantity or include same in subsequent deliveries hereunder.
6. **BUYER'S WARRANTIES AND ASSUMPTION OF DUTIES REGARDING SAFETY, HEALTH, UNLOADING, USE, HANDLING, AND DISPOSAL OF THE GOODS.**
 - (a) Buyer warrants that it has used its own independent skill and expertise in connection with the selection and use of the goods and that it possesses skill and expertise in handling, storage, transportation, treatment, use and disposal of the goods. Seller's recommendations, instructions, or information as to safety, health, handling, use, unloading or disposal of the goods are based upon information believed to be reliable, but Seller shall have no liability with respect thereto.
 - (b) Buyer hereby acknowledges receipt of Seller's Material Safety Data Sheet (MSDS). Buyer assumes the following duties and obligations:
 - (1) Buyer shall promptly and carefully inspect the goods upon receipt. Buyer will adopt and maintain safe handling, storage, transportation, use treatment and disposal practices with respect to the goods, and further agrees to follow such special care and best manufacturing practices as Buyer's use of the goods require including, but not limited to, all such practices required by federal, state, and local government statutes, rules, regulations or ordinances;
 - (2) Buyer shall instruct its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, transportation and disposal of the goods, including, but not limited to, information contained in Seller's most current MSDS; and
 - (3) Buyer shall comply with the OSHA Hazard Communication Standard, all applicable safety and environmental laws, and all other applicable government statutes, rules, regulations or ordinances, and shall take action necessary to avoid spills, emissions, leaks or other dangers to persons, property, or the environment.
7. **SELLER'S LIMITED WARRANTY: SUBJECT TO THE LIMITATIONS OF PARAGRAPHS 7, 8, AND 9,** Seller warrants that at the time of delivery the goods will conform to the attached specifications, that Seller will convey good title thereto, and that the goods will be delivered free from any lawful security interest, lien or encumbrance.
8. **EXCLUSION AND DISCLAIMER OF ALL OTHER WARRANTIES: THE LIMITED WARRANTIES CONTAINED IN PARAGRAPH 7 ABOVE ARE SELLERS SOLE AND EXCLUSIVE WARRANTIES WITH RESPECT TO THE GOODS. SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, WHETHER WITH RESPECT TO ITS RECOMMENDATIONS, INSTRUCTIONS, GOODS, APPARATUS, PROCESS OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.**
9. **LIMITATIONS OF REMEDIES AND SELLER'S LIABILITY:**
 - (a) **BUYER'S EXCLUSIVE REMEDY AND SELLER'S TOTAL LIABILITY TO BUYER FOR CLAIMS, AS DEFINED IN SUBPARAGRAPHS 9(b) BELOW, IS EXPRESSLY LIMITED AS FOLLOWS: BUYER HAS THE OPTION OF REPAYMENT OF THE PURCHASE PRICE PAID OR REPLACEMENT OF THE GOODS SUPPLIED HEREUNDER WITH RESPECT TO WHICH DAMAGES ARE CLAIMED. BUYER WAIVES ALL OTHER CLAIMS BY BUYER AGAINST SELLER AND SELLER SHALL NOT BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES. THE PRICE STATED FOR THE GOODS IS A CONSIDERATION IN LIMITING SELLERS AND ITS AFFILIATES' LIABILITY.**
 - (b) **AS USED IN PARAGRAPHS 8, 9, 10, and 11: "CLAIMS MEANS ALL ASSERTIONS OF ANY LEGAL, EQUITABLE, AND/OR ADMIRALTY CAUSES OF ACTION, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE; STRICT LIABILITY; OTHER TORT; EXPRESS OR IMPLIED WARRANTIES, INDEMNITY OR CONTRACT; CONTRIBUTION; OR SUBROGATION RELATED TO OR ARISING OUT OF THE PERFORMANCE OR NONPERFORMANCE OF THIS CONTRACT.**
 - (c) **ALL LIMITATIONS ON BUYER'S REMEDIES AND SELLER'S LIABILITY SHALL SURVIVE THE EXPIRATION, TERMINATION OR CANCELLATION OF THIS CONTRACT.**
10. **NOTICE OF CLAIMS:** All product claims by Buyer shall be deemed waived unless made by Buyer in writing and received by Seller within thirty (30) days of receipt of the goods; provided that for any claim which is not readily discoverable within such 30 day period such claim shall be deemed waived unless made by Buyer in writing and received by Seller within 90 days after receipt of the goods or within 30 days after Buyer learns or should have been reasonably aware of facts which should have given rise to such claim, whichever first occurs.
11. **INTELLECTUAL PROPERTY INFRINGEMENT:** Seller warrants that the use or sale of the material delivered hereunder will not infringe the claims of any United States patent covering the material itself; but does not warrant against infringement by reason of the use thereof in combination with other material or in the operation of any process.
12. **TRANSPORTATION:** Shipments shall be made via Seller's transportation equipment or by a carrier approved by Seller. If Seller provides the transportation equipment or absorbs any portion of the transportation charges, Seller shall have the right to designate route mode and carrier. If Buyer requires a route mode or carrier other than that selected by Seller, any extra cost incurred shall be paid by Buyer. Where the terms herein provide for Buyer to absorb any portion of the transportation charges, the transportation charges for the shipment will be those agreed upon by the Buyer and Seller. Buyer shall pay Seller's usual charge for detention of each unit of Seller's equipment held over free unloading time allowed by Seller at point of consignment; and no reconsignment of Seller's equipment shall be made except with Seller's written consent.
13. **CONTAINERS:** Carboys, drums, cylinders, or other returnable containers are the property of Seller and are loaned to Buyer. Buyer shall make a deposit as security for the return of such containers, equal to Seller's current deposit charge therefore at time of shipment, such deposit to be paid when the invoice for the contents is paid. Buyer shall use such containers only for reasonable storage of Seller's material originally delivered therein, and shall promptly return same empty and in good condition (F.O.B. Seller's shipping point, unless otherwise specified). Upon return of such containers as above provided, Seller shall credit Buyer with the amount of said deposit; but if Buyer fails to so return such containers, Seller may refuse to accept same and may retain said deposit. Deposits will not be refunded on containers held for more than two years from date of shipment.
14. **PERFORMANCE:**
 - (a) Performance of any obligation under this contract may be suspended by the party so affected without liability in the event of an Act of God: war; fire; flood; strike; explosion; labor trouble; mechanical breakdown; accident, riot, governmental action, laws, regulations or orders (including, but not limited to, pollution, health, ecology or environmental matters); Seller's inability to obtain fuel, power, raw materials, or equipment used in connection therewith on terms it deems practicable; or any other cause beyond the reasonable control of either party interfering with the production, supply, transportation or consumption practice of the party at the time which delays, prevents, restricts, limits or renders commercially infeasible, the performance of this contract or the consumption, sale or use of the goods, except as to the goods already in transit.
 - (b) Performance of any obligations under this contract may be suspended or terminated by the Seller, if Seller for any reason elects to close, curtail, or suspend operations, whether or not it is within the reasonable control of Seller, except as to the goods already in transit.
 - (c) The affected party may invoke subparagraph (a) or (b) by promptly notifying the other party in writing of the nature and the estimated duration of the suspension or cancellation of the party's performance. The total quantity hereunder shall be reduced by the quantity not delivered during the term of the suspension or cancellation without liability, and the contract shall otherwise remain unaffected. In no event shall Seller be required to ship the goods from Seller's or, if applicable, its affiliates' other locations or to purchase the goods or components thereof from other sources to fulfill the contract requirements. Seller may, without liability, allocate its supply of such goods or raw materials among its own uses, or distribute it among its customers upon such basis and in such manner as Seller deems fair and reasonable, provided that any goods or raw materials obtained by Seller from a third party solely for Seller's internal use are not subject to allocation.
15. **CREDIT:** If Buyer fails to pay any invoice within the time specified on the front of this contract, a late payment charge on the past due balance of one and one-half percent (1 1/2%) per month, or the maximum amount of interest allowed by law in the state in which the Buyer takes possession of the goods, whichever is lower, shall be paid by the Buyer to the Seller. In addition, if Buyer fails to pay any invoice in accordance with the terms of this contract Seller may defer shipments, alter payment terms or cancel this contract. If Buyer's financial responsibility becomes unsatisfactory to Seller and Seller deems itself insecure, Seller may accelerate the due date and demand immediate payment on any outstanding invoice for the goods delivered under this contract, or may require cash payments or satisfactory security for future deliveries. Buyer agrees to pay all costs and expenses, including reasonable attorney's fees, incurred by Seller in the collection of any sum payable by Buyer to Seller, or in the exercise of any remedy.
16. **INSURANCE:** Both Buyer and Seller shall maintain adequate insurance as deemed appropriate by both parties and as required by governmental regulations. Insurance certificates shall be furnished upon request.
17. **JURISDICTION:** This contract, its interpretation and enforcement shall be governed by and construed in accordance with the laws of the State of Utah, including the Uniform Commercial Code as in effect in Utah except as the provisions of such code are herein modified.
18. **GENERAL PROVISIONS:**
 - (a) Failure of either party to exercise any of its rights under this contract upon one occasion shall not waive its right to exercise the same on another occasion.
 - (b) If any provision of this contract is held invalid, such provision shall not affect or invalidate other provisions or application of the contract which can be given effect without the invalid provisions or application, and to this and the provisions of this contract are declared to be severable. If such invalidity becomes known or apparent to Buyer and Seller, Buyer and Seller agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of the contract.
 - (c) Neither party may assign or transfer the contract without obtaining the other party's prior written consent, except that Seller may assign this contract to a purchaser or transferee of Seller's business or manufacturing facility.
 - (d) Nothing in this contract shall be construed as creating any direct or beneficial right in or on behalf of any third party.
 - (e) Acceptance of the goods by Buyer on or after the date proposed in the face of this document for inception of the contract period, but before this document is signed by the parties or before Buyer otherwise makes a definite and reasonable written expression of acceptance shall constitute acceptance as to that shipment on the terms of this document, but shall not in itself constitute an acceptance of the final written expression of this document with respect to future quantities.
 - (f) The headings used herein are for convenience of reference only, are not part of this Agreement, and are not to affect the construction of, or to be considered interpreting, this Agreement.
 - (g) In the event any action or suit in equity is brought by either party hereto against the other in relation to this Agreement, the prevailing party will be entitled to reasonable attorney's fees and costs.
 - (h) Nothing in this contract shall contradict any law, regulation, ordinance or order of any governmental agency having jurisdiction over the operation of any party covered by this agreement.
 - (i) Seller is an independent contractor and is in no way associated with Buyer.
 - (j) No goods covered by this contract can be returned to Seller without written authorization.
 - (k) Any notices under this contract shall be in writing and shall be sufficiently given when mailed, postage paid, addressed to Seller or to Buyer at their respective addresses appearing below, or to such other addresses as the parties may so designate.