

**MITSUBISHI CHEMICAL AMERICA, INC.
TERMS AND CONDITIONS OF SALE**

The Terms and Conditions listed below are the exclusive and binding agreement between the parties covering the sale of any and all materials and/or services sold herein ("Products"), and in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and apply to all quotations made and orders accepted by Mitsubishi Chemical America, Inc. ("Seller"). Additional or different terms proposed by Buyer are hereby rejected unless specifically agreed by the parties in writing. Objection to any terms and conditions contained herein shall be deemed to have been waived unless written notice of such objection is received by Seller within ten (10) days of Buyer's receipt of these terms and conditions. Seller's shipment of the Products shall not be interpreted as acceptance of terms and conditions in Buyer's purchase order which are different from any terms and conditions contained herein.

1. **PERMISSIBLE VARIATIONS:** All Products, including those produced to meet exact specifications, shall be subject to tolerances and variations consistent with usages of the trade and regular practices concerning dimension, weight, packaging, normal variations in surface, deviations from tolerances and variations consistent with practical testing and inspection methods, and practices concerning over- and under-count of Products. A shipping tolerance of +/- 10% of ordered quantity applies to all Products. All products are produced based on Seller's specifications or mutually agreed upon (in writing) Buyer's specification.

2. **PRICE:** (a) Prices quoted by Seller and availability of Products are subject to change at anytime unless expressly stated on Seller's proposal that prices are firm for a term certain or otherwise agreed in writing by the parties. Prices include freight unless otherwise agreed upon by both parties. Freight charges are based on warehouse shipping location. (b) Buyer will be invoiced for Products according to the price in effect at the time of shipment of Products.

3. **DELIVERY, TITLE, REFUSED ORDERS:** Unless otherwise agreed in writing by Seller, any domestic shipments are delivered prepaid to Buyer's designated destination. Title to and risk of loss and liability for Products relating to or arising out of ownership or use of Product shall pass from Seller to Buyer at the time of delivery of Products to the common carrier for shipment. International terms shall be agreed in writing by Buyer and Seller. Refused orders shall be subject to a 25% restocking fee in addition to all freight charges. No future orders will be shipped unless this charge is paid in full. In addition, Buyer is responsible for all freight charges on validly cancelled orders. If Products on this order must be manufactured especially for Buyer, and this order is cancelled by Buyer for any reason, Buyer will take delivery of and make payment for Products completed and in process on the date notice of cancellation is received by Seller. Unless otherwise specified herein, Seller will not be liable for any damages for failure to deliver within the requested time, but will use its commercially reasonable efforts to make delivery within such time.

4. **INSPECTION:** Buyer shall inspect Products at the point of receipt of shipment. Regardless of whether Buyer inspects Products, all claims for alleged defects or shortfalls in Products are waived unless Seller is notified of the claim within 24 hours after removal of packaging. No claim shall be effective if made after Products have been altered or used. Buyer shall afford Seller prompt and reasonable opportunity to inspect all goods to which any claim is made. No material shall be returned to Seller without Seller's express consent, a return authorization, and return instructions in accordance with the return procedures set forth below in Section 17.

5. **FREIGHT DAMAGE:** Seller's warranty does not cover physical damage incurred in transit. If Buyer receives Product believed to be damaged during shipment, Buyer's sole remedy lies with the carrier and he should: (a) immediately notify Seller; (b) note any damage on the receipt and bill of lading; (c) file a claim with the carrier within five (5) days of receipt; (d) retain all shipping cartons, packing materials and content in the same condition as it was received.

6. **PAYMENT TERMS:** Unless otherwise agreed in writing by Seller, terms of payment shall be net thirty (30) days from the date of invoice. If payment is not received within such period, Seller may cancel this order or suspend further deliveries under it among other remedies. Overdue accounts will be subject to Seller's late payment fee in effect on invoice date, but will in no event exceed the maximum rate of interest allowed by law.

7. **CREDIT:** Buyer shall submit a credit application to Seller for approval. Credit is subject to advance approval by Seller, in its sole discretion. If the financial condition of Buyer at any time is such as to give Seller, in its judgment, reasonable grounds for concern about Buyer's ability to perform its obligations under a purchase order, Seller may require full or partial payment in advance or may suspend any further deliveries or continuance of the work to be performed by Seller until such payment has been received. Failure to furnish payment within ten (10) days of demand by Seller shall constitute a repudiation of the contract and in such event Seller shall be entitled to receive reimbursement for its cancellation charges in addition to any other rights available to it at law. In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller shall be entitled to cancel any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

8. **WARRANTY:** Seller warrants that the Products will conform to the applicable specifications, which may be amended by Seller at any time.

9. **NON-CONFORMING PRODUCT:** In the event that Buyer receives Products that it believes do not conform to applicable specification, then Buyer shall immediately notify Seller in order that Seller may inspect the Product to determine in its sole discretion whether or not such Product conforms to the specification. If Seller agrees that such Product does not conform, then Buyer's sole remedy will be for Seller to replace or credit the value of the non-conforming Product. Seller will replace or credit the value of the non-conforming Product for a period of nine (9) months from date of delivery. If Seller determines, in its sole discretion, that such Product is not non-conforming, Buyer shall pay all freight and other reasonable costs incurred by Seller related to the returned Product.



10. **DISCLAIMER OF FURTHER WARRANTIES:** THE WARRANTY SET FORTH IN SECTION 8 ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF THE PRODUCTS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT OF PATENT OR OTHER RIGHTS OF THIRD PARTIES.

11. **LIMITATION OF REMEDIES AND LIABILITY:** SELLER'S LIABILITY TO BUYER IN ANY CAUSE OF ACTION, WHETHER BASED ON CONTRACT OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE, OR ANY OTHER THEORY, SHALL BE LIMITED TO THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS GIVING RISE TO SUCH CLAIM. WITHOUT LIMITING THE FOREGOING, SELLER SHALL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS AND LOSS OF USE). ANY CAUSE OF ACTION THAT BUYER MAY HAVE AGAINST SELLER AND WHICH MAY ARISE IN CONNECTION WITH THE PRODUCTS MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

12. **INDEMNIFICATION:** Buyer shall indemnify Seller for and hold Seller harmless from (i) any and all loss, damage or injury to persons or property resulting from Buyer's handling, storage, transportation, resale or use of Products in manufacturing processes, or in combination with other substances, or otherwise and (ii) all damages, costs and expenses resulting from special marking of Products or containers in accordance with Buyer's requests.

13. **SERVICES:** All technical advice, recommendations and services provided by Seller are intended for use by persons having skill in the particular area of the services being provided. Such advice is provided to Buyer at its own risk, and Seller assumes no responsibility for any such advice, recommendations or services, and Buyer hereby waives all claims against Seller, for any results obtained or damages incurred from the use of Seller's advice, recommendations or services, absent willful misconduct.

14. **FORCE MAJEURE:** Seller will not be liable for non-performance or delay in performance due wholly or partly to any cause not in its reasonable control or not avoidable by reasonable diligence ("Force Majeure"). Upon the occurrence of Force Majeure, Seller shall give Buyer reasonable notice thereof and may suspend or reduce deliveries during the period of Force Majeure, and the total quantity deliverable under this Agreement will be reduced by the quantities so omitted. The following, while not an exclusive listing, will be considered to be Force Majeure: war, riots, national emergency, labor controversies, severe weather conditions and court decrees; inability to use the full capacity of plants or facilities as a result of governmental action, machinery malfunctions or breakdown; and the inability (without litigation or the payment of penalties or unreasonable price or the acceptance of unreasonable terms and conditions) to obtain fuel, power, labor, containers, transportation, facilities or material necessary to produce the Products.

15. **SHORTAGES:** If shortages occur in Seller's supply of the Products for any reason other than a Force Majeure, Seller will allocate all Products produced among its customers, its own requirements, and the requirements of its or its parent's division, subsidiaries, and affiliates in a manner and amount that it deems fair and reasonable, without obligation to obtain similar goods from other sources. Seller may deduct any quantity not shipped to Buyer because of any such shortages of either Products or materials from the quantity specified in Buyer's Purchase Order.

16. **HANDLING; LOADING; UNLOADING AND CONTAINERS:** (a) Buyer acknowledges that the Products may require special handling, storage, transportation, treatment or use to comply with applicable safety and environmental laws, and Buyer will take all actions necessary to comply with these laws and to avoid dangers to persons, property or the environment. Buyer certifies that containers and allied equipment presented by it at Seller's shipping point will be fit for the Products. Seller may refuse to load Buyer's containers if Seller reasonably believes that the quality of the Products will be prejudiced or that any unsafe condition exists (provided, however, Seller shall have no obligation to do so). Buyer shall be responsible for the prompt unloading and release of all transportation equipment and shall pay any invoice for demurrage, other expense or loss caused by Buyer within ten (10) days of receipt of written notice from Seller. (b) Buyer shall unload railroad cars, trucks and barges furnished by Seller within the free time specified by tariffs or time periods on file with applicable regulatory bodies or promptly after receipt if no such tariffs or time periods are on file, and pay any charges resulting from its failure to do so directly to the common carrier upon receipt of invoice therefore. Buyer shall pay Seller's daily charges for trip leased tank cars for tank cars held longer than seven (7) days from constructive placement. BUYER ASSUMES FULL RESPONSIBILITY FOR USE AND CONDITION OF CARS, TRUCKS AND BARGES WHILE IN BUYER'S POSSESSION AND AGREES TO (1) COMPENSATE SELLER FOR LOSS OR DAMAGE TO SELLER PROPERTY AND (2) INDEMNIFY AND SAVE SELLER HARMLESS FROM ANY LOSS OR DAMAGE TO PROPERTY OTHER THAN SELLER PROPERTY AND FROM ANY INJURIES TO PERSONS RELATING IN ANY WAY TO THE USE OF SUCH CAR(S), TRUCK(S) AND BARGE(S) WHILE SUCH ARE IN BUYER'S POSSESSION. Buyer shall report to Seller promptly any damage that may be sustained by the car(s), truck(s) or barge(s) in Buyer's possession.

17. **RETURN GOODS AUTHORIZATION:** All returns require pre-approval of Seller. Buyer shall contact customer service to receive a Return Goods Authorization (RGA). All returned Product must include original packaging with all accessories and parts included. Seller may charge up to a twenty five percent (25%) restocking fee. The RGA must be marked on all returned packages. Buyer is responsible for all freight charges and should send returned Product postage pre-paid. Except in the case of non-conforming Products, all returns must be made within thirty (30) days of delivery of Product.

18. **TAXES:** (a) Buyer shall provide Seller with a valid State Sales Tax Exemption Certificate. If Seller does not have Buyer's tax exempt information on file, sales tax shall be applied to invoices. (b) If new or increased taxes, excises or other governmental charges (other than taxes based on Seller's income) are imposed on Seller for the production, sale or transportation of any of the Products after



the date of the purchase order, Buyer will reimburse Seller for all amounts so imposed, or, if Buyer refuses to reimburse Seller for such amounts, Seller may, at its sole discretion, terminate the order as to such Products.

19. NOTICES: (a) All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be deemed received on the earlier of (i) the date actually received as evidenced in writing, regardless of how sent or (ii) three (3) business days after being mailed by United States certified or registered mail, return receipt requested, with postage prepaid, or (iii) the next business day, if sent by overnight courier.

20. EXPORT COMPLIANCE: (a) Sales hereunder, unless otherwise indicated, constitute domestic sales within the United States. If Buyer elects to export Products, Buyer shall constitute the US principal party in interest or exporter for all purposes under applicable law. (b) Seller specifically reserves to itself all rights to drawback of duty or taxes paid on materials entering into the manufacture or production of the Products specified in any order. Buyer disclaims all interests in such rights and agrees to furnish Seller with proof of exportation and all other documents necessary to obtain payment of such drawbacks and to cooperate with Seller in obtaining such payment.

21. GRATUITIES: Buyer warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Seller any gratuity with a view toward securing any business from Seller or influencing such person with respect to the terms, conditions, or performance of any contract or purchase order with Seller. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

22. ASSIGNMENT: Buyer shall not assign any purchase order, or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall entitle Seller to cancel such purchase order upon written notice to Buyer.

23. GOVERNING LAW: The validity and interpretation of these terms and conditions shall be governed by the laws of the state of South Carolina, without respect to its choice of law principles.

24. GENERAL: (a) In the event that any of the provisions, or portions thereof, or interpretations by the parties or by either party of any provisions, or portions thereof, of these terms and conditions are held to be unenforceable or invalid by any court of competent jurisdiction, Seller and Buyer agree that the court shall enforce such provision to the maximum extent permissible, and the other terms and conditions will remain in full force and effect. (b) Waiver by Seller of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. (c) No amendment of these Terms and Conditions shall be valid and enforceable unless agreed to in writing by Seller.