

## General Sales Terms and Conditions

### 1. Applicability.

(a) These terms and conditions of sale (these "**Terms**") are the only terms which govern the sale by Fondel Chemicals Limited ("**Seller**") to the buyer ("**Buyer**") of the goods ("**Goods**") named in the quotation, confirmation of sale, invoice, or other sales document accompanying these Terms (the "**Sales Confirmation**"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Goods covered hereby, the terms and conditions of such contract shall prevail to the extent they are inconsistent with these Terms.

(b) The Sales Confirmation and these Terms (collectively, the "**Agreement**") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

### 2. Order and Delivery.

(a) Each purchase order submitted by Buyer shall be subject to acceptance by Seller. Seller may in its discretion refuse to accept, in whole or in part, any purchase order delivered by Buyer. The goods will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the delivery point named in the Sales Confirmation (the "**Delivery Point**") using Seller's standard methods for packaging and shipping such Goods. Delivery shall be made EXW Delivery Point, Incoterms® 2010. Buyer shall take delivery of the Goods at the time that the Goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labour reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make shipments of Goods in advance of Buyer's requested shipment or delivery date, and make partial shipments of Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfilment of Buyer's purchase order.

(d) If for any reason Buyer fails to accept delivery of any of the Goods on the date fixed pursuant to Seller's notice that the Goods have been delivered at the Delivery Point, or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licences or authorizations: (i) risk of loss of or damage to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

### 3. Non-Delivery.

(a) The quantity of any instalment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within one day of the date when the Goods would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

(d) Buyer acknowledges and agrees that the remedies set forth in Section 3 are Buyer's exclusive remedies for the non-delivery of Goods.

### 4. Quantity.

If Seller delivers to Buyer a quantity of Goods of up to 10% more or less than the quantity set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

### 5. Title and Risk of Loss.

Title and risk of loss and damage passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the applicable provincial Personal Property Security Act.

### 6. Amendment and Modification.

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

### 7. Inspection and Rejection of Non-Conforming Goods.

(a) Buyer shall inspect the Goods within five business days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Non-Conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Non-Conforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Non-Conforming Goods, Seller shall, in its sole discretion, (i) replace such Non-Conforming Goods with conforming Goods, or (ii) credit or refund the Price for such Non-Conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. If Seller exercises its option to replace Non-Conforming Goods, Buyer shall (if requested to do so by Seller) return such Goods to Seller's place of business at Seller's cost. Buyer acknowledges and agrees that the remedies set forth in Section 7(b) are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under Section 7(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

### 8. Price.

(a) Buyer shall purchase the Goods from Seller at the prices (the "**Prices**") set forth in Seller's offer and Sales Confirmation..

(b) All Prices are exclusive of all harmonized sales tax, goods and services tax, sales tax, value added tax, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

#### **9. Payment Terms.**

(a) Buyer shall pay all invoiced amounts due to Seller within 30 days from the date of Seller's invoice, or as agreed in advance between Buyer and Seller and as indicated in Seller's Sales Confirmation. Buyer shall make all payments hereunder by wire transfer in the currency specified in the Seller's Sales Confirmation.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 1.0% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, reasonable legal fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder and such failure continues for 60 days following written notice thereof.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

#### **10. Limited Warranty.**

(a) Seller warrants to Buyer that the Goods will at the date of delivery conform to Seller's published specifications in effect as of the date of shipment.

**(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 10(a), SELLER MAKES NO CONDITION OR WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (i) CONDITION OR WARRANTY OF MERCHANTABILITY; (ii) CONDITION OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) CONDITION OR WARRANTY OF TITLE; OR (iv) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.**

(c) The Seller shall not be liable for a breach of the warranty set forth in Section 10(a) unless: (i) Buyer gives written notice of the defect, reasonably described, to Seller within five business days of the date of delivery; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller's place of business at Seller's cost for the examination to take place there; and (iii) Seller reasonably verifies Buyer's claim that the Goods are defective.

(d) The Seller shall not be liable for a breach of the warranty set forth in Section 10(a) if: (i) Buyer makes any further use of such Goods after giving notice pursuant to Section 10(c); (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, handling, commissioning, use or maintenance of the Goods; or (iii) Buyer alters or repairs such Goods without the prior written consent of Seller.

(e) Subject to Section 10(c) and Section 10(d) above Seller shall, in its sole discretion, either: (i) replace any Goods that do not conform to the limited warranty in Section 10(a) or (ii) credit or refund the price of such Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller's expense, return such Goods to Seller.

**(f) THE REMEDIES SET FORTH IN SECTION 10(e) SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 10(a).**

#### **11. Limitation of Liability.**

**(a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS GIVING RISE TO THE CLAIM.**

(c) The limitation of liability set forth in Section 11(b) shall not apply to liability arising out of death or bodily injury resulting from Seller's negligence or wilful misconduct.

#### **12. Insurance.**

Buyer represents and warrants to Seller that it has in place with reputable insurers such insurance policies in coverage amounts that would be maintained by a prudent purchaser of goods similar to the Goods provided hereunder, including, as applicable, professional errors and omissions liability insurance and comprehensive commercial general liability insurance (including product liability coverage, all-risk contractors' equipment insurance, and automobile liability insurance). In addition, Buyer will take out and maintain, at its own cost, such insurance policies and coverages as may be reasonably required by Seller from time to time. Buyer will promptly deliver to Seller, as and when requested, certificates of insurance evidencing such insurance coverage. If requested, Seller will be named as an additional insured under any such policies. If requested by Seller, such insurance will provide that it cannot be cancelled, or materially changed so as to affect the coverage provided under this Agreement, without the insurer providing at least 30 days prior written notice to Seller.

#### **13. Compliance with Law.**

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Goods.

#### **14. Termination.**

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and such failure continues for [60] days after Buyer's receipt of written notice of non-payment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**15. Waiver.**

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**16. Confidential Information.**

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

**17. Force Majeure.**

The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labour disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**18. Assignment.**

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

**19. Relationship of the Parties.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

**20. No Third-Party Beneficiaries.**

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Agreement.

**21. Governing Law.**

All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**22. Submission to Jurisdiction.**

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the Province of Ontario in each case located in the City of Toronto, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

**23. Notices.**

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

**24. Severability.**

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**25. Survival.**

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Warranty, Confidential Information, Limitation of Liability, Governing Law, Submission to Jurisdiction and Survival.

**26. Language.**

It is the express wish of the parties that this Agreement and any related documentation be drawn up in English. *Il est de la volonté expresse des parties que cette convention ainsi que tout document connexe soient rédigés en langue anglaise.*