



GENERAL TERMS AND CONDITIONS OF SALE

1. These General Terms and Conditions of Sale are referred to herein as the "Terms." Each order acknowledgment attached hereto and executed agreement by and between the Parties, if any, that incorporates these Terms is referred to below as the "Agreement". Capitalized terms used but not defined in these Terms have their meaning as defined in the Agreement. The Agreement contains the entire and exclusive agreement between the parties regarding the sale and purchase of each Product referenced in the Agreement. No modification of or addition to the Agreement shall be effected by any course of dealing or usage of trade, or acceptance or acknowledgement by Seller of any purchase order or other form submitted by Buyer containing additional or different terms or conditions; any terms or conditions provided unilaterally by Buyer are hereby expressly rejected by Seller. No addition to or modification of the Agreement shall be valid unless made in a writing signed by an authorized representative of the party to be bound thereby and specifically referencing the Agreement.

If the Agreement and these Terms are inconsistent with each other, the Agreement controls. Acceptance or use by Buyer of a shipment of Product after the tender of the Agreement by Seller (but before the Agreement is signed by both parties or before Buyer otherwise makes a definite and timely act or expression of acceptance) shall constitute acceptance of the terms of the Agreement as to that shipment but shall not in itself constitute an acceptance of the Agreement with respect to future shipments.

2. Payment of the full amount of each invoice shall be made to Seller in the currency stated in the Agreement, without deduction or offset, and shall be tendered to the address indicated on such invoice. All invoices are strictly net and payment must be made within thirty (30) days of date of invoice.

3. If Buyer breaches any term of the Agreement or other contractual obligation in favor of Seller, Seller may (a) suspend performance of any executory obligations of Seller (including without limitation the payment of rebates and the issuance of credits) until Buyer cures its breach, or (b) by delivery of written notice to Buyer describing the breach, immediately terminate the Agreement and any other contractual obligation to Buyer. 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. No termination shall have any effect on any breach of the Agreement occurring prior thereto.

Seller may recover the price for each shipment hereunder as a separate transaction, without reference to any other shipment. Seller shall have the right to offset any and all past due payment obligations or other indebtedness of Buyer against any outstanding payment obligations or other indebtedness that Seller or any of its affiliates may owe Buyer. Buyer agrees to pay all costs of Seller incurred in collection of past due amounts, including collection agency and/or attorney's fees, whether suit is filed thereon or not. If in default of payment of any undisputed invoice on the due date, interest shall accrue on any amount overdue at the lesser of (i) the rate of two percent (2%) per month above the London Interbank Offered Rate (LIBOR) or (ii) the maximum rate allowable by applicable law, interest to accrue on a day to day basis until full payment; and Seller shall, at its sole discretion, and without prejudice to any other of its accrued rights, be entitled to suspend delivery of Product until all overdue amounts have been paid in full including interest for late payments.

4. Seller shall not be obligated to fulfill any purchase order submitted by Buyer unless and until Seller confirms acceptance of such purchase order in writing. Seller may require at least sixty (60) days' prior notice of quantities to be delivered during each calendar month. It is intended that Buyer will order each Product in approximately level quantities over the term, subject to normal seasonal fluctuations that Seller has accepted in writing.

5. Failure of Seller to supply, or Buyer to take, any one or more deliveries when due, if caused by (a) natural or man-made events or forces, any other cause or contingency beyond the reasonable control of the affected party, (b) any regulation, law, or restriction of any governmental authority, agency, court, or other instrumentality of any supranational organization of sovereign states or political subdivision thereof (a "Governmental Authority"), seizure or requisition of Product by any Governmental Authority, or compliance with a demand or request for such Product for purposes of national or supranational defense, (c) inability of Seller to obtain from Seller's usual sources of supply any required raw material, energy source, equipment, labor or transportation, at prices and on terms deemed by Seller to be practicable, shall not subject the party failing to perform to any liability to the other during the period of such inability to make or take delivery. Quantities so affected may, at the option of either party, be eliminated from the Agreement without liability, but the Agreement



shall remain otherwise unaffected. Seller may allocate its available supply among its purchasers, including departments and divisions of Seller and its affiliates, on such basis as Seller may deem fair and practical without liability to Buyer.

6. In addition to the purchase price, Buyer shall pay or reimburse Seller for any applicable value added tax (VAT), sales, excise, use or other tax, assessment, license, import, duties, fee or other charge, and all increases thereof, which Seller may be required to pay upon the sale, production, transportation, delivery or use of the Product.

7. Seller may, at its option, deliver from points other than that specified (but shall not be obligated to do so) provided that such delivery shall be at the Agreement price. Where the Agreement price provides for absorption by Seller of freight charges, wholly or in part, Seller shall have the right to select the 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. If freight or other transportation costs are increased, Seller may add any increase to the Agreement price. Rail car mileage earnings on equipment owned or leased by Seller shall be for the sole account of Seller. Buyer acknowledges that additional charges may be imposed with respect to deliveries made not during standard business hours, deliveries made on weekends or holidays and deliveries made on less than twenty-four (24) hours notice. Such charges shall be reasonably determined by Seller.

8. At any time(s) during the term of the Agreement but effective upon not less than fifteen (15) days' prior written notice, Seller may adjust the price of any Product. The price applicable to any order shall be the price in effect on the date of shipment. If any governmental action or request restricts Seller from asking a price increase in accordance with the terms of the Agreement or continuing any price in effect, then Seller shall have the right to (a) terminate this Agreement upon thirty (30) days written notice to Buyer, (b) suspend deliveries for the duration of such restriction, or (c) have applied to the Agreement (as of the effective date of such restriction) any price permitted under such action or request.

9. Any communication, including any related payment, regarding any dispute, and/or payments in attempted accord and satisfaction of any invoice or account which is the subject of any dispute, shall be sent to the referenced contact person on the order with a copy to the Chief Legal Officer of Seller, and not to the regular payment address.

10. Buyer will familiarize itself and comply with all information and precautions to be taken in the transportation, delivery, unloading, discharge, storage, handling and use of each Product, all as described in applicable hazardous communications provided by Seller ("Information"). Buyer will instruct its employees, agents, contractors, customers or any third party which may be exposed to the Product about such Information and make copies available to such parties. Buyer assumes full liability and responsibility for compliance with the Information and all applicable laws, statutes, ordinances and regulations of any Governmental Authority ("Applicable Law") related to the processing, transportation, delivery, unloading, discharge, storage, handling, disposition, sale or use of each Product ("Uses"). Buyer further agrees to protect, defend 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 ("Claims") resulting from Buyer's negligence, willful misconduct or breach of Buyer's obligations hereunder, as well as all Claims resulting from Uses of any Product after delivery by Seller which are (i) inconsistent with any Information provided to Buyer, (ii) in violation of any Applicable Law, or (iii) within Buyer's assumed liability and responsibility under this Agreement.

Any technical advice or service furnished or recommendation made by Seller or any representative thereof concerning any Uses of any Product is provided in good faith, but SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ITS COMPLETENESS OR ACCURACY OR THE RESULTS TO BE OBTAINED FROM USE THEREOF. Seller shall not be liable for and Buyer assumes all risks of such advice and service and the results obtained in reliance thereon.

11. SELLER MAKES NO WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, BY FACT OR LAW, OTHER THAN SELLER'S (I) OBLIGATION TO DELIVER PRODUCT COMPLYING WITH SELLER'S PUBLISHED SPECIFICATIONS (AS MAY BE REVISED BY SELLER FROM TIME TO TIME) OR, IF APPLICABLE, THE PRODUCT SPECIFICATIONS OTHERWISE REFERENCED IN THE AGREEMENT AND (II) IMPLIED WARRANTIES OF TITLE AND FREEDOM FROM ENCUMBRANCE. SELLER MAKES NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY SUCH WARRANTIES THAT MAY OTHERWISE BE IMPLIED ARE EXPRESSLY DISCLAIMED.

12. SELLER'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE AGREEMENT, HOWSOEVER CAUSED AND WHETHER BASED IN TORT, AGREEMENT, 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 QUANTITY OF PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, ANY CONSEQUENTIAL, INCIDENTAL,



SPECIAL OR PUNITIVE DAMAGES, EXCEPT TO THE TEXTENT RESULTING FROM FRAUD, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

13. BUYER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. BUYER'S FAILURE TO GIVE NOTICE TO SELLER OF ANY CLAIM WITHIN THIRTY (30) DAYS AFTER THE DATE OF DELIVERY SHALL CONSTITUTE UNQUALIFIED ACCEPTANCE OF THE PRODUCT AND A WAIVER BY BUYER OF ALL CLAIMS WITH RESPECT THERETO. THE WEIGHTS, TARES AND TESTS ESTABLISHED BY SELLER SHALL GOVERN UNLESS PROVEN TO BE INCORRECT.

14. Buyer assumes full liability and responsibility for quality control, testing and determination of suitability of any Product for its subsequent intended application or use in any process or as a component of any other product ("Intended Uses"). Buyer agrees to protect, defend and hold harmless Seller from and against all Claims associated therewith including, without limiting the generality of the foregoing, Claims associated with product liability with respect to Intended Uses as well as infringement of any third party's intellectual property rights, patents on processes practiced by Buyer or patents on products made through such Intended Uses.

15. Buyer agrees not to make any use of writings, data, designs, drawings, specifications or any other information furnished to it by Seller or observed or developed by Buyer in the performance hereof and to not disclose any of the foregoing to third parties, except as required in the performance of this Agreement and then only after first obtaining a written agreement from such third parties to be bound by similar secrecy and use restrictions. Upon completion, cancellation or termination of this Agreement, Buyer shall return to Seller all of the foregoing, including all copies, extracts or derivatives of tangible materials containing any of the foregoing made by Buyer or third parties employed by Buyer, together with Buyer's certification of such return. Seller shall at all times have title to all drawings, specifications, writings or other documents prepared or furnished by Buyer hereunder.

16. If at any time the financial condition or prospects of Buyer or the credit risk to Seller shall become unsatisfactory to Seller (in its sole discretion), Seller may require cash or satisfactory security prior to shipments or deliveries hereunder; such election shall not affect the obligation of Buyer to take and pay for the contracted materials. Additionally, Seller may terminate the Agreement and all undelivered orders immediately without notice if Buyer becomes insolvent, dissolved, liquidated, makes a general assignment for the benefit of its creditors, files or has filed against it a petition in bankruptcy, or has a receiver appointed for a substantial part of its assets.

17. Unless explicitly provided in the Agreement, delivery of Product shall be at that facility of Seller or a third party where Product is finished or stored by or on behalf of Seller. Title to and risk of loss of all Products sold hereunder shall pass to Buyer at the Seller's point of shipment whether or not Seller pays all or any part of freight, and notwithstanding any other designation elsewhere in the Agreement.

18. The Agreement shall bind and inure to the benefit of the successors and permitted assigns of the parties. The Agreement and any right or obligation hereunder is not assignable or transferable by either party in whole or in part without the prior written consent of the other party except that Seller shall have the right to assign this Agreement and its rights and obligations hereunder, without obtaining the consent of Buyer, to (1) any entity with which Seller (a) merges, (b) sells a substantial part of its assets or businesses, or (c) sells a substantial part of its assets or business relating to the manufacture and/or sale of a Product and (2) any affiliate of Seller. Seller and its assigns shall have the right to assign any right to receive payment under this Agreement to any person, without the prior written consent of Buyer.

19. The rights and obligations of each Party which by their nature or of necessity survive the termination or expiration of the Agreement shall survive the termination or expiration of this Agreement.

20. This Agreement shall be governed by and construed in accordance with the laws of the Switzerland without reference to its conflicts of law principles. The United Nations Convention on Contracts for International Sales of Goods shall not apply to this Agreement. Any disputes under this Agreement that cannot be resolved by the Parties through good faith negotiation shall be resolved in the courts of Basel, Switzerland, and the Parties hereby consent to the exclusive jurisdiction of such courts. Failure of either party to exercise any right it has under the Agreement on one occasion shall not operate or be construed as a waiver by such party of the same right on another occasion or any other rights it has; any waiver must be in a writing signed by the waiving party. In the event that any provision of the Agreement shall be adjudicated to be invalid or unenforceable, the remaining provisions of this Agreement 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. Nothing in the Agreement shall be construed as creating any direct or beneficial right in or on behalf of any third party.

END of Terms