

**Terms and Conditions of Sale
(Spot Orders)**

The products and/or materials being sold to Buyer are referred to herein as “Products”. The sale of Products contemplated hereby is referred to as the “Order.”

1. **Controlling Terms and Conditions.** Seller objects to, and shall not be bound by any term or condition which is different from or in addition to the terms and conditions set forth herein. Any additional or different terms or conditions proposed by Buyer are hereby expressly rejected. **Acceptance of delivered Products shall constitute acceptance of these terms and conditions.**
2. **Termination.** Seller may cancel this Order if Buyer fails to carry out any of the terms of any other contract with Seller.
3. **Volume and Delivery.** The quantity of the Order is subject to variations of plus or minus ten percent (10%) at Seller’s option. The quality and weight of Product shown on Seller’s delivery ticket are presumed correct; however, Buyer may file a claim relating to quality noncompliance or quantity deficiencies within ten (10) days of delivery. The claim must be accompanied by a proof certified by a qualified surveyor. Buyer may not cancel the purchase of a non-complying portion of the Order unless Seller has failed to replace such non-complying Product within a reasonable time after the failure to meet such specifications is established. The failure to deliver a claim meeting these time and proof requirements shall be deemed to constitute acceptance of the quantity and quality of the Product by Buyer.
4. **Late Pickup/Restocking/Special Handling Fees.** If after five (5) business days from an Order being confirmed, Buyer requires a change in the confirmed delivery date, Buyer shall pay a \$500 change fee. If Buyer has arranged to pick up an Order from Seller and does not pick up the Order on the confirmed pickup date, Buyer shall pay Seller a \$350 late pick up fee. An additional \$350 late pickup fee will be incurred for each two day business cycle in which the pickup does not occur. If not picked up by the 6th business day following the original date, the late pick up fees shall be capped at \$1,400. E.g., if Buyer fails to pick up an Order on a Thursday there will be a \$350 charge as of the close of business on Thursday and, if still not picked up, additional \$350 charges will accrue at the close of business on the following Monday, Wednesday and Friday). If not picked up by the 8th business day, the order will be deemed cancelled, the material restocked and Buyer will need to place a new Order for the Material. Any canceled Orders will incur a \$1,400 restocking fee. If there is a combination of restocking fees and late pickup fees, we will cap the combined fees at \$1,400. These fees are in addition to any and all remedies provided by applicable law. As used herein, “business days” mean means Monday through Friday excluding any day, which is a nationally observed holiday in the United States.

If Buyer desires to expedite an Order (defined as inside quoted lead time), Buyer shall pay a will a \$500 fee. Any Order for less than 2,000 lb. will be charged a \$500 handling fee.

5. **Payment for each Order.** All payments should be made in U.S. Dollars and remitted via check and/or wire transfer in accordance with Seller’s instructions. If not otherwise specified, all payments should be made within 30 days after the date of invoice. Buyer shall pay the price of the Product without setoff, counterclaim, or any other rights which Buyer may have against Seller. If payment is due on a non-banking day when banks are not open to transmit or receive funds, payment shall be remitted on the banking day immediately preceding the due date.

If the pricing or weight is not finalized prior to the time when payment is due, Buyer shall remit a timely provisional payment based upon Seller’s invoice. Payment by either party for final settlement shall be remitted within three working days when final weights and prices are known.

If Buyer fails to pay by the due date thereof any sum required to be paid by Buyer to Seller hereunder, Buyer will pay to Seller interest on the delinquent amount from the due date thereof until the paid date at the rate of the lesser of (i) 1½% per month (18% per annum) or (ii) the maximum amount permitted by applicable law. Buyer shall also pay Seller all reasonable costs and expenses (including, but not limited to, reasonable attorneys’ fees) incurred by Seller in connection with Seller’s efforts to collect such delinquent payment or payments.

Buyer shall bear and pay all taxes (excluding Seller's income taxes), duties, levies and other similar charges imposed, levied by any government arising out of this Order, including, without limitation, withholding, sales, use, value added, registration, excise, documentary taxes, duties, levies and other charges, regardless of whether such are payable by the Seller.

6. Title/Risk/Compliance with Transportation Regulations. Seller shall retain a security interest in the Product until Seller has received the full contracted amount for the Product. Except for the retained security interest, full title and risk of loss shall pass to Buyer upon delivery to Buyer or Buyer's agents (i.e., transportation company).

7. Compliance with Laws and Product Stewardship. Seller and Buyer are committed to promoting effective product stewardship and appropriately managing environmental, health, safety, and regulatory considerations with respect to the Products. Seller agrees that when using the Products (and all materials derived from, or containing some or all of, the Products), it will comply with all applicable federal, state, and local laws. Buyer is solely responsible for complying with, at its own expense, all applicable federal, state, or local laws, including, but not limited to, those relating to occupational health, safety, and/or the environment (collectively "HSE Laws"), and shall secure any required permits, licenses, approvals, or other authorizations applicable to Buyer's operations and the purchase, handling, transportation, storage, and use of the Products (and all materials derived from or containing some or all of the Products), and the distribution, marketing, sale, and use of all materials resulting from or containing some or all of the Products. Buyer will timely provide appropriate and/or legally-required environmental, health, safety, and regulatory information related to the Products (and all materials resulting from or containing some or all of the Products) to Buyer's employees and to all of Buyer's customers of materials resulting from or containing some or all of the Products. Buyer hereby agrees to indemnify and hold Seller, its employees and agents, harmless from and against any and all claims arising from any breach of Buyer's obligations in this section.

8. Product Use. Seller is selling the Products as new and useful products, and it is Seller's intent that no portion of the Products, or any materials derived from or containing some or all of the Products, be disposed or otherwise handled, transported, stored, processed, or used in such a manner as to create any liability for Seller, including but not limited to, any liability under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") and/or any other HSE Laws. Buyer is therefore solely responsible for evaluating and determining whether the Products are suitable and appropriate for Buyer's particular use and intended application. The conditions of evaluation, selection, and use of the Products can vary widely and affect the use and intended application of the Products. Because many of these conditions are uniquely within Buyer's knowledge and control, Buyer must evaluate and determine whether the Products are suitable and appropriate for a particular use and intended application. Buyer assumes all risks related to the purchase of the Products, and subsequent handling, transportation, storage, use, distribution, and marketing of the Products, and all materials resulting from or containing some or all of the Products. Buyer hereby agrees to indemnify and hold Seller, its employees and agents, harmless from and against any and all claims arising from any breach of Buyer's obligations in this section.

With regards to any United States Pharmacopeia (USP) grade materials, Buyer agrees to (i) comply with all applicable US Food and Drug Administration ("FDA") regulations including specifically the Current Good Manufacturing Practice ("cGMP") regulations enforced by the FDA, and (ii) not repackage or relabel any such materials. Buyer shall indemnify Seller against any liability incurred Seller arising from a breach of these obligation. Once Buyer takes possession of such material, it is not eligible for cancellation or return.

9. Warranties. Seller warrants that the material delivered hereunder shall conform to the specifications or grade described herein, within any stated tolerances. . For purposes of determining conformance with product specifications, an observed value or a calculated value shall be rounded "to the nearest unit" in the last right-hand digit used in expressing the specification limit, in accordance with the rounding method of ASTM Practice E29, for Using Significant Digits in Test Data to Determine Conformance with Specifications. **SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE.**

10. Force Majeure. If any shipment hereunder is prevented or delayed due to: (a) labor difficulties or a fire, flood, earthquake, tidal wave, hurricane, typhoon, tornado or other natural calamity, war, civil commotion, riots, revolution, blockage, embargo, strike, other labor disputes or delay, interruption, cancellation, suspension or other non-performance of any transportation contract for any reason under which Seller has arranged for deliver of Product; (b) any prohibitions, U.S./Last Revision Date 4.3.18

requirement, regulation or order of a national or local government (including any such condition which affect any raw material required for the production of the Products); and/or (c) any and all disabling causes or contingencies beyond Seller's control whether of the nature of those conditions hereinabove mentioned, then Seller shall not be liable for any delay in shipment or for non-delivery for all or any part of the Product or any other failure to perform any of its obligations hereunder and may cancel or postpone the shipment hereunder. The time of Seller to make delivery hereunder shall be extended during any period in which such delivery shall be prevented or delayed by reason of any of the foregoing issues, provided that if any delivery hereunder be prevented or delayed for more than three (3) months either party shall have the right to cancel the Order with respect to such delivery by written notice to the other. In the event Buyer declares force majeure for the Product which has been shipped, Buyer shall be responsible to Seller for the demurrage costs, storage costs and other expenses created by the force majeure.

11. Limitation on Damages. Except as otherwise stated herein, the sole and exclusive remedy of Buyer or any other party against Seller for all claims of any kind, whether based on contract, tort (including negligence), breach of warranty or otherwise, for any loss or damages arising out of, connected with or resulting from the sale or failure to sell, shall be replacement of such Product sold hereunder, or, at Seller's option, refund of the purchase price paid for the Product(s) and shall in no event be greater than the invoiced value of the Product(s) as supplied and fully paid for. **No other remedy shall be available to the Buyer (including, but not limited to, indirect or consequential damages, lost profits, lost sales, punitive damages, injury to persons or property or any other incidental or consequential loss).**

12. Export Control. Buyer acknowledges that the Order may concern products that may be controlled or restricted under the U.S. Export Administration Regulations or the Office of Foreign Assets Control, or other applicable laws and regulations relating to the export or import of products and may be subject to the approval of the U.S. Department of Commerce or Treasury, respectively, prior to export. Any export or re-export of the Materials by Buyer, directly or indirectly, in contravention of the export control laws, economic sanctions laws or other applicable laws or regulations is prohibited, and Buyer shall comply with all such laws and regulations, as well as the U.S. Foreign Corrupt Practices Act and similar laws of applicable foreign jurisdictions. Buyer shall not seek to influence sales or other business affairs by means of bribery, kickbacks, illegal payments or other ethically questionable inducements, including gifts or anything of value. Additionally, the Materials shall not be sold for use in, or to parties that are suspected to be involved in, the development, production, use or stockpiling of weapons of mass destruction; to entities or individuals on any applicable lists of parties denied export privileges (including, without limitation, <http://www.bis.doc.gov/complianceand enforcement/liststocheck.htm>), or to parties in any embargoed countries. This provision constitutes an independent covenant and continuing obligation of Buyer and shall survive the termination of this Order.

13. General. (a) This agreement contains the entire agreement between the parties and supersedes any prior oral or written agreements or communications between them relating the subject matter hereof. No oral representations shall be binding unless set forth herein. (b) Buyer may not assign, in whole or in part this Order without the express consent of Seller; this Order shall enure to the benefit of and be binding on the parties and their respective heirs, executors, administrators, successors and permitted assigns. (c) No waiver by Seller of any provisions of this agreement shall be effective unless in writing and shall be effective only to the extent of such waiver; any such waiver shall not constitute a waiver of any other provision of this the agreement. (d) This Order shall be governed by and construed in accordance with the laws of the State of Texas applicable. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Order. Each of the Parties irrevocably and unconditionally submits to the exclusive jurisdiction of the Courts of the State of Texas sitting in Houston, Texas, and of the United States District Court for the Southern District of Texas sitting in Houston, Texas, in any action or proceeding arising out of or relating to this Order. Each party hereby irrevocably waives, to the fullest extent permitted by law, any right to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Order or the transactions contemplated hereby or thereby (whether based in contract, tort or any other theory). The losing party shall pay the reasonable attorneys' fees of the prevailing party in action or proceeding arising out of this Order. If any provision hereof is declared invalid or unenforceable, the balance of this agreement will remain in full effect, and the invalid or unenforceable clause will be automatically reformed only to the minimum extent necessary to become valid and enforceable. (e) The provisions of the "Incoterms" (published by International Chamber of Commerce) valid at the date of the Order shall apply insofar as the same are not inconsistent with the terms and conditions stated herein. (f) Subject to the Limitations on Damages provisions above, the remedies set forth herein are in addition to any and all remedies provided by the Texas Uniform Commercial Code and other applicable law. (g) Seller shall have the right of offset any amounts due or to become due to Seller under this Order against any amount due or to become due to Buyer under any other contract between Buyer and Seller. (h) Seller may at its option

defer performance under this Order or require prompt payment or the opening of a Letter of Credit, or require any other acceptable security or collateral, in the event of circumstances which, in the reasonable judgment of Seller, may have an adverse effect on the creditworthiness of Buyer and/or Buyer's ability to perform its obligation hereunder.