

## TERMS AND CONDITIONS

**1. APPLICABILITY:** These terms and conditions of sale (these "Terms") are applicable to each sale of goods ("Goods") by Colonial Chemical Solutions, Inc. ("Seller") to you ("Customer"). These Terms and the terms in any bill of lading or invoice of Seller (a "BOL") relating to a specific sale of Goods to Customer comprise the entire and complete agreement between the parties relating to such sale (the "Agreement") and supersede all different, prior or contemporaneous understandings, agreements, negotiations, promises, representations, warranties and/or communications, both written and oral. Seller specifically rejects any additional, different, or conflicting terms including any terms or conditions of or provided by Customer or included in any purchase order, confirmation, website, or other document of Customer. With respect to any sale of Goods, should a conflict arise or exist between the Terms and any BOL, these Terms shall control. Delivery of Goods by Seller does not constitute acceptance of or agreement with any terms and/or conditions not in these Terms or an associated BOL and does not serve to modify or amend these Terms. These Terms may only be amended in a writing which specifically and expressly states that it amends these Terms and is signed by Seller and Customer.

**2. DELIVERY; NON-DELIVERY; SHIPPING TERMS; QUANTITY:** Seller shall not be liable for any costs, penalties or damages arising from delivery delays or failures caused by third parties. Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to the address provided by Customer on the BOL (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Customer shall be responsible for all unloading costs and provide equipment and labor reasonably suited for receipt and unloading of the Goods at the Delivery Point. Seller may, in its sole discretion, ship Goods to Customer in one or more lots or shipments, and each shipment shall constitute a separate sale. The quantity of any installment of Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Customer on delivery unless Customer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of Goods unless Customer gives written notice to Seller of the non-delivery within three (3) days of the date when the Goods would in the ordinary course of events have been received. 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. Delivery shall be made FOB Delivery Point, unless otherwise agreed in writing by Seller. If Seller delivers to Customer a quantity of Goods of up to ten percent (10%) more or less than the quantity set forth in the BOL, Customer shall not be entitled to object to or reject the Goods or any portion of such Goods by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the BOL adjusted pro rata.

**3. TITLE AND RISK OF LOSS:** Title and risk of loss passes to Customer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Customer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Customer 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 is intended to constitute a purchase money security interest under the applicable uniform commercial code ("UCC"), and Seller is authorized to file from time to time any UCC financing statements or related amendments or continuation statements Seller deems appropriate.

**4. CREDIT, PAYMENT TERMS, INTEREST & COLLECTION COSTS:** Purchases of Goods are subject to prior credit approval, and payment is due in full, without setoff, and in accordance with the time for payment indicated in the applicable credit application or BOL (and if none is so stated, then within thirty (30) days after the earlier of receipt of the Goods or the BOL therefore. If Customer fails to make timely payments, Customer agrees to pay interest of 1.5% per month or the maximum lawful interest which may be assessed by Seller, whichever is lower, on unpaid past-due amounts accruing from their due dates. If Customer fails to timely pay amounts due Seller or otherwise breaches the Agreement, Customer shall pay to Seller all reasonable attorneys' fees and costs actually incurred, whether suit is brought or not and at trial and on appeal. Customer shall return to Seller any asset tags used by Seller to deliver Goods to Customer not later than ninety (90) days from the delivery date as indicated on the BOL or be responsible for replacement costs for the same in accordance with the payment terms, interest and collection costs provided herein.

**5. INSPECTION AND REJECTION OF NON-CONFORMING GOODS:** Customer shall inspect the Goods upon receipt. Customer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods (as defined herein) within three (3) days of receipt and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) goods shipped are different than those identified in the BOL; or (ii) product's label or packaging incorrectly identifies its contents. If Customer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (a) replace such Nonconforming Goods with conforming Goods, or (b) credit or refund the purchase price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. Customer shall ship, at Seller's expense and risk of loss, the Nonconforming Goods to Seller's facility located at 916 W. Lathrop Avenue, Savannah, Georgia. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Customer's shipment of Nonconforming Goods, ship to Customer, at Seller's expense and risk of loss, the replacement Goods to the Delivery Point. Customer acknowledges and agrees that the remedies set forth in this paragraph are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 6 (Limited Warranty), all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under the Agreement to Seller.

**6. LIMITED WARRANTY:** Seller warrants to Customer that the Goods are of good quality in accordance with industry practice and free from material defects in material and that Seller has good title to the same. **EXCEPT FOR THE WARRANTY IN THE PRECEDING SENTENCE, SELLER MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES, WITH RESPECT TO THE GOODS, INCLUDING ANY REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** Seller shall not be liable for a breach of warranty unless: (i) Customer gives written notice of the defect, reasonably described, to Seller within thirty (30) days after Customer has received the Goods; (ii) Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Customer (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 Customer's claim that the Goods are defective. Subject to the above, with respect to any such Goods, Seller shall, in its sole discretion, either: (a) repair or replace such Goods (or the defective part) at Seller's cost or (b) credit or refund to Customer the price of such Goods at the pro rata contract rate charged to Customer, provided that, if Seller so requests, Customer shall, at Seller's expense, return such Goods to Seller. **THE REMEDIES SET FORTH HEREIN SHALL BE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH HEREIN.**

**7. LIMITATION ON LIABILITY: TO THE EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT (A) SHALL EITHER PARTY BE LIABLE TO THE OTHER 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 GOODS PURCHASED BY CUSTOMER, SELLER'S SALE THEREOF, OR ANY BREACH BY A PARTY OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY THE OTHER PARTY OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER OR SELLER, 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) NOR SHALL SELLER'S LIABILITY WITH RESPECT TO GOODS SOLD EXCEED THE PURCHASE PRICE PAID TO SELLER BY CUSTOMER FOR SUCH GOODS. REGARDLESS OF PRIOR DEALINGS, ANY CLAIM BY CUSTOMER RELATED TO GOODS PURCHASED FROM SELLER OR THE DELIVERY THEREOF**

**SHALL BE DEEMED WAIVED AND RELEASED UNLESS PRESENTED IN WRITING TO SELLER AND FILED IN A COURT SPECIFIED IN SECTION 14 BELOW WITHIN 1 YEAR FROM THE DATE OF DELIVERY.**

**8. HAZARDOUS MATERIALS:** The Goods may be or contain dangerous or hazardous materials or substances, and Customer assumes upon receipt of the Goods all risks and liabilities of any nature or kind arising from or related to the same, including, but not limited to, handling, using, transporting, storing, and disposing of the Goods. Seller shall be responsible for providing any Safety Data Sheets ("SDS") associated with the Goods which it is required to provide under applicable law. Customer acknowledges that it has been adequately warned by Seller of the risks associated with handling, using, transporting, storing, and disposing of the Goods, including, without limitation, those set forth in the SDS and that Customer is familiar with the Goods. Customer further acknowledges its separate and independent knowledge of such risks, which are known in Customer's industry. While the Goods are in Seller's possession and prior to a carrier's receipt for transport, Seller shall take all necessary, appropriate and/or legally required precautions and actions to safely and properly transfer and ship the Goods, and upon Customer's receipt of Goods from carrier, Customer shall take all necessary, appropriate and/or legally required precautions and actions to safely and properly receive, store, handle, use, transport and dispose of the Goods, including, but not limited to, informing, warning, familiarizing and training Customer's employees, agents, contractors and customers with all hazards associated with the Goods. Customer agrees to indemnify, defend, hold harmless and reimburse Seller for, from and/or against all claims, suits, judgments, costs, expenses, damages and/or liabilities of any nature or kind, including reasonable attorney's fees and costs, arising or resulting in any way from acts, omissions, events, occurrences, spills, releases, explosions, fires or accidents of, concerning or relating in any way to the Goods and which occur or take place upon or after Customer's receipt of the Goods and while in Customer's ownership, possession or control. Notwithstanding any delivery terms to the contrary, Seller agrees to indemnify, defend, hold harmless and reimburse Customer for, from and/or against all claims, suits, judgments, costs, expenses, damages and/or liabilities of any nature or kind, including reasonable attorney's fees and costs, arising or resulting in any way from acts, omissions, events, occurrences, spills, releases, explosions, fires or accidents of, concerning or relating in any way to the Goods and which occur or take place prior to a carrier's receipt for transport from Seller and while in Seller's Seller's ownership, possession or control.

**9. INSURANCE; COMPLIANCE WITH LAWS:** Customer shall procure and maintain the following policies of insurance: (a) Worker's Compensation Insurance in an amount sufficient to comply with applicable laws; (b) General Liability Insurance with policy limits reasonably acceptable to Seller; and (c) such other insurance reasonably required by Seller. All such policies shall include a waiver of subrogation in favor of Seller and its affiliates. Upon Seller's request from time to time, Customer shall provide Seller with a certificate of insurance from Customer's insurer evidencing all such insurance coverage. The certificate of insurance shall name Seller as an additional insured. Customer shall comply with all applicable safety and health related governmental requirements, laws, regulations and ordinances concerning the Goods. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to perform its obligations under the Agreement, including all environmental laws and other laws relating to owning, handling, storing, transporting, using and disposing of hazardous materials.

**10. TERMINATION:** In addition to any remedies that may be provided under these Terms, Seller in its discretion may terminate the Agreement or any sales order or suspend any sales or deliveries of Goods with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due hereunder; (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.

**11. WAIVER:** No waiver by Seller of any of the provisions of the Terms or the 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 the 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.

**12. CONFIDENTIAL INFORMATION:** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, formulae, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Customer, 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 the Agreement is confidential, solely for the Customer's use of performing the Agreement and may not be disclosed or copied by Customer unless authorized in advance by Seller in writing. Upon Seller's request, Customer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section without the need to show irreparable harm or post bond. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; (c) rightfully obtained by Customer on a non-confidential basis from a third party; (d) required to be made pursuant to a subpoena or order of any judicial or regulatory body.

**13. FORCE MAJEURE:** Seller shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached the Agreement, for any failure or delay in fulfilling or performing any term of the 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 labor 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, telecommunication breakdown or power outage.

**14. GOVERNING LAW; JURISDICTION; VENUE:** All matters arising out of or relating to the Terms or the Agreement is governed by and construed in accordance with the laws of the State of Georgia without giving effect to any choice or conflict of law provision or rule (whether of the State of Georgia or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Georgia. Any legal suit, action or proceeding arising out of or relating to the Agreement or goods or product delivered pursuant to the Agreement shall be instituted in a federal or state court located in Chatham County, Georgia, and each party irrevocably submits to the exclusive jurisdiction and venue of and in such courts in any such suit, action or proceeding. **EACH PARTY HERETO UNCONDITIONALLY AND IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY. EACH PARTY CERTIFIES THAT IT HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER AND MAKES IT VOLUNTARILY.**

**15. NOTICES:** All notices, requests, 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 BOL 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 certified or registered mail (in each case, return receipt requested, postage prepaid).

**16. SEVERABILITY; SURVIVAL; AMENDMENT:** If any term or provision of the Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Sections 3, 4, 6, 7, and 11 through 16, inclusive, of these Terms as well as any provisions in these Terms which by their nature should apply beyond their terms, will remain in force after any termination or expiration hereof.