

# STANDARD TERMS AND CONDITIONS OF SALE



americhem®

EFFECTIVE: July 5, 2016

**1. TERMS OF SALE.** These Standard Terms and Conditions of Sale ("Terms") shall apply to Seller's Quotation or Acknowledgment in which these Terms are specifically incorporated by reference (the Quotation or Acknowledgment, together with these Terms, the "Agreement"). To the extent there is a conflict between these Standard Terms and Conditions and the Quotation or Acknowledgment, the terms in the Quotation or Acknowledgment shall control. All purchases by Buyer of products described in the Agreement are expressly limited to and conditioned upon Buyer's assent to these Terms, regardless of whether Buyer purchases such product through any media or means, including but not limited to, verbal or written purchase orders, electronic orders via EDI, acknowledgements, confirmations, or other writings from Buyer to Seller. Unless such provisions are expressly agreed to by Seller in a writing signed by Seller, any additional or conflicting terms and conditions contained on, attached to or referenced by Buyer's writings, or other prior or later communication from Buyer to Seller, shall have no effect on the purchase of any such products by Buyer from Seller and are expressly rejected by Seller. These Terms along with the Quotation or Acknowledgment in which they are incorporated by reference are deemed an offer for sale by Seller. If Buyer does not accept in writing Seller's offer to sell, Buyer's commencement of performance (including ordering, purchasing or taking delivery of product) shall, in all cases, constitute Buyer's unqualified and unconditional acceptance of the Agreement and assent to the Terms.

**2. PRICES.** Unless otherwise stipulated in writing, quoted prices will be valid for thirty (30) days. Prices are based upon Seller's understanding of Buyer's requirements and specifications. Quoted prices are exclusive of all taxes (except taxes levied on Seller's income) including federal, state and local use, sales, property or similar taxes paid or required to be collected by Seller.

Where Buyer has submitted a request for quote/proposal, Buyer hereby acknowledges and agrees that the prices set forth in this contract are contingent upon Buyer's agreement to purchase the total quantities set forth in the Buyer's request for quote/proposal. If Buyer fails to purchase at least ninety percent (90%) of the quantities if products contained in its request for quote/proposal, Buyer agrees that pricing on the products delivered to Buyer shall be adjusted retroactively to reflect the impact of lower volume on material pricing, labor efficiencies and other costs and expenses of Seller. Buyer hereby agrees to pay Seller such additional sums within thirty (30) days if the date of Seller's invoice for payment.

**3. TITLE AND RISK OF LOSS.** Except as otherwise specifically set forth in this Agreement, all sales of products shall be shipped F.O.B. shipping point. Notwithstanding any shipping term, title to any products sold and risk of loss of such products passes to Buyer upon delivery by Seller to the carrier and products shall be deemed "delivered" at such time, and any claims for losses or damage occurring after delivery to carrier by Seller shall be made by Buyer directly with the carrier.

#### **4. PAYMENT TERMS/CREDIT.**

(a) Buyer shall pay all invoices, without deduction, in U.S. Dollars. If the Agreement does not state payment terms, payment shall be received by Seller no later than thirty (30) days from the date of Seller's invoice. Delay in payment will result in Buyer being responsible for interest at a rate of one and a half percent (1½%) per month compounded monthly (19.6% per annum), or the maximum rate allowed by law, whichever is less, on the outstanding amount of any unpaid invoice beginning on the day after the payment due date. Notwithstanding the foregoing, in no event shall the late payment charge for a month be less than Five Dollars (\$5.00). If the payment due date is a Saturday, Sunday or holiday where banks located in the State of Ohio are authorized or required to be closed, Buyer shall make such payment on the business day after such due date.

(b) Seller makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Buyer. In the event credit is provided by Seller to Buyer, or Performance Assurance (as hereinafter defined) is required by Seller of Buyer, Buyer will provide to Seller, as requested by Seller, such annual or interim reports containing Buyer's and/or the Buyer's Performance Assurance provider's consolidated financial statements for a particular fiscal year or accounting period, as requested. In all cases, such statements shall be in accordance with generally accepted accounting principles.

(c) Notwithstanding the foregoing, if Seller determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may: (i) suspend deliveries of product, (ii) require prepayment by wire transfer of immediately available funds, and/or (iii) require Performance Assurance. Buyer hereby waives written notice of any such action. "Performance Assurance" means collateral in the form of either cash, letter(s) of credit, guaranty, or other security acceptable to Seller in its sole discretion.

(d) In the event Buyer fails to timely pay Seller any payments due Seller (whether under this Agreement or pursuant to any other obligation of Buyer to Seller) in accordance with Seller's terms, Seller may, in addition to any other remedies it may have under this Agreement, defer further shipments until such payments are made or, at its option, cancel the unshipped balance without any liability to Buyer.

**5. TAXES AND GOVERNMENTAL CHARGES.** Except as otherwise specifically set forth in this Agreement, Buyer shall pay all taxes (excluding federal, state or local income or franchise taxes of Seller) and all import duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon ("Taxes and Governmental Charges"), whether payable by Seller or Buyer, imposed or levied on or with respect to this Agreement or the amounts payable hereunder, the products, or the possession, sale, use, furnishing or ownership of the products. If this Agreement specifically provides that Seller shall pay any of the foregoing, Seller shall pay the amount thereof at the rates in effect on the date of this Agreement. If the total amount thereof is, at any time and for any reasons (whether as a result of new or increased duties, taxes or other charges or otherwise), greater (or less) than the aforementioned amount as of the date of this Agreement, the difference shall be charged (or credited) to Buyer. The contract price for the products to be provided by Seller under this Agreement will be increased by any Taxes and Governmental Charges with respect to the supply to Seller of any products, materials or services to be incorporated in the products being sold or performed by Seller under this Agreement.

**6. SHIPPING.** Seller shall use commercially reasonable efforts to ship the products hereunder within the time specified in this Agreement or, if no time is specified, within Seller's then lead-time for shipment of such products (determined at the time Buyer's order is placed). Seller reserves the right to deliver +/- 10% of the agreed upon amount. Buyer shall be invoiced for the amount actually delivered.

**7. CHANGES IN SPECIFICATIONS OR DESIGN.** If Buyer requests changes in specifications or designs relating to any products to be provided hereunder, shipment schedules shall be revised, if necessary, and an equitable adjustment, upward or downward, shall be made in price if, in Seller's reasonable determination, it is warranted.

**8. BUYER SHIPPING DELAYS.** Delays in the design, manufacturing, or shipping schedule caused by Buyer may result in additional charges, including, but not limited to, a surcharge to offset increased material cost, storage fees, or other applicable costs.

**9. PRODUCT STEWARDSHIP; SAFETY AND HEALTH.** Buyer is responsible for the safe use, selection, handling, and disposal of the products being sold to it hereunder. Buyer will: (a) familiarize itself with any product information provided to, or made available to, Buyer by Seller including material safety data sheets, warnings and safety and health information concerning the product and/or the containers for such products sold hereunder ("Safety Information"); (b) communicate such Safety Information to all persons who Buyer can reasonably foresee may be exposed to such materials or containers; (c) follow safe handling, use, storage, selling, transportation, and disposal practices and (d) take reasonable action to avoid dangers to persons, property or the environment.

#### **10. LIMITED WARRANTY; DISCLAIMER.**

(a) Subject to the limitations set forth below, Seller warrants that the products sold or provided hereunder conform, at the time of delivery to Buyer, in all substantial respects to the applicable Seller promulgated product specifications in effect at the time of the Quote or Acknowledgment. The foregoing warranty shall not apply in the event Buyer fails to comply with Seller's design parameters, and shall not extend to any products which have been subjected to misuse, misapplication or neglect, damaged by accident, rendered defective by reason of improper installation, or by the performance of repairs or alterations outside of Seller's plant, except when performed under Seller's specific authority. This warranty shall not apply to any goods, services or parts thereof furnished or solicited by Buyer or acquired from others at Buyer's request and/or Buyer's specifications.

(b) If products are claimed not to conform in all substantial respects to Seller's product specifications, Seller, upon written notice promptly given, will either examine the products at their site or issue shipping instructions for their return to Seller (transportation costs prepaid by Buyer). In the event any products are determined by Seller to be defective and covered by this warranty, transportation costs (cheapest way) to and from Seller's plant, will be borne by Seller and reimbursement or credit will be made for amounts so expended by Buyer. In case of a dispute as to whether the products meet contract specifications, Seller or Buyer may designate a mutually acceptable independent testing company and/or surveyor to make an examination and in such case said testing company's and/or surveyor's findings shall be conclusive and binding on both parties (the expense of which

examination shall be borne by Seller with respect to each item found not to conform to specification and by Buyer with respect to each item found to conform to specifications).

(c) With respect to any claim of breach of warranty hereunder, Buyer shall notify Seller in writing within ten (10) days from the date the defect is discovered or, upon reasonable inspection, should have been discovered. Buyer's failure to give such written notice of such claim within such 10-day period shall constitute an unqualified acceptance of the product and a waiver of all claims with respect thereto. In the event timely notice is given by Buyer, but Seller fails to comply with its obligations hereunder, Buyer agrees that any action for a breach of warranty or any other provision of this Agreement will be, and must be, commenced within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first.

(d) BUYER AND SELLER EXPRESSLY AGREE THAT SELLER'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE TO ISSUE CREDIT OR REPLACE (ALL AT SELLER'S OPTION) ANY PRODUCT WHICH SELLER DETERMINES TO BE OTHER THAN AS WARRANTED; NO ALLOWANCE SHALL BE MADE FOR ANY LABOR, CHARGES OF BUYER FOR REPLACEMENT OF PARTS, ADJUSTMENTS OR REPAIRS, OR ANY OTHER WORK, UNLESS SUCH CHARGES ARE AUTHORIZED IN WRITING IN ADVANCE BY SELLER.

(e) THE WARRANTY SET FORTH IN SECTION 10(a) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES AND COMPRISE SELLER'S SOLE AND ENTIRE WARRANTY OBLIGATION AND LIABILITY TO BUYER, ITS CUSTOMERS AND ASSIGNS IN CONNECTION WITH PRODUCTS SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

**11. LIMITATION OF LIABILITY.** SELLER'S TOTAL LIABILITY TO BUYER FOR DAMAGES FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO ANY CAUSE WHATSOEVER IN RELATION TO THIS AGREEMENT WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, OR OTHER CAUSE (a "CLAIM") SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH SUCH CLAIM RELATES. NOTWITHSTANDING THE FOREGOING SENTENCE UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, REVENUE OR OPPORTUNITY, CLAIMS OF THIRD PARTIES OR FOR INJURY TO PERSONS OR PROPERTY, OR FOR ANY OTHER SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND OR NATURE.

**12. FORCE MAJEURE.** Seller shall not be liable for delays in the performance of, or the non-performance of, any of its obligations under this Agreement if such default is the result of causes beyond its reasonable control including, but not restricted to, acts of God, acts of government, acts of Buyer, fires, strikes, floods, accidents, epidemics, quarantine restrictions, war, acts of terrorism, insurrection or riot, civil or military authority, compliance with priority or allocation orders or preference ratings issued by the government, weight embargoes, car shortages, wrecks or delays of transportation, inadequate transportation facilities, unusually severe weather, or inability to obtain necessary labor, fuel, materials, supplies, or manufacturing facilities and delays of a subcontractor due to such causes, provided that Seller agrees that Seller shall give notice of any anticipated delay caused by such causes beyond its reasonable control.

**13. CANCELLATION/MODIFICATION OF ORDER.** Buyer acknowledges that any products being purchased hereunder are being manufactured especially for Buyer. In no event shall Buyer have the right to cancel, modify or delay releases with respect to any order where the material and order is in process, except with the Seller's consent and subject to conditions then to be agreed upon, which shall include protection of Seller against all losses.

**14. COMPLIANCE WITH LAW.**

(a) The parties agree to comply with all applicable laws, treaties, conventions, directives, statutes, ordinances, rules, regulations, orders, writs, judgments, injunctions or decrees of any governmental authority having jurisdiction ("Laws") pertaining to the fulfillment of the Agreement.

(b) Buyer will be responsible for compliance with all Laws applicable to the product(s) sold hereunder once such product(s) has been delivered by Buyer in accordance with this Agreement, including, without limitation, those related to operations, safety, maintenance, equipment, size and capacity, and pollution prevention.

(c) If any license or consent of any government or other authority is required for the acquisition, carriage or use of the product(s) sold hereunder, Buyer will obtain the same at its expense, and if necessary, provide evidence of the same to

Seller on request. Failure to do so will entitle Seller to withhold or delay shipment, but failure to do so will not entitle Buyer to withhold or delay payment of the price therefor. Any expenses or charges incurred by Seller resulting from such failure will be paid for by Buyer within ten (10) days of receipt of Seller's written request.

(d) Except as permitted under U.S. Laws, any product(s) sold by Seller to Buyer hereunder will not be sold, supplied or delivered by Buyer directly or indirectly to any party or destination that, at the time of such sale, supply or delivery, is declared an embargoed/restricted party or destination by the government of the United States of America or by the United Nations. Within two (2) days after Seller's request, Buyer will provide Seller with appropriate documentation to verify the final destination of any product(s) delivered hereunder.

**15. INFRINGEMENT.** Buyer agrees that it will not induce Seller to use any patent, secret process, trade secret, know-how, drawings, plans, specifications or other confidential knowledge or information belonging to any third party. Buyer further agrees that it will defend, indemnify and hold harmless Seller against any damages, costs, expenses or other liabilities (including reasonable attorney's fees) arising out of, or relating to, any claim brought against Seller relating to the infringement (or alleged infringement) of any patent or any use by Seller of any secret process, trade secret, know-how, drawings, plans, specifications or other confidential or proprietary knowledge or information belonging to any third party arising from the Seller's manufacture, use or sale of any products in accordance with any information, materials, specifications, drawings, plans, instructions or samples furnished by Buyer.

**16. CONFIDENTIALITY; EQUITABLE RELIEF.** The following provisions of this Section 16 shall only apply in the event the parties have not entered into a separate confidentiality or similar agreement. All technical data and other proprietary information (including information that constitutes a "trade secret" under applicable state law) disclosed or furnished by one party to the other: (i) shall be kept confidential; (ii) shall remain the exclusive property of the party furnishing or disclosing such information; and (iii) shall be returned to the party furnishing such information upon request. The parties agree that a violation or threatened violation of the provisions set forth in this Section 16 will result in irreparable harm to non-defaulting party, and, accordingly, the parties agree that, in such event, the non-defaulting party shall be entitled to institute judicial proceedings, seeking immediate injunctive relief (or similar equitable relief) against such violation or threatened violation without any requirement to post a bond as a condition of such relief, as well as damages at law as may be recovered by such party, and the attorney fees it incurs in enforcing any of the covenants contained in this Section 16.

**17. SECURITY INTEREST.** To secure Buyer's obligations to Seller, Seller hereby reserves, and Buyer hereby grants to Seller, a security interest, including any applicable purchase money security interest, in all products (and all proceeds from the sale of such products by Buyer) sold by Seller to Buyer. Buyer hereby authorizes Seller to file any financing statement or other document which is, or becomes, necessary for Seller to perfect the security interest granted to it under this Section 17.

**18. ARBITRATION.** Any controversy or claim arising out of or in connection with the negotiation, execution and/or performance of this Agreement (other than the failure by Buyer to pay for product provided when due hereunder) shall be submitted to arbitration in accordance with the then current rules of the American Arbitration Association. The arbitration shall be conducted in Akron, Ohio, or at such other place as the parties may agree upon, by one person independent of the parties appointed by them by mutual agreement (the "Arbitrator"). Failing the appointment of an Arbitrator by the parties, such Arbitrator shall be appointed by the president of the American Arbitration Association or his designee. Judgment on any award may be entered in any court having jurisdiction as hereinafter provided. The arbitral award shall be enforceable under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notice of process in connection with arbitral or judicial proceedings may be served upon the parties by registered or certified mail, with the same effect as if personally served. Any money awards shall be expressed in United States currency and shall include a reasonable interest component. The costs of any such arbitration proceeding shall be paid by the party against which the award is rendered.

**19. LAW AND JURISDICTION.** This Agreement will be governed by and construed and enforced in accordance with the Laws of the State of Ohio applicable to agreements made and to be performed entirely within such state, without regard to conflict of laws rules thereof. The United Nations Convention on Contracts for the International Sale of Goods, or any subsequently enacted treaty or convention, shall not apply or govern this Agreement or the performance hereof or any aspect of any dispute arising hereunder. Subject to the provisions of Section 19, the parties agree that any action brought by any party shall be brought and resolved exclusively by the State and Federal courts located in Akron, Ohio, and the courts to which an appeal therefrom may be taken; provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order or arbitral award. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. The Parties agree that either or both of them may file a copy of this Section 20 with any court as written evidence of the knowing, voluntary and bargained agreement

between the parties irrevocably to waive any objections to venue or to convenience of forum. Legal process in any proceeding may be served on any party anywhere in the world.

**20. SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

**21. WAIVER.** Except as otherwise specifically set forth in this Agreement, no modification or termination hereof or waiver of any of the obligations hereunder shall be effective unless in writing and signed by the party against whom such modification, termination or waiver is sought to be enforced. The failure by Seller to enforce at any time any of the provisions herein, shall not constitute a waiver and shall in no way be construed as a waiver of such provisions or options, nor in any way be construed to affect the validity of this agreement or any part thereof, or the right of the Seller thereafter to enforce each and every such provision.

**22. BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Buyer may not assign any rights or claims, or delegate any duties under this Agreement, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.

**23. INDEMNIFICATION.** Buyer shall indemnify and hold harmless Seller its officers, directors, employees and agents from and against any claim (including reasonable costs, litigation expenses and attorneys' fees) for personal injury to or death of any person or damage to property by whomsoever owned, to the extent caused by the negligent acts or omissions of the Buyer, its agents or employees arising out of or relating to its use of Seller's products and services.

**24. ENVIRONMENTAL MATTERS.** Seller and Buyer agree that Seller shall not have any responsibility for any hazardous or toxic materials, wastes or substances ("hazardous substances") at Buyer's site, and that Seller shall have no discretion or control over (or participation in) the use, treatment, storage, transportation, disposal, release, investigation or remediation (collectively, "handling") of any such hazardous substances and no authority or obligation to make decisions or implement actions to prevent, abate, or remediate any conditions caused by the handling of such hazardous substances. Buyer agrees to release, hold harmless, defend and indemnify Seller from and against all actual or threatened claims, demands, orders, losses, lawsuits, liabilities, damages, penalties, fines, expenses and costs (including attorneys and expert fees) arising from or related to: (i) the handling of hazardous substances at Buyer's site or in relation to the products or the services sold or provided by Seller hereunder; and (ii) any noncompliance (or alleged noncompliance) with Environmental, Health and Safety Laws with respect to Buyer's site, or any products and services sold or provided by Seller hereunder. For purposes of this Section, "Environmental, Health and Safety Laws" means any federal, state, local or foreign laws, regulations, codes, rules, orders, ordinances, permits, or requirements pertaining to the environment or workplace safety and health, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq. (as amended), the Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (as amended), and the Occupational Safety and Health Act, 29 USC § 651 et seq. (as amended).

**25. ENTIRE CONTRACT.** This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLER IS MAKING NO REPRESENTATIONS OR WARRANTIES TO BUYER AND ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO EFFECT OR FORCE.