

GENERAL TERMS AND CONDITIONS OF SALE

- (1) **ENTIRE AGREEMENT:** This Agreement contains all the terms and conditions of sale and purchase of the material named herein and constitutes the complete understanding of the parties with respect thereto. No modification, extension, or release from any provision hereof shall be effected by mutual agreement, acknowledgment, acceptance of purchase order or shipping instruction forms, or otherwise, unless the same shall be approved in writing, signed by the authorized individual of the party to be bound, and specifically described as an amendment to or extension of this Agreement. No waiver by either Seller or Buyer with respect to any breach or default or of any remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be approved and expressed in writing signed by the authorized corporate officer of the party to be bound.
- (2) **GOVERNING LAW:** THE PARTIES HERETO AGREE THAT ALL OF THE PROVISIONS OF THIS AGREEMENT AND ANY QUESTIONS CONCERNING ITS INTERPRETATION AND ENFORCEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW JERSEY, U.S.A. and the execution and delivery of this Agreement shall be deemed to be the transaction of business within the State. The United Nations Convention on Contracts for the International Sale of Goods, and the Uniform Principles of International Commercial Contracts, shall NOT apply to this Agreement. Further, the parties agree that any dispute arising out of this Agreement, if not confined to Arbitration, Article 12 of these General Conditions, shall be brought only in the federal or state courts in the state of New Jersey and both parties consent to the jurisdiction of said courts and expressly waive the defense of an inconvenient forum to the maintenance of any such proceeding.
- Neither this Agreement nor any interest therein may be transferred or assigned by either party except upon the prior written consent of the other party, such consent not to be unreasonably withheld.
- (3) **BUYER'S CREDIT AND PAYMENT:** Buyer shall pay all invoices in U.S. dollars and in good funds according to the payment terms agreed between the parties, without set-off or deductions. Buyer will pay Seller all amounts due by wire transfer or Electronic Funds Transfer. Payments which fall due on a non-banking day (weekend or holiday) must be received by the preceding banking day. If payment is not received by the date due, any outstanding amount shall bear interest at the monthly rate of one and one-half of one percent (1.5%) per month or the maximum rate allowed by law. Seller reserves the right, without liability, without prior notice, without prejudice to any other remedies under this Agreement or by operation of law or equity, to terminate this Agreement and/or suspend further deliveries under it in the event Seller fails to timely receive full payment in good funds for any one shipment when same becomes due and payable according to the terms set forth herein. Buyer agrees to provide current financial statements upon request by Seller. If in Seller's sole and absolute discretion Seller deems the financial condition of Buyer (and/or credit risks relating thereto) to be unsatisfactory, Seller may require cash in advance in good funds or security that Seller deems satisfactory. Further, Seller may withhold product shipments until receipt of such advance payment or the aforescribed satisfactory security. Seller may at any time, upon giving notice to Buyer, decline to make delivery except for cash in advance in good funds. Separately, in the event that Seller in its sole discretion determines that the applicable credit risk is unsatisfactory, Seller also reserves the right to offset or deduct any amount due to Buyer from Seller, accelerate the due date on all amounts owed to Seller, and/or reclaim delivered product. Any quantities suspended pursuant to Seller's exercise of these aforescribed rights may, at Seller's sole option, be eliminated from this Agreement without liability. If amounts due hereunder are placed with an outside agency for collection, or if suit is brought for collection, or if collected through probate, bankruptcy, or judicial proceedings, then Buyer shall pay all costs of collection, including but not limited to all attorney's fees, in addition to other amounts due.
- (4) **EXCUSE OF PERFORMANCE:** Either Seller or Buyer will be excused from its obligations in this Agreement to the extent that performance is delayed or prevented in whole or part as a result of any circumstance whatsoever beyond its reasonable control (except financial) that interferes with the production, supply, transportation, or consumption of the material covered by this Agreement or with the supply of any raw materials (including energy resources) used in connection therewith. Circumstances "beyond its reasonable control" include, but are not limited to, acts of God, natural catastrophes, earthquakes, lightning, hurricanes, floods, fire, acts of war or terrorism, sabotage, embargo, civil disturbance, riots, acts of governmental authority, compliance with laws, regulations, orders, recommendations, or requests of governmental authority, patent issues, labor disruption or strikes, electric power outages, explosions, accidents, mechanical malfunction or breakdown, plant shutdowns, annual plant turnarounds, release of dangerous or hazardous materials, interference with the usual means of transporting the material, and anything of a similar nature. In addition, Seller shall be so excused from its obligations in the event it is unable to purchase raw materials at a commercially reasonable price or in the event it elects, in its reasonable discretion, to cease or suspend the operation of any facility where it is producing any quantity of the material delivered hereunder. Quantities so affected by any such cause may be eliminated from the Agreement without liability, but the Agreement shall otherwise remain unaffected. Seller may, during any such period of shortage, prorate and allocate its supply of such material among itself for its own consumption and/or the consumption of its affiliated companies, its contract customers and its regular customers not then under contract, in such manner as may be deemed reasonable by Seller. If, because of any such circumstances, there should be a shortage of any material covered by this Agreement, Seller shall not be obligated to purchase replacement material in the marketplace, to change its supply point for the Buyer, or change the facility where the material is manufactured in order to satisfy any obligations hereunder.
- (5) **LIMITED WARRANTY:** Subject to the Limitations of Liability, Article 8, hereunder, Seller warrants title and that all materials sold hereunder shall conform to Seller's standard specifications as of the date of shipment from Seller to Buyer. SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, MEDICAL OR OTHERWISE (REGARDLESS OF WHETHER SELLER KNOWS BUYER'S INTENDED USE OR PURPOSE), OR ANY OTHER MATTER WITH RESPECT TO THE MATERIALS, WHETHER USED ALONE OR IN COMBINATION WITH OTHER SUBSTANCES. Any suggestions made by Seller concerning uses or applications of said materials reflect Seller's opinion only and Seller makes no warranty of results to be obtained.
- (6) **COMPLIANCE WITH LABOR LAWS:** In producing product sold hereunder Seller shall comply with the Fair Labor Standards Act of 1938, as amended; provision of Executive Order 11246, as amended; Age Discrimination in Employment Act of 1967, as amended; Rehabilitation Act of 1973, as amended; Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; and Equal Pay Act, as amended.
- (7) **TITLE AND RISK OF LOSS:** Title and risk of loss for the material shall pass to Buyer upon delivery to any contract carrier, Buyer's equipment, or its authorized representative at the Shipping Point (whichever occurs first). Buyer hereby grants Seller an unconditional security interest in all and any goods for which payment has not been received and agrees that Seller may file all and any applicable financing statements and appropriate notices to competing secured parties to protect Seller's interests therein.
- (8) **LIMITATIONS OF LIABILITY:** Within fifteen (15) days after receipt of each shipment of material sold hereunder, Buyer shall examine such material for any damage, defects, or shortage. All claims, including for alleged damaged or defective goods, shortage or non-delivery of goods, negligence or any other cause whatsoever, shall be deemed waived unless made in writing and received by Seller within fifteen (15) days after Buyer's receipt of the goods. Failure of Buyer to give notice of any claim within such time period shall be deemed an absolute and unconditional waiver of such claim, irrespective of whether the facts giving rise to such claim shall have been discovered or whether processing, use or resale of the material shall have taken place. SELLER'S LIABILITY FOR ANY AND ALL LOSSES OR DAMAGES RESULTING FROM ANY CAUSE WHATSOEVER, INCLUDING ALLEGED AND/OR PROVEN NEGLIGENCE, BREACH OF CONTRACT AND/OR BREACH OF WARRANTY, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE MATERIAL IN RESPECT TO WHICH THE CLAIM IS MADE, OR AT THE ELECTION OF SELLER, THE REPAIR OR REPLACEMENT OF SUCH MATERIAL. Seller shall not be liable for, and Buyer assumes responsibility for, all personal injury and property damage resulting from the handling, possession, use, or resale of the material. In no event shall Seller be liable for special, incidental, punitive, exemplary, and/or consequential damages of any type, regardless of whether Buyer's claim is in contract, tort, strict liability, or otherwise. Transportation charges for the return of material which is the subject of this Article 8 shall not be paid by Seller unless authorized in advance by Seller.
- (9) **CHANGE TO PRICE AND TRANSPORTATION TERMS:** At any time during the term of the Agreement, Seller may, upon written notice to Buyer, change the price or transportation terms, effective on the date set forth in such notice. Buyer's failure to make written objection to any such change within three (3) days of notice of such change shall constitute the acceptance of the new price or transportation terms. Seller reserves the right to terminate this Agreement on thirty (30) days written notice if any governmental authority in any way restricts or limits the right of Seller to increase its prices or to continue any price already in effect.
- (10) **ADJUSTMENT TO PRICE:** If the Seller and Buyer agree that the price will follow market movements based on an agreed index of industry prices or other similar methodology, and if the price pursuant to such index or methodology has not been settled as of the time of shipment, after the price has settled, Seller shall issue a post-sale price adjustment(s) to reflect the final price as indicated by the agreed index or other methodology.
- (11) **UNLOADING AND DEMURRAGE:** Seller's delivery equipment, if furnished hereunder, is with the understanding that Buyer will take all necessary actions and precautions to promptly unload and return Seller's railcars and/or returnable containers in as good condition as received, undamaged condition as when first received from Seller (D.A.P. Delivered At Place, unless otherwise specified) to delivering carrier (in railcar, constructive placement for delivery/switching) within the tariff or contracted period free of demurrage or extra detention charges. All applicable demurrage or extra detention charges on such equipment shall be for Buyer's account. For Seller's railcars, Buyer will be subject to a holding charge of fifty dollars (\$50) per day per railcar after Seller allowed holding days of constructive placement and an additional one time charge of five thousand dollars (\$5,000) per railcar after one hundred and twenty (120) days of constructive placement. Buyer is responsible to inspect railcars for visual defects or damages of any type caused by railroad carrier or any other party. Buyer shall notify Seller of any defect or damage found, irrespective of how caused or by whom, including open hatches and bottom unloading gates, within twenty-four (24) hours of receipt at Buyer's point of delivery. Buyer shall not repair any damages or defects in connection with Seller's railcars and/or returnable containers without Seller's advance written permission to do so. Buyer shall close all hatches, gates, outlet caps, and seal prior to releasing Seller's railcars, loaded or empty, for return shipment. Separate from and additional to Buyer's liability for all and any loss, damage, injury, fine, or penalty of any kind (if any) that results and/or is suffered by (or claimed or assessed against) Seller as a result of Buyer's failure to have closed or sealed every hatch, gate, and outlet cap pursuant to Buyer's aforesaid obligations, Buyer will be subject to a charge of fifty dollars (\$50) per individual hatch, gate, and/or outlet cap that is missing or returned to Seller in less than fully closed and sealed condition when each railcar is returned. Buyer shall not assign, reoute, direct, or reassign any railcar except with prior written consent of the Seller. Buyer will cause no liens of any kind, including but not limited to tax liens, to be imposed on the railcars. BUYER ASSUMES FULL RESPONSIBILITY AND LIABILITY FOR THE USE, CONDITION, AND SAFEGUARDING OF SELLER'S RAILCARS AND/OR RETURNABLE CONTAINERS AND BUYER AGREES TO (1) COMPENSATE SELLER FOR ANY LOSS OR DAMAGE TO SELLER'S PROPERTY (IRRESPECTIVE OF HOW CAUSED OR BY WHOM) UNTIL SUCH TIME AS THE RAILCARS AND/OR CONTAINERS HAVE DEPARTED BUYER'S FACILITY, AND (2) TO INDEMNIFY AND SAVE SELLER HARMLESS FROM ANY LOSS OR DAMAGE TO PROPERTY OTHER THAN SELLER'S AND FROM ANY INJURIES TO PERSONS RELATING IN ANY WAY TO THE USE, CONTROL, POSSESSION, HANDLING, LOADING, UNLOADING, STORAGE, OR TRANSPORTATION OF SUCH RAILCARS AND/OR CONTAINERS WHILE SUCH ARE IN BUYER'S (OR BUYER'S AGENT'S) POSSESSION OR WHILE SUCH ARE OTHERWISE UNDER BUYER'S (OR BUYER'S AGENT'S) CONTROL.
- (12) **ARBITRATION:** Any dispute or controversy arising out of this Agreement shall be referred to and determined by a sole arbitrator, except that if one or both of the parties oppose the final selection of the sole arbitrator, either party may require that there be a panel of three (3) arbitrators and the American Arbitration Association shall comply with such requirement. Within forty-five (45) days of written demand for arbitration, the arbitrator(s) shall be selected by the American Arbitration Association pursuant to the then current rules of that Association. The arbitrator(s) shall decide what proportion of all arbitration-related expenses shall be paid by each party. All arbitration proceedings shall be conducted in the state of New Jersey. The substantive laws to be applied by the arbitrator in reaching a decision shall be the laws of the state of New Jersey. The arbitration procedure to be followed shall be determined by the arbitrator(s) with the objective to keep the arbitration costs to the parties as minimal as possible while still allowing for a fair decision to be reached. In event of a default by any party in respect to any procedural order made by the arbitrator(s), the arbitrator(s) shall have the power to proceed with the arbitration and to deliver his (their) decision and award. The duty to arbitrate shall survive the cancellation or termination of this Agreement. The arbitrator(s) shall provide the parties with a concise written explanation of the reasoning behind the decision and award. The arbitrator's(s) decision and award shall be final and legally binding on all parties.
- (13) **SEVERABILITY AND WAIVER:** Every provision in this Agreement is intended to be severable such that if any term or provision hereof is illegal or invalid for any reason whatsoever, such provision shall be severed from this Agreement and shall not affect the validity of the remainder of this Agreement. A waiver of any breach or default under this Agreement must be in writing and shall not constitute a waiver of any other or subsequent breach or default of the same or any other provision hereof.
- (14) **BUYER COMPLIANCE WITH APPLICABLE U.S. LAWS AND REGULATIONS AND CLARIFICATION OF EACH PARTY'S RELEVANT ROLES:** Buyer shall comply with all relevant federal, state, and/or local laws, ordinances, rules and regulations applicable to the materials or goods as well as applicable to its performance under this Agreement, including but not limited to all U.S. export regulations, all U.S. economic sanctions laws, the U.S. Foreign Corrupt Practices Act, and all other applicable anti-bribery and anti-corruption laws of any applicable jurisdiction. Buyer will not, in violation of any relevant laws, whether directly or indirectly, export, re-export, or otherwise transfer goods or any technical information disclosed to Buyer, to any person or entity that falls within any category or description, and/or is specifically identified, described, or designated, by any relevant governmental agency or governmental authority as a prohibited or blocked party for such purposes. Buyer will fully defend and indemnify Seller for and against any liability by reason of Buyer's failure to comply with any violation of this paragraph. Further, if any material(s) purchased by Buyer are to be exported from the United States by Buyer, Buyer shall, for purposes of this Agreement, be the "Exporter of Record" as that term is used by U.S. Customs and Border Protection ("CBP") and/or the Bureau of Industry and Security ("BIS") and/or any other successor or related governmental agency, and Buyer shall comply with all rules and regulations (including those related to reporting, filing, and record keeping) of all and any of the aforesaid governmental authorities and/or agencies.
- (15) **UCC 2-207 "BATTLE OF THE FORMS" IS NOT APPLICABLE:** The parties have agreed that Uniform Commercial Code (UCC) Section 2-207, commonly referred to as the "Battle of the Forms" clause, shall NOT apply to this transaction or to any communications or forms generated by Buyer or Seller in connection therewith. Rather, it is the mutual intent of the parties that these General Conditions shall be the terms and conditions which shall exclusively govern and control this transaction, and that any differing terms or conditions in any communications or forms generated by Buyer shall not apply.
- (16) **INDEMNITY:** BUYER ASSUMES ALL RISK AND LIABILITY AND BUYER WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS SELLER, ITS PARENTS, AFFILIATES, AND SUBSIDIARIES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS ("SELLER INDEMNITEES") FROM AND AGAINST ANY AND ALL THIRD PARTY CLAIMS, LAWSUITS, LOSSES, LIABILITY, OR EXPENSE OF ANY TYPE OR DESCRIPTION, INCLUDING WITHOUT LIMITATION, ALL COURT COSTS AND ATTORNEYS' FEES INCIDENT THERETO ("THIRD PARTY CLAIMS") THAT ARISE OUT OF, ARE CONNECTED WITH, RESULT FROM, OR RELATE IN ANY WAY TO SITUATIONS OR OCCURRENCES WITH RESPECT TO MATERIALS OR GOODS IN CONNECTION WITH THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, RECEIPT, POSSESSION, CONTROL OVER, USE, HANDLING, STORAGE, PROCESSING, DISPOSAL, RESELL, AND/OR RETRANSFER OR TRANSPORTATION OF SUCH PRODUCTS OR GOODS) AFTER DELIVERY OF SAME TO BUYER. THE AFORESAID INDEMNITY OBLIGATIONS OF BUYER SHALL INCLUDE INDEMNITY RELATED TO: (i) PERSONAL INJURY OR DEATH OF ANY PERSON (INCLUDING WITHOUT LIMITATION, TO BUYER'S EMPLOYEES OR AGENTS AND/OR TO ANY THIRD PARTY); AND (ii) DAMAGE TO REAL OR PERSONAL PROPERTY OF ANY PARTY OR THIRD PARTY. SUCH INDEMNIFICATION AND OBLIGATION TO DEFEND SHALL APPLY WITHOUT REGARD TO THE CAUSE OR CAUSES THEREOF, INCLUDING, WITHOUT LIMITATION, STRICT LIABILITY OR ANY DEGREE OF NEGLIGENCE (INCLUDING BUT NOT LIMITED TO GROSS NEGLIGENCE; AND REGARDLESS OF WHETHER CONCURRENT, ACTIVE, OR PASSIVE) OF A SELLER INDEMNITEE; PROVIDED, HOWEVER, THAT BUYER SHALL HAVE NO SUCH OBLIGATIONS FOR ANY THIRD PARTY CLAIM(S) THAT DIRECTLY RESULT FROM THE PROVEN SOLE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF A SELLER INDEMNITEE.
- (17) **SAFETY, HEALTH, AND ENVIRONMENTAL COMMUNICATIONS:** Buyer acknowledges that it is familiar with the risks associated with handling, transporting, using, storing, and disposing of material, including, without limitation, those set forth in Seller's Safety Data Sheet for material ("SDS"), as of the date of shipment, found at www.fpcusa.com. Buyer further acknowledges its separate and independent knowledge of such risks, which are known in Buyer's industry. Buyer is solely responsible for determining the suitability of material in Buyer's formulations and applications prior to use. Buyer will maintain compliance with all appropriate safe handling and use procedures, and all safety and health-related governmental requirements concerning material, and will take such steps as necessary to inform its employees, agents, contractors, customers and other third parties of proper use, storage, and disposal of material. Such steps include, but are not limited to, dissemination of pertinent information contained in the SDS, as appropriate. Buyer will not deliver or consign commercial or sample quantities of material to any party whom Buyer reasonably believes will handle, transport, use, store, or dispose of said material in a dangerous manner or contrary to law or the advice of Seller. Buyer hereby agrees that Seller will have the right to immediately cease delivery of material to Buyer, if, in Seller's sole opinion, Buyer fails to take necessary action to prevent or mitigate imminent endangerment to human health, safety, or the environment with regards to Buyer, or Buyer's representatives or agents' handling, transportation, use, storage, and disposal of material.
- (18) **TAXES:** Any tax (except income taxes), excise or other governmental charges that now or in the future may be imposed, increased, or levied upon the production, value added, sale, transportation, storage, handling, delivery, use, or disposal of Product sold hereunder which Seller may be required to pay, shall be paid by Buyer to Seller in addition to the purchase price. Buyer shall provide Seller, on request, with properly completed exemption certificates for any tax from which Buyer claims exemption.
- NOTICE TO BUYER:**
Seller's measurement of weights shall be controlling; however, any weight deviation from the Seller's controlling measurements, within +/- one percent (1%) is hereby agreed by both Seller and Buyer to be waived. Regardless, and separately, any permissible valid claims for freight allowance (if any) must be accompanied by original receipted freight voucher. Before accepting goods from the transportation company, Buyer must check to ensure that Buyer is receiving each article, but if shipment is short or damaged, Buyer must refuse the goods until receiving an adjusted freight receipt, which Buyer must ensure that Buyer receives from the transportation company. On carload shipments Buyer must take full car seal records and carefully note whether all seals are intact.