

## TERMS AND CONDITIONS

**1. APPLICABILITY:** These terms and conditions of sale (these "Terms") are the only terms which govern the sale of the goods ("Goods") by Colonial Chemical Solutions, Inc. ("Seller") to Customer listed on the other side of these Terms ("Customer"). The Straight Bill of Lading – Short Form on the other side of these Terms (the "BOL"; and collectively with these Terms (this "Agreement")) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Customer's general terms and conditions of purchase regardless whether or when Customer has submitted its purchase order or such terms. Fulfillment of Customer's order does not constitute acceptance of any of Customer's terms and conditions and does not serve to modify or amend these Terms.

**2. DELIVERY:** Seller shall not be liable for any delays, loss or damage in transit. 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 loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Goods to Customer.

**3. NON-DELIVERY:** 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.

**4. QUANTITY:** 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.

**5. SHIPPING TERMS:** Delivery shall be made FOB Delivery Point.

**6. 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 constitutes a purchase money security interest under the Uniform Commercial Code of the State of Georgia and of the state in which Customer is organized. Customer hereby irrevocably authorizes Seller at any time and from time to time to file in any relevant jurisdiction any financing statements and amendments thereto that contain the information required by Article 9 of the applicable Uniform Commercial Code, including continuation statements for the purpose of perfecting, confirming, continuing, enforcing or protecting the security interest granted hereunder.

**7. CREDIT, PAYMENT TERMS AND INTEREST:** Purchases of Goods are subject to prior credit approval and payment is due in accordance with the applicable credit application or invoice. 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 invoices from their due dates and Seller's reasonable costs of collection, including, but not limited to, reasonable attorneys' fees.

**8. AMENDMENT AND MODIFICATION:** These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.

**9. 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 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 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, (i) replace such Nonconforming Goods with conforming Goods, or (ii) 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 its 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 Customer's expense and risk of loss, the replacement Goods to the Delivery Point. Customer acknowledges and agrees that the remedies set forth in Section 8 are Customer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 9, all sales of Goods to Customer are made on a one-way basis and Customer has no right to return Goods purchased under this Agreement to Seller.

**10. LIMITED WARRANTY:** Seller warrants to Customer that the Goods and are free from material defects in material. **EXCEPT FOR THE PRECEDING WARRANTY, SELLER MAKES NO WARRANTY WHATSOEVER, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.** 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 of the time when Customer discovers or ought to have discovered the defect; (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: (i) repair or replace such Goods (or the defective part) or (ii) credit or refund the price of such Goods at the pro rata contract rate 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.**

**11. LIMITATION ON LIABILITY: IN NO EVENT SHALL SELLER BE LIABLE 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 BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, 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. REGARDLESS OF PRIOR DEALINGS, ANY CLAIM BY BUYER RELATED TO THE PRODUCT OR DELIVERY SHALL BE DEEMED WAIVED UNLESS PRESENTED IN WRITING TO SELLER AND FILED IN A COURT SPECIFIED IN SECTION 21 BELOW WITHIN 1 YEAR FROM THE DATE OF DELIVERY.**

**12. HAZARDOUS MATERIALS:** Customer shall take all necessary and legally required precautions, including, but not limited to, appropriate training of Customer's personnel, for the health and safety of Seller's personnel who will be delivering the Goods, including taking all necessary or legally required actions to properly store, remove and/or remediate any safety conditions or hazardous materials, as well as, maintain a reasonably safe operating environment in accordance with legal requirements so that Seller can safely deliver the Goods.

**13. INSURANCE:** Customer shall procure and maintain the following policies of insurances (a) Worker's Compensation Insurance in an amount sufficient to comply with applicable laws; (b) General Liability Insurance with policy limits acceptable to Seller; and (c) such other insurance reasonably required by Seller. 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.

**14. COMPLIANCE WITH LAWS:** Customer shall comply with all applicable laws, regulations and ordinances. Customer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement, including all environmental laws and other laws relating to the ownership, handling, storing, shipping and use of hazardous materials.

**15. TERMINATION:** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement 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.

**16. WAIVER:** No waiver by Seller of any of the provisions of this 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 this 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.

**17. CONFIDENTIAL INFORMATION:** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, 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 this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied 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. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party.

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

**19. ATTORNEYS' FEES:** Customer shall reimburse Seller for any and all attorneys' fees arising from or related to enforcement of this Agreement, including, but not limited to, attorneys' fees arising from any collection efforts for past due amounts owed to Seller by Customer for the sale of the subject Goods.

**20. GOVERNING LAW:** All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal 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.

**21. JURISDICTION; VENUE:** Any legal suit, action or proceeding arising out of or relating to this 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 such courts in any such suit, action or proceeding.

**22. NOTICES:** All notices, request, 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).

**23. SEVERABILITY:** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

**24. SURVIVAL:** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration hereof, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.