

## GENERAL TERMS AND CONDITIONS

In addition to the specific terms and conditions set forth in the Purchase Order attached hereto, the following General Terms and Conditions also apply and, together, constitute the entire agreement between the parties ("Agreement"):

**1. Scheduling of Shipments.** Buyer and Seller shall work together to coordinate the shipment of Product(s) to Buyer's Facilities. Authorized representatives at Buyer's Facilities will order Product(s) for delivery as required and Seller shall deliver such Product(s) on the agreed delivery date. ***Time is of the essence and it is essential that all Product(s) be delivered by Seller to Buyer in accordance with the agreed delivery dates.*** Buyer must be advised immediately of any delays in delivery of Product(s). Seller agrees to both reimburse Buyer in full and indemnify Buyer for any loss, damage or cost, including, but not limited to, attorneys' fees arising out of or related to any and all delays in Buyer's receipt of Product(s).

**2. Freight.** All shipments from Seller to Buyer will be designated as "F.O.B. Buyer's Facilities" or to such other location as designated by Buyer. Seller shall pay all shipping costs. On a monthly basis, Seller shall provide Buyer with a detailed description of the shipping costs incurred to ship Products(s) to Buyer. If Buyer determines it has more favorable shipping rates than Seller has with either the same or other carriers, then upon Buyer's notifying Seller of the more favorable shipping rate, Seller shall ship the Product(s) utilizing Buyer's carrier at the more favorable shipping rates. In that event, Buyer's carrier will invoice Buyer for such shipping costs and Seller shall immediately reduce the price of Products by the amount of shipping costs that Seller would have incurred to ship Product to Buyer if Buyer did not elect to have Seller use Buyer's carrier.

**3. Shipments of Hazardous Materials.** Seller shall clearly mark all hazardous materials or substances. Seller shall also comply with all federal, state and local laws, regulations, orders and ordinances regarding the shipment of hazardous materials or substances.

**4. Product Changes.** Seller shall provide Buyer written notice a minimum of six (6) months prior to any change in the specifications of the Product(s) that could in any way affect the appearance, performance or Buyer's use of the Product(s). Similarly, Seller shall provide Buyer written notice a minimum of six (6) months prior to any change in feedstock, raw materials, manufacturing process or any other similar change that could in any way affect the appearance, performance or Buyer's use of the Product(s). Any changes covered by this Section must be approved in advance by Buyer. Buyer, at its sole election, may terminate this Agreement at any time without any liability if Seller fails to provide such timely notice.

**5. Inspection.** Buyer, at its sole election, may inspect and test all Product(s) under this Agreement at all times and places. Buyer's decision as to whether or not to conduct any such inspection and/or testing shall not relieve Seller of its obligation to comply with all obligations under this Agreement. All Product(s) are subject to inspection and testing by Buyer upon arrival at the Buyer's Facilities. To the extent Buyer rejects Product(s) as nonconforming, the quantities under this Agreement will automatically be reduced by the amount of the nonconforming Product(s) unless Buyer otherwise notifies Seller. Defective Product(s) not in accordance with Buyer's specifications will be held for Seller's instructions and at Seller's risk, and if Seller so directs, will be returned at Seller's sole

expense. Seller's failure to provide written instructions within ten (10) days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity, will entitle Buyer, at Buyer's option, to either charge Seller for storage and handling or to dispose of the Product(s) without liability. Payments for Product(s) prior to inspection do not constitute an acceptance, and neither inspection, failure to make inspection, nor acceptance of Product(s) release Seller from any of the warranties or other provisions of this Agreement nor impair Buyer's rights to reject or revoke acceptance of nonconforming Product(s).

**6. Invoices.** Invoices must be mailed by Seller to Buyer immediately after any shipment. Payment will be made subject to Buyer's offset/deduction/credit for any loss, rejection, storage fee, shipping cost, or adjustment for shortage, deficiency in quality, failure to make specified delivery, defects, failure to comply with specifications or breach of any warranty of this Agreement. Any such adjustment by Buyer is not an exclusive remedy of Buyer for any of the foregoing and Buyer's use of such remedies do not constitute a waiver of any other right, remedy or privilege.

**7. Limited Meet or Release.** If, during the term of this Agreement, Buyer is offered any Product covered hereunder or another product meeting the quality specifications set forth in Exhibit A at a price lower than that being paid by Buyer under this Agreement, then Buyer will provide Seller notice of such offer. Within fifteen (15) days following receipt of such notice, Seller will either (a) meet such lower price; or (b) provide a release allowing Buyer to purchase such product from the third party supplier in the quantities Buyer elects and continue to sell Buyer its remaining requirements, if any, pursuant to the terms of this Agreement. Unless expressly stated otherwise, this Agreement, including the language in this Section, is neither intended, nor shall it be construed, to create an exclusive supply agreement between Buyer and Seller. As such, Buyer is free to purchase either any Product covered hereunder or another product meeting the quality specifications set forth in Exhibit A from any Seller of its own choosing.

**8. Most Favored Nations Pricing.** If at any time during the term of this Agreement, Seller sells a Product covered under this Agreement under more favorable terms and conditions to an unaffiliated third party, then Seller shall notify Buyer within three (3) business days and upon Buyer's election provide Buyer the Product under the same favorable terms and conditions, effective on the same date as Seller provides the more favorable terms and conditions to the unaffiliated third party and continue to provide the more favorable terms and conditions to Buyer for the same period of time as provided to the unaffiliated third party. Upon five (5) days written notice, Seller shall provide Buyer access to Seller's company books and records to ensure compliance with this provision.

**9. Cost Reduction Initiatives.** Supplier commits to working with Buyer to identify and implement a minimum of 3% in cost reductions for each calendar year during the term of this Agreement. The 3% will be based upon the actual total delivered cost per unit to the Buyer on January 1<sup>st</sup> of each year. Supplier shall provide the necessary personnel and/or technical resources required to assist Buyer with implementation of the identified savings. If Supplier does not assist Buyer with identifying and implementing the 3% minimum annual cost reduction requirements, then Buyer reserves the option to re-quote the business at the end of that calendar year for the remaining term of the Supply Agreement.

**10. Title to all Materials/Assets/Etc.** shipped by Johns Manville or on Johns Manville's behalf (collectively referred to as the "Asset") to a vendor for any reason shall be vested

and remain the property of Johns Manville. The vendor shall not permit any lien or other encumbrance of any kind to be placed against the Asset while they are in the vendors possession and/or control. The vendor agrees to provide signage in their facilities that clearly identifies the Asset to be the property of Johns Manville, and shall execute such documents as reasonably requested by Johns Manville to preserve Johns Manville's title to the Asset. In addition, the vendor grants to Johns Manville a power of attorney to execute any and all documents necessary to establish and maintain Johns Manville's title to the Asset. Johns Manville shall have the right to immediately, and without notice, take possession of the Asset at any time during the vendor's normal business hours. Johns Manville shall be responsible for any and all inventory and/or property taxes on all Asset owned by Johns Manville.

**11. Warranty.** Seller warrants that all Product(s) provided hereunder are free and clear of all liens and encumbrances whatsoever and that Seller has good and marketable title to same. Seller also warrants that all Product(s) and services are free from any actual or claimed patent, copyright or trademark infringement. In addition to all warranties that are prescribed or implied by law, Seller expressly warrants that the Product(s) conform strictly to the specifications set forth in Exhibit C; are merchantable, of good material and workmanship, and free from defects; are suitable for the use intended; conform to recognized industry standards of quality and function; and conform in all respects in the production, sale, delivery and use thereof with all applicable laws and governmental orders, rules and regulations.

**12. Remedies.** In addition to any other remedies available to Buyer including those remedies afforded Buyer under the Uniform Commercial Code, Seller shall, at Seller's expense and at the convenience of and the direction of the Buyer, immediately repair, replace, or otherwise correct any defective or nonconforming Product(s) and workmanship discovered within the maximum time permitted by law, which shall be no less than two (2) years from the later of: (a) the date of acceptance of Product(s); or (b) the date the defective Product(s) were discovered by Buyer.

**13. Indemnity.** Seller shall indemnify, defend and hold harmless Buyer from and against any and all losses, damages (including incidental, special and consequential damages), liabilities, and claims, at law and/or in equity (including all reasonable costs, expenses and attorneys' fees incurred in connection therewith) related to or arising out of: (a) Seller's title to the Product(s) purchased by Buyer hereunder; (b) infringement or alleged infringement of any patent, copyright or trademark relating to the sale or use of the Product(s) purchased by Buyer hereunder or the intended use thereof; and (c) Seller's breach of the warranty set forth in Section 11, above or any other material provision set forth in this Agreement.

**14. Insurance Coverage.** Seller shall maintain the following insurance in full force and effect during the full term of this Agreement:

- i. Worker's Compensation Insurance with full statutory limits;
- ii. Employer's Liability Insurance in the amount of \$500,000 per occurrence and in the aggregate;
- iii. Comprehensive General Liability Insurance (including blanket contractual liability and completed operation coverage) with combined single limits of

coverage for bodily injury and death and property damage in the amount of \$2,000,000 per occurrence and \$5,000,000 in the aggregate, with \$5,000,000 Umbrella Insurance for personal injury and property damage per occurrence and in the aggregate.

- iv. Automobile Liability Insurance for owned and non-owned vehicles with combined single limits of coverage for bodily injury and death and property damage in the amount of \$1,000,000 per occurrence and in the aggregate.

All insurance policies shall be cancelable only upon thirty (30) days advance written notice to Buyer. Buyer shall be named as an additional insured on the Comprehensive General Liability and Automobile Liability Insurance policies. Prior to commencement of Seller's services under this Agreement, Seller shall provide Buyer with certificates of insurance, from a reputable insurance company with a Best's rating of A or an equivalent Best's rating, showing that the required coverage is in effect within ten (10) days after execution of this Agreement and from time to time as necessary during the term of this Agreement. Seller shall require any subcontractors under this Agreement to carry the same insurance with the same limits of coverage as required of Seller.

**15. Termination for Cause.** If Seller fails to timely deliver the Product(s) or to perform any of the services contained in this Agreement at the time specified herein or otherwise defaults in the performance of any of its obligations hereunder and the default continues for ten (10) calendar days, or if Seller becomes insolvent, a trustee or receiver of Seller's business or assets is appointed, Seller makes an assignment for the benefit of creditors, or a petition in bankruptcy is filed by or against Seller, then in any such event, Buyer, at its sole and ultimate discretion, may cancel this Agreement in whole or in part and any other agreement, order, confirmation, or terms of sale between the parties, by written notice to Seller. Buyer shall have no liability or obligation whatsoever to Seller by reason of or resulting from such cancellation. In addition to any other remedies available, Buyer may purchase similar Product(s) elsewhere in such manner as Buyer may deem appropriate. Seller is liable to Buyer for any excess costs in procuring and purchasing the similar Product(s), plus any and all incidental and/or consequential damages

**16. No Waiver.** Failure of Buyer to insist upon strict performance of any of the terms and conditions in this Agreement will not be deemed a waiver of any rights or remedies that Buyer may have and shall not be deemed a waiver of any subsequent default in the terms and conditions hereof. The shipping or receiving of any Product(s) under this Agreement or payment therefore shall not be deemed a waiver of any rights for any prior failure by Seller to comply with any provision of this Agreement.

**17. Inconsistencies.** In the event of any inconsistency or conflict between these General Terms and Conditions and any other terms and conditions on either the face of this Agreement or an existing master agreement between the parties, then the General Terms and Conditions in this Agreement DO NOT control.

**18. Taxes.** Buyer will pay all regular and ordinary taxes or other governmental charges that now or in the future may be imposed, assessed or levied against Seller in connection with the purchase and sale of Product(s) under this Agreement. Buyer will provide Seller with properly completed exemption certificates for any taxes from which Buyer claims exemption. Seller shall be solely responsible for taxes based upon Seller's income or

profit. Seller shall be responsible for all export and import duties that are incurred prior to transfer of title of the Products to the Buyer.

**19. Confidentiality.** The purchase of Product(s) under this Agreement and all specifications and other information given to Seller in connection with this Agreement involve valuable property rights of Buyer and shall be held confidential by Seller; shall remain the property of Buyer; and shall not either be disclosed by Seller to third parties or used by Seller for any purposes (including Seller's advertising or other marketing efforts) other than those for which they have been prepared or supplied under this Agreement unless Seller receives Buyer's prior written approval.

**20. Severability.** If any provision herein is declared unenforceable by a court of competent jurisdiction, then it will not affect the enforceability of this Agreement. In such event, there will be substituted for the affected provision an enforceable provision as similar as possible to reflect the intent of the affected provision. If such provision cannot be amended so as to be enforceable, then this Agreement will be deemed amended to delete the unenforceable provision.

**21. Assignment.** This Agreement is not assignable or transferable without the prior, express written consent of Buyer, which consent will not be unreasonably withheld.

**22. Governing Law.** This Agreement is governed by and construed in accordance with the laws of the State of Colorado without regard to conflict of law principles and without regard to the United Nations Convention on the International Sale of Goods.

**23. Venue.** Seller and Buyer agree that in the event a dispute arises between them resulting in litigation that such litigation shall be undertaken in a state or federal court sitting in Denver County, Colorado. Buyer and Seller hereby submit to the jurisdiction and venue of any state or federal court sitting in Denver County, Colorado.

**24. Force Majeure.** Notwithstanding the provisions set forth above, in the event Seller or Buyer is unable, in whole or in part, by force majeure (as defined below), to carry out its obligations under this Agreement, that party's obligations, as they are affected by such force majeure, will be reduced or suspended during the continuance of the force majeure but for no longer period, and the party claiming the force majeure will use its best efforts to remedy such force majeure with due diligence. The party hereto that is affected by force majeure will give the other party notice of the force majeure as soon as possible after it occurs. The party giving notice of the force majeure will further give notice of the time that the force majeure is no longer applicable. The term "force majeure", as used herein, will mean acts of God, acts or failure to act of governmental authorities, wars, riots, fires, floods, explosions, national emergency, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the party claiming suspension. Increased cost of performance, lower profits, loss of profit opportunity, lack of or inability to obtain raw materials, fuel or supplier (unless caused solely by priorities, restriction or allocation imposed by governmental authority) change in market conditions, any market, financial or economic circumstance or change mechanical or equipment failures, delays in shipping or customs clearance, labor performance, labor efficiency, labor availability, labor strike (within Seller's negotiating control), labor disturbance or dispute (within Seller's negotiating control), labor shortage, or loss of economic benefit will specifically not be Force Majeure Events for purposes of this Agreement and will not be acceptable reasons

for failing to perform the obligations set forth in this Agreement. During the period of a force majeure, the party declaring force majeure will have its obligations to the other party reduced or suspended, as the case may be, to the extent and for the period of the force majeure. If the period of force majeure declared by Seller continues for a commercially unacceptable period, as determined by the Buyer, Buyer will have the right to obtain Product(s) and/or services from alternate sources and to decide whether such alternative supply arrangements will reduce the forecasted amount due from Seller in an amount equal to or less than that obtained by Buyer from such alternate sources. If the period of force majeure declared by Seller continues for forty-five (45) days, Buyer may terminate this Agreement upon fifteen (15) days' written notice anytime after said forty-fifth day to Seller.

**25. Compliance with Laws.** Seller shall comply with all foreign, federal, state and local laws, orders, rules and regulations which may affect or be applicable to this Agreement or the Seller including, without limitation, (a) those applying to the Product(s) covered by this Agreement, (b) those applying to the prices charged by Seller, (c) those applying to the payments to be made by Buyer or (d) those applying to labor, including, without limitation, the Fair Labor Standards Act and laws and orders regarding equal opportunity, handicapped workers, affirmative action, disabled veterans and small and disadvantaged businesses.

**26. Joint Development.** Buyer and Seller agree that during the term of this Agreement they may exchange technical information pertaining to the Product(s) and technical information pertaining to Buyer's products and processes in an effort to produce a higher quality product or process. To the extent Buyer and Seller engage in the joint development of a product or process utilizing each other's technology, the parties will enter into a separate joint development agreement before commencing any such joint development activities that establishes the relative rights and obligations of the parties, including the ownership of proprietary rights of jointly developed property.

**27. Entire Agreement.** Except as provided otherwise, this Agreement supersedes all previous communications, representations or agreements between the parties, either oral or written. This Agreement will not be deemed modified by the acknowledgment or acceptance of Seller's invoices, bills of lading or other documents. Any modification of this Agreement must be in the form of a written amendment signed by both parties.

**28. Safety.** Seller shall furnish to Buyer Material Safety Data Sheets and any warnings or other safety and health information concerning the Product(s) including, without limitation, any safe handling, use, storage, transportation or disposal practices.

**29. Attorneys' Fees.** In the event Buyer commences a proceeding against the Seller to enforce this Agreement and Buyer prevails in the proceeding, then Buyer shall recover from the Seller its attorneys' fees and costs incurred in such proceeding against the Seller and the Seller shall pay such attorney fees and costs.