



## TERMS AND CONDITIONS OF SALE

**1. BY PURCHASING THE GOODS OR SERVICES DETAILED ON THE FACE HEREOF (THE "GOODS") FROM SELLER, BUYER CONFIRMS THAT THE FOLLOWING TERMS AND CONDITIONS APPLY TO BUYER'S PURCHASE OF THE GOODS. THE TERMS AND CONDITIONS SET FORTH BELOW AND ON THE FACE SIDE HEREOF CONSTITUTE A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND SELLER. ALL REPRESENTATIONS, PROMISES, WARRANTIES, OR STATEMENTS BY AN AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO FORCE OR EFFECT. NO MODIFICATIONS OR ADDITIONS THERETO SHALL BE BINDING UPON SELLER UNLESS EXPRESSLY CONSENTED TO IN WRITING. ANY CONFLICTING WARRANTIES, TERMS AND CONDITIONS IN BUYER'S PURCHASE ORDER OR ANY OTHER BUYER DOCUMENT ARE SPECIFICALLY REJECTED BY SELLER.** No course of prior dealing or usage of trade shall supplement or explain any term used in this agreement.

**2. PRICE; PAYMENT.** Prices quoted are good for thirty (30) days, unless there occurs: (a) any change in the fertilizer or pesticide raw materials markets; (b) any change in the current cost of supplies, materials, or labor; (c) alterations in specifications, packaging, quantities, designs or delivery schedules; (d) legislation which increases the cost of producing, warehousing, or selling goods purchased hereunder, in which cases prices quoted may be changed at any time without notice until such time as Buyer's order is acknowledged in writing by Seller. Unless otherwise agreed to in writing by Seller, invoices shall be due and payable within thirty (30) days of the invoice date. In the event of late payment, Seller will impose a delinquency charge of 1½% per month which will be applicable to any outstanding balance. Until all amounts due are paid in full, Seller retains a security interest in the Goods and in all proceeds of the Goods and reserves the right to terminate future orders or withhold future shipments. Buyer shall execute financing statements on request and irrevocably authorizes Seller to execute and file same. Clerical errors are subject to correction. Unless otherwise stated in writing, Seller's prices do not include sales, use, excise, value added or similar taxes. Buyer is liable for all taxes on the Goods.

**3. WARRANTY.** Seller makes no warranty with respect to Goods manufactured by it other than (a) with respect to Goods manufactured by Seller based on specifications furnished by or on behalf of Buyer and accepted by Seller, such Goods have been manufactured substantially in accordance with such specifications, and (b) with respect to all other Goods manufactured by Seller, as provided in the written warranty statement(s) attached to or accompanying the Goods. THE FOREGOING WARRANTY IS EXCLUSIVE AND OFFERED IN LIEU OF ALL WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. No affirmation of Seller, by words or action, other than as set forth in this Section shall constitute a warranty. All warranty claims must be made in writing and delivered with the Goods, or any unused portion thereof (freight paid by Buyer) to Seller prior to the expiration of six (6) months from the date of shipment or be barred. If any of the Goods are found by Seller to be defective, such Goods will, at Seller's option, be replaced or repaired at Seller's cost. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to repair or replace defective Goods. Goods not manufactured by Seller are not warranted by Seller and are sold only with the warranties, if any, of the manufacturer thereof. Seller's warranty does not cover labor or other costs or expenses to remove or install any defective, repaired or replaced Goods. Seller's warranty does not apply to any Good which has been subjected to misuse, mishandling, misapplication, neglect (including but not limited to improper storage or maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than Seller or one of Seller's authorized agents.

**4. LIMITATION OF LIABILITY; ASSUMPTION OF RISK.** Seller's liability (whether under the theory of tort, contract, warranty, negligence, strict liability or otherwise) for its Goods shall be limited to repairing or replacing Goods found by Seller to be defective. Seller's liability shall in no case exceed the price allocable to the Good or part thereof which gives rise to the claim. It is understood and agreed that Buyer assumes all risks and liabilities resulting from the use of the Goods. Seller neither assumes nor authorizes any person to assume for Seller any of the liability in connection with the sale or use of the Goods.

**5. DISCLAIMER OF DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER. CONSEQUENTIAL DAMAGES SHALL INCLUDE WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSS SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE GOODS). BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE, OR INJURY.

**6. ACCEPTANCE.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim for shortage, overcharge, or damage to Goods within ten (10) days from invoice date, such Goods shall be deemed finally inspected, checked and accepted by Buyer and no allowances shall be made thereafter.

**7. DELIVERY; TITLE; RISK OF LOSS.** Partial shipments shall be permitted. Buyer agrees to accept a shipping tolerance of plus or minus 2%. Unless otherwise stated in writing by Seller, title to and risk of loss or damage passes to Buyer at the time Goods are transferred to a commercial transportation carrier for shipment. Unless Buyer specifies in writing the desired methods of transportation at the time of order placement, Seller will select the carrier and route. Unless otherwise stated in writing by Seller, all items ordered will be packaged according to Seller's standards. Special packaging at the request of Buyer is subject to Seller's written approval and additional charges. Any insurance on shipments shall be at the request and cost of Buyer.

**8. DELAYS.** All shipping dates are approximate, and are based upon current availability of materials, present production schedules, stability of the fertilizer and pesticide raw materials markets, and prompt receipt of all necessary information. Seller assumes no responsibility for delays. Seller will not be liable for any damage, loss, fault, or expense arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (1) strikes, fires, disasters, wars, riots, acts of God; (2) acts of Buyer; (3) shortages of fuel, labor, power, materials, supplies, transportation, or manufacturing facilities; (4) governmental action; (5) subcontractor delay; or (6) any other cause or condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

**9. TERMINATION, CANCELLATION; CHANGES; RETURNS.** Orders cannot be terminated, cancelled, or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent. Acceptance of Buyer's order by Seller shall be established upon delivery of an order acknowledgement to Buyer. In the event of cancellation or termination by Buyer of this order before completion thereof,



other than breach thereof by Seller, Buyer shall pay to Seller promptly upon receipt of invoice from Seller: (a) contract price for all products which shall have been completed prior to receipt of notice of termination; (b) all actual costs incurred by Seller in connection with the uncompleted portion of the order, including profit, overhead and costs of materials in process or purchased for processing the order; and (c) cancellation charges. Goods may not be returned without the written consent of Seller. Cancellation and restocking charges will be assessed to Buyer on all approved cancellations and returns.

**10. EXPORT CONTROL.** The sale, resale or other disposition of Goods are subject to the export control laws, regulations and orders of the United States and may be subject to the export and/or import control laws and regulations of other countries. Buyer agrees to comply with all such laws, regulations and orders and acknowledges that it shall not directly or indirectly export any Goods to any country to which such export or transmission is restricted or prohibited. Buyer acknowledges its responsibility to obtain any license to export, re-export or import as may be required.

**11. GENERAL CONDITIONS.**

A. In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the performance of any order or contract if Buyer is in default in the performance of any order or contract with Seller, and in case of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller.

B. No delay or omission by Seller in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar to or a waiver of any such right or remedy on any future occasion.

C. The sale of Goods pursuant to this order shall be governed by the laws of the State of Ohio. The United Nations Convention for the International Sale of Goods shall not apply. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF ANY OHIO STATE COURT OR FEDERAL COURT OF THE UNITED STATES OF AMERICA SITTING IN CUYAHOGA COUNTY, OHIO, AND ANY APPELLATE COURT FROM ANY THEREOF, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THE SALE OF GOODS AND SERVICES OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY AGREES THAT ALL CLAIMS IN RESPECT OF ANY SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN ANY SUCH OHIO STATE OR, TO THE EXTENT PERMITTED BY LAW, IN SUCH FEDERAL COURT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

D. Buyer represents and warrants to Seller that Buyer has provided Seller any and all documents and information reasonably required for Seller to manufacture and sell the Goods to Buyer, in each case, in compliance with all Applicable Laws, as defined below (such documents and information are collectively, the "Production Requirements"). Production Requirements may include, without limitation, the following: (1) raw material sourcing instructions, (2) formulation instructions, (3) manufacturing specifications, (4) shipping instructions, (5) labeling instructions, and (6) testing instructions. Buyer acknowledges and agrees that, unless Buyer provided Production Requirements to Seller, the manufacturing methodology and the selection, sourcing and quality of materials used by Seller in connection with the manufacture and sale of Goods to Seller were, in each case, at the sole discretion of Seller. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 3(B) (WARRANTY) OF THESE TERMS AND CONDITIONS OF SALE, SELLER SHALL NOT BE LIABLE TO BUYER AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO SUCH MANUFACTURING METHODOLOGY, AND SELECTION, SOURCING AND QUALITY OF MATERIALS USED BY SELLER.

Buyer further represents, warrants and agrees that (i) the Goods are registered under Applicable Laws in certain states, and Buyer shall at all times be solely responsible for determining the states in which the Goods are registered (collectively, the "Permitted States"); (ii) Buyer will not, and will not cause or permit any third party to, sell, re-sell, promote, market or use the Goods in any state other than the Permitted States; and (iii) the manufacture and sale of Goods by Seller to Buyer do not and will not violate any Applicable Laws, including, without limitation, the intellectual property rights of any third parties.

Buyer agrees to indemnify, defend and hold harmless Seller and its affiliates and their respective officers, directors, managers, members, shareholders, partners, customers, employees, agents, representatives, heirs, predecessors, successors and assigns, from and against any and all claims, demands, lawsuits, damages, losses, costs and expenses, including, without limitation, reasonable attorneys' fees, arising from or in connection with any breach or violation by Buyer of any representation, warranty or agreement of Buyer contained in these Terms and Conditions of Sale or Applicable Law. As used herein, "Applicable Laws" shall mean all state, federal, local, provincial and foreign laws, regulations, rules, and orders.

**12. SEVERABILITY.** The invalidity or unenforceability of any one or more phrases, sentences, or sections shall not affect the validity or enforceability of the remaining portions of this Agreement.

NOTICE: SELLER ASSUMES NO RESPONSIBILITY FOR LOSS OR DAMAGE TO ANYTHING, INCLUDING, BUT NOT LIMITED TO, RAW MATERIALS AND PACKAGING PROVIDED BY BUYER, PLACED WITH SELLER FOR STORAGE AND/OR USE IN FULFILLING BUYER'S ORDER.

Seller hereby certifies that the Goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act as amended and of regulations and orders of the United States Department of Labor issued under Section 14 thereof. For products acquired pursuant to Federal Acquisition Regulations, the following shall be construed to be incorporated herein: (1) Equal Opportunity (E.O. 11246); (2) Affirmative Action for Special Disabled and Viet Nam era Veterans (38 U.S.C. 2012(a)); and (3) Affirmative Action for Handicapped Workers (29 U.S.C. 793). No other Federal Acquisition Regulations shall be construed to apply to Seller without Seller's written agreement thereto. CURRENT PERMITTED STATES MAY BE VERIFIED BY CONTACTING [REGAFFAIRS@TSCUSA.COM](mailto:REGAFFAIRS@TSCUSA.COM)