

HARCROS TERMS AND CONDITIONS OF SALE

All sales and quotations made by Seller are expressly subject to each of the following Terms and Conditions that shall replace all terms and conditions of Buyer's order or other documents, which are hereby specifically rejected, and of any proposal or quotation to Buyer not agreed to by Buyer and Seller in writing and attached hereto. Buyer shall keep all terms of this Agreement, including, but not limited to, pricing, confidential, and shall not disclose any such information to any third party except as otherwise agreed to in writing by Seller. No agent, salesman or employee of the Seller is authorized to alter or vary the terms hereof or make representations, agreements, or warranties at variance with the terms and conditions hereof.

Seller is in complete agreement with The Truth-in-Lending Act, Title 1 of the Federal Consumer Protection Act. At Buyer's request, Buyer will be furnished with a statement of your account. In addition to these terms and conditions of sale, Buyer is bound to all terms and conditions set forth in Buyer's signed application for credit with Harcros Chemicals Inc.

1) **PAYMENT:** Payable in lawful money of the United States. Acceptance by Seller of bank drafts, check, or other media of payment will be subject to immediate collection of the full face amount thereof. Seller reserves the right to charge Buyer a late payment-service charge of up an 1 ½ % per month on the unpaid account balance up to 18% per annum, or the highest legal rate of interest permitted under applicable state law. In the event Seller must initiate legal proceedings or retain a collection agency in order to secure its rights hereunder, Seller shall be entitled, in addition to all other remedies available at law and/or equity, to recover from Buyer its fees associated therewith including, but not limited to, reasonable attorneys' fees, collection fees, expert witness costs and court costs.

2) **PRICES:**

- (a) Seller's price is determined by the weight taken at point of shipment and shall govern. If Seller desires to revise the price or prices herein specified within the terms of this agreement, but is restricted to any extent against doing so by reason of any law, Governmental order or regulation, or if the price is in effect under the agreement is nullified or reduced by reason of any law, Governmental order or regulation, Seller shall have the right to cancel this agreement upon written notice to Buyer
- (b) Any advances in freight rates during the life of the agreement shall be paid by the Buyer.

3) **SHIPMENT, DELIVERY, TITLE AND RISK OF LOSS:**

- (a) Seller shall not be required to deliver in any month more than the monthly quantity herein specified, or, if no monthly quantity is specified, more than a pro-rata amount of the entire quantity of said goods sold hereunder. In the event the Buyer fails to take said specified or pro-rata quantity in any month, Seller, at its option, may cancel such quantity or include same in subsequent deliveries hereunder.
- (b) Seller may recover for each delivery hereunder as a separate transaction, without reference to any future delivery. If Buyer be in default with respect to any of the terms or conditions of this, or any other agreement with Seller, Seller may, at its option, defer further deliveries hereunder until such default be remedied (in which event, if Seller so elects, the agreement period shall be deemed extended by a time equal to that during which deliveries shall be so deferred), or without prejudice to any other legal remedy, Seller may decline further performance hereof.
- (c) Articles sold hereunder shall be deemed delivered, and title hereto shall pass to Buyer, (a) in the case of shipments by Seller's trucks upon delivery at Buyer's plant(s) or, (b) in the case of shipments by public or agreement carrier, or by carrier arranged for by Buyer, by delivering the same to such carrier at loading points at Seller's plant. Buyer assumes full responsibility and liability for compliance with Federal, State, Municipal or local Regulations governing the unloading, discharge, storage, handling, and the use of the products supplied by Seller under these terms and conditions of sale.
- (d) In case of breakage or loss in transit, Buyer shall have notation of same made on expense bill before paying freight. CLAIMS for damage, shortage, etc., must be made within ten (10) days after receipt of goods. Seller's liability for damages shall in no event exceed the purchase price of the particular delivery with respect to which such damages are claimed. Goods shall not be returnable to Seller without Seller's written permission.

4) **DELAY/NON-PERFORMANCE:** Seller shall not be liable for delays in performance, including delivery, or for failures to perform, including failure to deliver, due to (a) any causes beyond Seller's reasonable control, or (b) Acts of God, acts of Buyer, acts of civil or military authorities, governmental regulations, priorities, strikes or other labor disturbances, fires, riots, wars, or natural disasters, including epidemics, storms, droughts, floods, or earthquakes, or transportation delays, or (c) inability arising from causes beyond Seller's reasonable control to obtain necessary materials, components, services or facilities necessary for the production, or transportation of the goods. Seller will promptly notify Buyer of any material delay and will specify a revised performance date as soon as practicable. In the event of any such delay, Seller will have the option of either (a) performing pursuant to an extension of time equal to the period of the delay; or, (b) reducing the total quantity deliverable under the agreement an proportion to the availability of the product caused by such delay.

5) **WARRANTY/DISCLAIMER:** SELLER MAKES NO WARRANTY OR REPRESENTATION EITHER EXPRESS OR IMPLIED, AS TO THE FITNESS, CONDITION, CAPACITY, SUITABILITY, OR MERCHANTABILITY OF ANY GOODS SOLD HEREUNDER, EXCEPT THAT THE GOODS CONFORM TO THE CHEMICAL DESCRIPTION ON THE LABEL, AND ALL RISKS RESULTING FROM THE USE OF SAID GOODS IN BUYER'S MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE, ARE TO BE BORNE BY THE BUYER AT ITS SOLE RISK AND EXPENSE. The Seller does not warrant against the infringement of any United State or other patent claim by reason of use of the Goods in combination with other materials or in the operation of any process and statements concerning the possible use of the Goods are not intended as recommendations to use the same in the infringement of any patent.

Buyer agrees to indemnify and hold harmless Seller against any liability, damages, losses, costs and expenses in connection with any suit or claim; including but not limited to, any loss of use, loss of profits, damage or injuries to persons or property arising out of or relating to any use or handling of materials purchased by Buyer herein, whether or not in accordance with directions or other information provided by Seller, whether such claim is made by Buyer, Buyer's customers, or other third parties.

6) **LIMITATIONS OF LIABILITY:**

- (a) ALL CLAIMS WITH RESPECT TO PRODUCT, WHETHER BASED IN CONTRACT, TORT, BREACH OF WARRANTY, OR ON ACCOUNT OF WEIGHT, QUALITY, LOSS OF OR DAMAGE TO ANY ARTICLE DELIVERED HEREUNDER ARE WAIVED UNLESS MADE IN WRITING WITHIN THIRTY (30) DAYS AFTER ARRIVAL THEREOF AT DESTINATION.
- (b) SELLER WILL NOT UNDER ANY CIRCUMSTANCES, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL OR EXEMPLARY DAMAGES including, but not limited to, loss of profits or revenues, loss of use of or damage to any substance combined therewith, cost of capital, cost of substitute products, facilities or services, or claims of Buyer's customers.
- (c) SELLER'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF, RESULTING FROM, OR CONCERNING ANY ASPECT OF THIS AGREEMENT OR FROM THE PRODUCTS OR SERVICES FURNISHED HEREUNDER SHALL NOT EXCEED THE PRICE OF THE SPECIFIC PRODUCT OR SHIPMENT WHICH GIVES RISE TO THE CLAIM.

7) **FINANCIAL CONDITION:** If, in Seller's judgment, Buyer's credit shall become impaired at any time, Seller shall forthwith have the right to decline to make deliveries hereunder except for cash until such time as said credit has been re-established to Seller's satisfaction.

- 8) **NO ASSIGNMENT:** The delegation or assignment by Buyer of any or all of its duties or rights respectively under this agreement without Seller's prior written and signed consent is voidable, at the Seller's option.
- 9) **TAXES:** The gross amount of any sales, property, excise, use value—added, or other similar tax applicable to the price, sale, or delivery of any products or services furnished hereunder or to their use by Seller or Buyer shall, at Seller's option, either be added to the price as shown on the face hereof or be paid directly by Buyer unless Buyer provides Seller with a tax-exemption certificate acceptable to the taxing authorities.
- 10) **DISPUTE RESOLUTION.** The parties hereto will attempt in good faith to resolve through negotiation any dispute or controversy arising out of or relating to this Agreement ("Dispute"). If the Dispute is not resolved within thirty (30) business days, then either party to the Dispute may submit the Dispute to arbitration before a single arbitrator in accordance with the Commercial Rules of the American Arbitration Association then in effect. Any arbitration under this provision shall be conducted in Kansas City, KS. The decision of the arbitrator shall be final and binding upon the parties and may be enforced in any court of competent jurisdiction. The arbitrator shall award to the prevailing party, if any, as determined by the arbitrator, all of its costs and fees. "Costs and fees" means all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative fees, travel expenses, out-of-pocket expenses such as copying and telephone, court costs, witness fees and attorneys' fees.
- 11) **COMPLETE CONTRACT:** This document contains the entire understanding and agreement of the parties concerning the purchase and sale of the items listed on page 1 hereof. No agent, salesman or employee of the Seller is authorized to alter or vary the terms hereof or to make any representation, agreements or warranties at variance with the terms and conditions hereof. No amendment, supplement, addition or modification, including those contained in any preprinted forms sent by Buyer to Seller (hereinafter an Amendment) to this Agreement shall be effective or binding upon Seller unless made in writing, dated, acknowledged as an Amendment to this Agreement and signed by both parties hereto. Seller's failure to object to any such term or condition shall not be deemed an acceptance thereof or a waiver of any of the terms or conditions of this agreement.
- 12) **RETURNABLE CONTAINERS:** All returnable containers used in connection with shipments of Seller's products are the property of Seller. Buyer shall use containers only for reasonable storage of Seller's goods originally delivered therein and shall return such containers in good condition within ninety (90) days from date of original shipment. At Seller's request, Buyer shall make a deposit of security for the return of such containers equal to Seller's deposit requirements at time of shipment, such deposit to be paid, without discount, when the invoice for contents is paid. Upon return of such containers as above provided for to the site from which originally shipped, or in accordance with specific directions of Seller, Seller shall credit Buyer with the amount of said deposit, except that return transportation charges shall be paid by the Buyer to the Seller in accordance with assessment of transportation charges with respect to delivery of material sold hereunder. At Seller's sole discretion, if Buyer fails to return such containers or fails to return such containers in good condition and within the specified time, Seller may retain said deposit for such failure and/or invoice Buyer for the cost of a replacement container. When returning empties, such container must be tagged, showing number, consignor and consignee and Buyer shall include all container numbers on bills of lading and shipping papers. This is essential to identify containers and issue proper credit to Buyer.
- 14) **TERMINATION:** Seller shall have the right, exercisable at any time by written notice to Buyer and without incurring any liability to Buyer, to suspend delivery of this, and all orders of Buyer heretofore accepted by Seller upon the happening of any of the following events of default:
- a) the failure of Buyer to observe any of the terms and conditions of this Agreement;
 - b) Buyer's becoming insolvent, committing any act of bankruptcy, including, but not limited to , the appointment of a trustee or receiver for any part of Buyer's property, or the commencement of any proceedings by or against Buyer under any law having to do with the relief of debtors; or
 - c) any attempted assignment of this Agreement by Buyer.
 - d) Notwithstanding anything herein to the contrary, Buyer is obligated to purchase any and all Product(s) identified above as "Specially Sourced Products" at the Price in effect as of the effective date of termination, and all raw materials (at Seller's cost) related thereto from Seller upon termination of this Agreement, regardless of the reason for such termination.
- Any orders accepted by Seller prior to the effective date of any termination of this Agreement and remaining uncompleted on such date shall not survive such termination. In the event of any termination, Buyer shall pay to Seller all sums due on the effective date of termination with respect to orders accepted and completed by Seller prior to such date.
- 15) **WAIVER.** Failure on the part of Seller to enforce at any time or for any period of time, any of the provisions of this Agreement shall not be deemed or construed to be a waiver of such provision or of the right of Seller to thereafter enforce each and every such provision.
- 16) **SURVIVAL:** If any provision of this Agreement is or becomes or is deemed invalid, illegal or unenforceable in any jurisdiction, (a) such provision shall be construed or deemed amended to conform to applicable laws so as to be valid and enforceable, or, if it cannot be so construed or deemed amended without materially altering the intention of the parties, it shall be stricken, (b) the validity, legality and enforceability of such provision will not in any way be affected or impaired by it in any other jurisdiction, and (c) the remainder of this Agreement shall remain in full force and effect.
- 17) **CHOICE OF LAW:** The validity, performance and all matters relating to the interpretation and effect of this agreement and any amendments hereto modifications hereof shall be governed by the laws of the State of Kansas.