

1. **Pricing, Products, and Quantity.** The goods purchased (the "Products") and the quantity purchased are set forth in the applicable purchase order (the "PO"). No other terms in the PO shall have legal effect. Pricing will be as set forth in Seller's written acknowledgment, which is subject to these T&C, accepting the PO (the "Acknowledgment") or in the applicable signed written agreement between the parties (the "Underlying Contract"), if such an agreement exists and states pricing for the Products. The PO (to the extent that it identifies the Products and the quantity ordered), Acknowledgment, any Underlying Contract, and these T&C (to the extent permitted by the Underlying Contract, if any), constitutes the entire "Agreement" between Buyer and Seller. Seller rejects any supplemental, additional, or conflicting terms and conditions included by Buyer with a PO or any other document (except to the extent such terms and conditions match those set forth in the Acknowledgment). **Seller's acceptance of the PO is expressly conditioned on Buyer's acceptance of these terms and conditions.**

2. **Ordering.** If this Agreement contemplates multiple shipments over a period of time then, unless this Agreement states specific shipment dates and quantities, this Agreement will be deemed to require approximately monthly deliveries of roughly equivalent quantities. Buyer acknowledges and agrees that any stated delivery dates are approximate; time shall not be of the essence unless expressly stated in both the PO and the Acknowledgment.

3. **Limited Warranty, Damages, and Remedy.** Seller warrants that, at the time of delivery, all Products will conform in all material respects with the specifications provided by Seller (the "Specifications"), as measured using the testing methodology and equipment specified by Seller (collectively the "Reference Procedures"). **THE FOREGOING WARRANTY IS EXCLUSIVE, AND SELLER MAKES NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED. SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST INFRINGEMENT. SELLER ALSO DISCLAIMS ALL WARRANTIES ARISING OUT OF ANY PRIOR PERFORMANCE, COURSE OF PERFORMANCE, OR USAGE OF TRADE.** Seller assumes no liability or obligation for any technical advice provided by Seller with respect to any Product or for the results of the application of such advice or Product.

4. **Shipping and Packaging.** All pricing and delivery is EXW Incoterms™ 2010 at Seller's plant unless expressly specified to the contrary in both the PO and the Acknowledgment. If the PO and Acknowledgment both state that pricing includes delivery to a location other than Seller's plant, then Seller will bear all risk of loss and transportation costs until the Product reaches the specified delivery point. In each case, Buyer is responsible for all risk of loss and transportation after delivery. Buyer will not sell, ship, import, export, re-export or allow trans-shipment of any of the Product in any manner contrary to any applicable laws, including, without limitation, to any prohibited individual, firm, or entity appearing in the Denied Party List maintained by the Department of Commerce of the United States of America, or any other similar list published by the government of the USA or any other government having jurisdiction. Buyer will comply with all applicable laws and regulations of the USA and any other country having jurisdiction. Buyer agrees to unload and return to Seller any railcars containing Seller's Product within 5 days after such railcars arrive at Buyer's Facility. If Buyer fails to do so, Buyer will be obligated, and agrees, to reimburse Seller for the railcar rent paid by Seller for each day beyond the 5th day that each railcar is not returned to Seller. Buyer will not, and will not allow any person or entity under its control to, sell or reuse any Product packaging provided by Seller. Buyer is solely responsible for ensuring that all Product and packaging materials are transported, handled, stored, installed, used, and disposed of in a safe, legal, and proper manner after delivery.

5. **Quality.** Seller will sample and test the Product in accordance with the Reference Procedures. Seller normally includes weights and tare records with each shipping invoice, and Seller will provide a copy upon request. The parties agree that the results of sampling and testing by Seller, and the weights and tare recorded by Seller, each in the ordinary course of business are the best evidence of the condition of the goods at the time of delivery.

6. **Disputes.** If Buyer knows or has reason to believe a Product does not conform to the Specifications, then Buyer must contact Seller within 24 hours of when the Product arrives at Buyer's site to afford Seller the opportunity to inspect, sample, and analyze the Product before it is affected by conditions at Buyer's location. In any event, Buyer must submit written notice of any claim relating to a Product or any delivery (including, without limitation, that a Product does not conform to Specifications, that a shipment quantity is incorrect, or that the goods have suffered loss or damage) within 30 days after delivery or such claim is waived. The parties agree that different testing methodologies and equipment can generate disparate test results, and that disputes regarding conformity of the Products to the Specifications will be determined by the parties, or if necessary by a neutral third party, exclusively using the Reference Procedures.

7. **Limited Remedies.** If Seller agrees, or a neutral third party selected by both parties determines, that any portion of the Product does not conform to the Specifications, then Seller, in its sole and absolute discretion and as Buyer's sole, complete, and exclusive remedy, shall either: (a) instruct Buyer as to where to send the nonconforming portion of the Product, at Seller's expense, and promptly send Buyer the same quantity of replacement Product that conforms to the Specifications; or (b) issue Buyer a credit for the full price of the nonconforming portion of the Product, including freight charges, if paid by Buyer, in exchange for (i) return of the Product to Seller and (ii) a release acceptable to Seller. **NEITHER PARTY WILL BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR SPECIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR LOST PRODUCTION, WHETHER ARISING UNDER BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, INDEMNITY, OR ANY OTHER THEORY OF LIABILITY. SELLER'S LIABILITY FOR ANY CLAIMS AND CAUSES OF ACTION ARISING OUT OF THE SALE, USE, STORAGE, DELIVERY OR NON-DELIVERY OF ANY PRODUCT, PERFORMANCE OF ANY SERVICES, OR BREACH OF ANY WARRANTY OR OBLIGATION WILL BE LIMITED TO THE PRICE (INCLUDING THIRD PARTY FREIGHT CHARGES IF PAID BY BUYER) PAID TO SELLER FOR THE RELEVANT SHIPMENT OF SUCH PRODUCT.**

8. **Taxes.** All sales or use taxes, excise taxes or other taxes, transfer fees, or similar charges required to be paid in connection with the transportation, delivery or sale of any Product sold hereunder pursuant to any federal, state, or municipal law or regulation now existing or hereafter enacted will be in addition to the prices herein specified and will in any event be paid by the Buyer.

9. **Payment Terms.** Payment is due net 30 days from date of the invoice (the "Due Date"), in US dollars, without deduction or setoff. Any amount not paid in full by the Due Date will be subject to interest, from the Due Date until paid, at a rate of 2% per calendar month (or any portion thereof). In the event a bankruptcy proceeding is filed by or against Buyer, or if Buyer fails to make one or more payments timely, and Seller engages the services of any attorney and/or collection agencies to collect any payment(s), then Buyer will pay all fees and costs incurred by Seller, including, without limitation, reasonable attorneys' fees, costs, and disbursements relating to the assumption, assignment, or rejection of this Agreement, relief from the automatic stay and/or adequate protection with respect to this Agreement, and/or any Chapter 11 plan in such proceeding and/or filing a proof of claim. Seller may require payment in advance of delivery if Buyer is in breach of any agreement with Seller or, in Seller's sole opinion, if Buyer's ability to pay timely is in doubt.

10. **Termination.** Either party may terminate this Agreement by written notice to the other upon the occurrence of any of the following events: (a) breach by the other party of any obligations under this Agreement (including the Buyer's failure to pay any portion of the purchase price for any Product by the Due Date) and failure to cure such breach within 30 days following written notice to the party in breach; provided however, that in the case of a failure to pay any portion of the purchase price for any Product by

the Due Date, the cure period will be 10 days from the Due Date and no notice will be required; or (b) the continuation of a Force Majeure delay for more than 90 days; or (c) immediately upon the commencement of bankruptcy or insolvency proceedings by the other party, or the appointment of a receiver, trustee, or custodian for the assets of the other party; or (d) three late payments in any rolling 6-month period, notwithstanding any timely cure of such breach of payment obligations. Termination of this Agreement will not affect the obligation of Buyer to pay for Product shipped prior to termination. Notwithstanding any provision to the contrary, Seller may terminate this Agreement without cause upon 60 days' notice to Buyer in the event it decides, in its reasonable business discretion: (a) to close the plant that produces the Product(s) supplied to Buyer hereunder; or (b) to discontinue the production of any of the Products. In the event that Seller elects to terminate this Agreement as set forth in the immediately preceding sentence, should Seller discontinue the production of less than all the Products sold to Buyer hereunder, then this Agreement will terminate only as to the discontinued Product(s), and will continue in full force and effect as to the Product(s) that are not discontinued by Seller.

11. **Return Policy.** If Seller ships or delivers Product that complies with the Specifications, and Buyer rejects or returns such Product, then Buyer will: (a) notify Seller immediately, (b) bear all risk of loss until the Product is delivered to Seller's designated plant, (c) pay all shipping and related charges (inbound and outbound), and (d) pay a restocking fee of 20% of the invoice price of said Product. The foregoing is not intended as a penalty, but constitutes the parties' estimate of Seller's actual damages, which are difficult to ascertain at the time of this Agreement. If after receiving the returned Product Seller determines in good faith that the condition of the Product has changed after delivery to Buyer, as measured using the Reference Procedures, then Buyer will pay the full purchase price of the Product.

12. **Confidentiality.** "Confidential Information" includes any and all ideas, knowledge, data, or other information, whether communicated orally, in writing, or in any other form whatsoever that is received by the Buyer from or on behalf of the Seller, or that is observed, ascertained, learned, or obtained by the Buyer regarding the Seller's business, including, without limitation: any analyses, data, summaries, or other information generated using or with reference to Confidential Information; any Samples (defined below); and any information relating to the Purpose. Buyer will not use or disclose the Confidential Information except as strictly necessary in furtherance of the Agreement or to the extent applicable law or enforcement of its terms requires disclosure. Buyer will treat the Confidential Information with at least the same degree of care it accords its own valuable Confidential Information, and in no event with less than reasonable care. All Confidential Information shall remain the exclusive property of Seller. Buyer shall not, and shall not permit any third party to: (a) analyze or reverse engineer any sample or Product (b) give or sell all or any portion of any sample to a third party; (c) file any patent, utility model, or design application based upon, including, or disclosing any sample or other Confidential Information. If Buyer and Seller have executed a nondisclosure agreement that is in effect at the time of this Agreement then such nondisclosure agreement shall govern and control over this Section 12.

13. **Indemnity.** Buyer shall indemnify and defend Seller and its affiliates, and each of their shareholders, directors, officers, employees, agents, and representatives (collectively the "Indemnitees") and hold the Indemnitees harmless from and against any and all loss, liability, damage, claim, or expense whatsoever (including, without limitation, attorneys' fees, costs, and disbursements) arising out of or related to any actual or alleged: (a) negligence, gross negligence, strict liability, or intentionally wrongful acts of Buyer or its affiliates or each of their shareholders, directors, officers, employees, agents, and representatives (each a "Buyer Party"); (b) violation by any Buyer Party of any law, regulation, rule, or order; (c) Buyer's breach of this Agreement; or (d) acts or omissions of any Buyer Party relating to the Product, including, without limitation, Buyer's sale, use, or disposition of any Product.

14. **Applicable Law.** The validity, construction, and performance of this Agreement will be governed by and interpreted in accordance with the laws of the State of New York, USA. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement.

15. **Effects of Headings.** The underlined paragraph headings in these T&C are for reference only, and they are not intended to affect the interpretation hereof.

16. **Assignment.** Neither this Agreement nor any rights nor obligations hereunder may be assigned or delegated, in whole or in part, by Buyer to any third party without the prior written consent of Seller.

17. **Insurance.** Both parties will at all material times maintain adequate insurance for the operations of their respective businesses under a comprehensive liability insurance policy against claims for bodily and personal injury, death, and property damage caused by or occurring in conjunction with the operation of each party's respective business.

18. **Notices.** Except as otherwise provided in this Agreement, all notices or notifications described herein must be in writing and must be sent by certified mail, postage prepaid and return receipt requested, or by reputable overnight courier with tracking provided. Notices to Buyer must be sent to the address printed on Buyer's PO. Notices to Seller must be sent to the address printed on Seller's Acknowledgment, with a mandatory copy sent to Imerys Legal Department, 100 Mansell Court East, Suite 300, Roswell, GA 30076.

19. **Force Majeure.** Each party shall be relieved of performance of its obligations under this Agreement when prevented by any events such as acts of God, terrorist or foreign acts, insurrections, riots, strikes, labor disputes, work stoppages or slowdowns, fires, explosions, storms, floods, power/energy failure, shortage of raw materials or parts or equipment necessary to make or transport the Product, inability to obtain raw materials or energy on terms Seller considers reasonable, breakdown of or damage to or contamination of plants, mines, quarries, equipment, or facilities, interruptions in or exigencies of transportation, embargoes, orders, actions or non-actions of civil or military authorities, or governmental requirements or restrictions that prevent, in whole or in part, either party from performing its obligations hereunder (each such event a "Force Majeure event"). The party desiring to invoke this provision will promptly notify the other party of the nature and estimated duration of the suspension period. Any deficiencies in deliveries as a result of a Force Majeure event will not be made up except by mutual consent of the parties hereto. Notwithstanding any provision to the contrary, Buyer will remain liable to Seller for the contract price of all Product shipped by Seller.

20. **Severability.** Any provision of this Agreement that is prohibited, unenforceable, or held to be illegal, unenforceable, or void will be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

21. **Waiver.** Except as provided in Section 6 of these T&C, the failure of either party to enforce, in any one or more instances, performance of any of the terms, covenants, or conditions of this Agreement will not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, covenant, or condition, and such failure will in no way affect the validity of this Agreement or the rights and obligations of the parties hereto. The parties acknowledge that a waiver of any term or provision hereof may only be given by a written instrument executed by each party hereto.

22. **Amendments.** This Agreement may not be modified, amended, or supplemented except by an agreement in writing signed by an authorized officer of each party. **NO EMPLOYEE OF SELLER HAS AUTHORITY TO AGREE, WHETHER ORALLY, IN WRITING, OR BY PERFORMANCE, TO ANY TERMS OR CONDITIONS EXCEPT THOSE EXPRESSLY SET FORTH IN THIS AGREEMENT.**

23. **Third Parties.** Nothing herein is intended to confer upon to any person or entity, other than the parties hereto and their permitted successors or assigns, any rights, benefits, or remedies of any kind whatsoever.

24. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties.