



## FBC CHEMICAL CORPORATION STANDARD TERMS AND CONDITIONS OF SALE

ALL TRANSACTIONS SHALL BE GOVERNED BY THESE STANDARD TERMS AND CONDITIONS OF SALE (THE "TERMS") OF FBC CHEMICAL CORPORATION, A PENNSYLVANIA CORPORATION ("SELLER"). ANY PROPOSAL THAT INCLUDES DIFFERENT OR ADDITIONAL TERMS THAT VARY FROM THESE TERMS IS HEREBY REJECTED. NOTWITHSTANDING THE FOREGOING, ANY SUCH COUNTERPROPOSAL BY BUYER SHALL NOT OPERATE AS BUYER'S REJECTION OF THE AGREEMENT OF SALE, BUT AS A REJECTION OF THE ADDITIONAL OR DIFFERENT TERM(S).

1. **EXCLUSIVE TERMS.** An order is deemed by Seller to be an offer to purchase, which Seller may accept or reject in its sole discretion. The offer is expressly conditioned upon Buyer's acceptance of all of the terms and conditions set forth herein. The agreement formed by Buyer's acceptance of the offer, whether by signed purchase order, signed purchase agreement, or otherwise and these Terms are the exclusive agreement between Buyer and Seller (the "Agreement") with respect to the goods being sold by Seller to Buyer which are the subject hereof (the "Products") and may not be altered or amended, nor its terms waived, except in writing, signed by an authorized representative of the party to be bound thereby. Acceptance or acknowledgment of purchase order forms or other similar forms containing provisions different from, or deletions or additions to, the terms hereof are hereby rejected and shall not be binding to Seller. Buyer shall not assign its rights or delegate its duties hereunder, in whole or in part, without prior written consent of Seller. Specific terms in Seller's offer shall prevail to the extent they conflict with terms below. The offer is subject to change without notice until actual receipt of its acceptance.

2. **PRICE.** Quoted prices are based upon present taxes (other than sales taxes), freight rates, United States Tariff classifications and import duties. Buyer shall pay the costs of delivery of the Products. Buyer shall pay any increased costs resulting from such changes or from Buyer's selection of means of transportation. Buyer shall reimburse Seller for all taxes or other charges by any national, state or municipal government upon the sale, use, production, or transportation of Product which Seller is required to pay.

3. **PRICE ADJUSTMENTS.** Seller may adjust product or service prices at any time. Buyer may suspend orders immediately upon notice of a price increase. In the event price protection is stated in a written agreement between the parties, Seller may temporarily suspend such Product's price protection in extraordinary market conditions as determined by Seller by its sole discretion. Seller shall reinstate the Product's price protection upon Seller's determination that the market condition for the Product is no longer extraordinary.

4. **PAYMENT.** Payment terms are net 30 days from date of invoice. Past due balances are subject to a late payment charge of 1 1/2% per month, or the maximum amount permitted by applicable law, whichever is less. Buyer shall pay all charges, costs and legal fees incurred in collecting amounts owed. Buyer shall have no right of set-off or withholding, and no deduction of any amounts due from Buyer to Seller shall be made without Seller's prior, express written approval.

5. **CONTAINERS.** Seller shall retain ownership of all returnable containers. Buyer may use the containers only for the storage of original contents. Buyer shall return the containers to Seller empty and in good condition within 90 days from the date of delivery. Buyer shall pay a deposit on all returnable containers. If Buyer returns the containers in good condition within 90 days and is otherwise in good standing with Seller, Seller shall credit the deposit to Buyer's account. If not returned within 90 days or returned in less than good condition, as determined by Seller in Seller's sole discretion, Seller, in Seller's sole discretion, may reject the containers and retain up to the full amount of the deposit.

6. **TITLE AND RISK OF LOSS.** Seller shall retain the right and title to the Products until Seller is paid in full for the Products. Buyer shall obtain the right and title to the Products upon payment to Seller of the purchase price and any taxes, excise or other charges. Upon full payment to Seller, title and risk of loss for Products transfers to Buyer at Seller's shipping point, unless Products are shipped in Seller's vehicles in which case title and risk of loss transfers to Buyer when the vehicle first enters Buyer's property.



7. **WARRANTY.** THE WARRANTIES SET FORTH HEREIN OR IN SELLER'S WARRANTY DOCUMENTS WITH RESPECT TO A PRODUCT ARE THE ONLY WARRANTIES MADE BY SELLER IN CONNECTION WITH THE PRODUCTS AND THE TRANSACTIONS CONTEMPLATED HEREBY. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS TO BUYER OR ANY OTHER PERSON OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, AND SELLER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. PRODUCTS SOLD HEREUNDER ARE SOLD ONLY TO THE SPECIFICATIONS SPECIFICALLY SET FORTH BY THE SELLER IN WRITING. SELLER'S SOLE OBLIGATION FOR A REMEDY TO BUYER SHALL BE REPAIR OR REPLACEMENT OF NON-CONFORMING PRODUCTS IN ACCORDANCE WITH SECTION 8 BELOW. BUYER ASSUMES ALL RISK WHATSOEVER AS TO THE RESULT OF THE USE OF PRODUCTS PURCHASED, WHETHER USED ALONE OR IN COMBINATION WITH OTHER PRODUCTS OR SUBSTANCES. Buyer acknowledges that Seller acts as a distributor for Products not branded by Seller ("Resale Products") and that matters relating to the quality of the Resale Products are not within Seller's control. Accordingly, SELLER MAKES NO WARRANTIES WHATSOEVER CONCERNING RESALE PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES EXPRESS OR IMPLIED.

8. **REMEDIES.** Seller's liability for nonconforming Products is exclusively limited, at Seller's option, to replacement of the defective Products or refund of the purchase price of such Products. Seller's liability for any defective or negligent service is limited to Seller re-performing the service or a refund of an amount not to exceed the amount paid for the service, or, if the services were provided free of charge, to pay an amount not to exceed the amount paid for the Products to which the services related in the 12 months prior to the event of the liability.

9. **LIMITATION ON LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, STATUTORY, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF USE, LOSS OF TIME, INCONVENIENCE, LOSS OF BUSINESS OPPORTUNITIES, DAMAGE TO GOODWILL OR REPUTATION, OR LOSS OF DATA, ARISING OUT OF, OR AS A RESULT OF, THE SALE, DELIVERY, SERVICING, USE OR LOSS OF THE PRODUCTS SOLD HEREUNDER, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR SUCH DAMAGES COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS THAT ARE THE SUBJECT OF THE AGREEMENT FOR ANY CLAIMS MADE UNDER OR RELATED TO THE AGREEMENT.

10. **INDEMNITY.** Buyer agrees to defend, indemnify and hold Seller, its officers, directors, agents, and employees harmless from all claims, demands, actions and causes of action relating to personal injury or property damage to third parties, including attorney's fees and actual costs ("Claims") incurred as a result thereof, to the extent of its negligence or arising after delivery of the Products to Buyer. Seller agrees to defend, indemnify and hold Buyer, its officers, directors, agents, and employees harmless from Claims to the extent of its negligence.

11. **CLAIMS.** Buyer shall inspect the products promptly upon receipt for non-conformity (including but not limited to non-conformity for quantity, quality, and/or defects). Any claim for shortage or non-conforming Products must be made in writing to Seller within 30 days after Buyer's receipt of the Product. Any claim for non-delivery of Product must be made within 30 days after the date upon which the Product was to be delivered. As to any claim not reasonably discoverable within such 30-day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim must be in writing and received by Seller within 180 days after Buyer's receipt of the Products. Failure of Buyer to provide written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim. Products may not be returned without Seller's permission and transportation for return will not be paid by Seller unless authorized in writing in advance. Amounts owing to or payable by either party hereunder shall be deemed



to be reconciled on the first anniversary of the final delivery of Products or services (if any).

12. **FORCE MAJEURE.** Seller is not liable for nonperformance or delay in performance caused by circumstances beyond Seller's control. A "Force Majeure Event" means, without limitation, (a) acts of God, war, riots, fire, explosions, floods, strikes, lockouts, injunctions, accidents, pandemics, Product short supply, unforeseen shutdown of major sources of supply, breakage of machinery or apparatus, or national emergency, (b) Seller's inability to obtain at prices Seller deems in its discretion to be commercially reasonable, the Product, fuel, power, raw materials, labor, containers or transportation facilities, (c) the occurrence of any unforeseeable contingency making performance impracticable, or (d) compliance in good faith with any applicable governmental statute, regulation, or order. Any delivery so suspended shall be cancelled without liability, but the Agreement shall otherwise remain unaffected.

13. **QUANTITY.** Seller is not obligated to deliver in any month more than a proportionate part of the maximum quantity specified, determined by dividing such maximum quantity by the total number of months included in the period of the Agreement. When, in the opinion of Seller, there is a period of shortage of supply of said products for any reason, Seller may allocate its available supply among its customers in a manner Seller deems fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified.

14. **PRODUCT STEWARDSHIP.** Buyer agrees that Products will be used, handled, stored, transported and disposed of in such a manner that is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. Buyer agrees to instruct its employees with respect to, and to make certain that they know and understand, procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the Products. Buyer further agrees to deliver the most recent edition of Product literature, including SDSs, to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who can handle, use, store, transport and dispose of Products safely.

15. **COMPLIANCE WITH LAWS; EXPORT LAWS.** Buyer and Seller shall comply with all applicable international, national, state, regional and local laws and regulations with respect to their performance of the Agreement. Buyer agrees to adhere to all applicable US Export laws and regulations with respect to the products.

16. **TERM AND TERMINATION.** The "Term" shall be that period which is otherwise stated in the Agreement or, if none exists, continues until terminated by either party on 30 days written notice. This Terms and any order or delivery may be terminated or suspended (a) by either party if any proceeding under bankruptcy is brought by or against the other party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Products.

17. **ARBITRATION.** The parties shall submit any dispute related to the Agreement to arbitration in Mars, Pennsylvania before one arbitrator under the American Arbitration Association's Commercial Arbitration Rules. A party may seek interim relief from any court having jurisdiction without waiving any remedy under the Agreement. The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify the terms of this Agreement. A party may enter a judgment on an award in any court having jurisdiction. The prevailing party shall be entitled to an award of reasonable attorney fees. The Agreement shall be governed by the laws of the Commonwealth of Pennsylvania.