

STANDARD TERMS AND CONDITIONS OF SALE **OQ Chemicals Corporation, May 2020**



These standard terms and conditions of sale apply to all sale agreements, orders, acknowledgements or confirmations which reference these terms and all other sales made by Seller unless otherwise agreed upon in writing signed by an authorized representative of Seller.

1. **PRICE CHANGES:** Seller may change the price of the Goods on the first day of any calendar [month/quarter] by giving Buyer at least 15 days notice. Buyer's failure to object to a proposed change at least 5 days before its effective date constitutes acceptance. If Buyer objects, Seller may (1) rescind the price change, (2) negotiate with Buyer regarding a different price, or (3) give Buyer notice of Seller's intent to terminate this Contract as of the effective date of the proposed change.

If any governmental action prevents Seller from increasing a price or continuing any price already in effect, Seller may terminate this Contract by giving Buyer 30 days' notice.

2. **PAYMENT TERMS; BUYER'S CREDIT:** Net payment is due and must be received by Seller 30 days from date of invoice. **TIME IS OF THE ESSENCE.** Payment shall be made on or before the due date in U.S. Dollars by electronic funds transfer to the bank and account specified by Seller. Late payments will bear interest, compounded daily, at a per annum rate equal to the lesser of (1) the prime charged by Seller's primary bank plus 2% or (2) the maximum rate allowed by applicable law, from the date due until the delinquent payment is made. Seller may change payment terms by notifying Buyer at least 30 days in advance. If Seller is not satisfied with Buyer's financial responsibility, Buyer breaches any contract with Seller, or Buyer fails to make payment within 30 days from the date of invoice, Seller may require payment in cash before shipment of Goods.

3. **WARRANTY:** Seller warrants that it will deliver good title to the Goods, free of any liens or encumbrances, and that the Goods will conform to Seller's standard sales specifications.

4. **DISCLAIMER OF FURTHER WARRANTIES:** EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, CONCERNING THE GOODS OR THE CONTAINERS IN WHICH THE GOODS ARE SHIPPED. SELLER EXPRESSLY EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS OF THE GOODS FOR ANY PARTICULAR USE CONTEMPLATED BY BUYER.

5. **LIMITATION OF REMEDIES AND LIABILITY:** IN NO EVENT WILL BUYER'S DAMAGES OR OTHER RECOVERY FROM SELLER IN ANY CAUSE OF ACTION, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY, EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC GOODS AS TO WHICH THE CLAIM IS MADE, PLUS COMMERCIALY REASONABLE AMOUNTS INCURRED BY BUYER FOR TRANSPORTATION, CARE, CUSTODY AND RETURN OF THE GOODS. SELLER SHALL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER, FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR LOST OR PROSPECTIVE PROFITS, WHETHER THE CLAIM IS BASED ON CONTRACT, TORT, OR ANY OTHER THEORY. EXCEPT AS PROVIDED IN THE FIRST SENTENCE OF THIS SECTION, SELLER WILL NOT BE LIABLE TO BUYER FOR, AND BUYER AGREES TO DEFEND AND INDEMNIFY SELLER AGAINST, ALL OR ANY PART OF ANY LOSS, DAMAGE OR INJURY TO PERSONS, INCLUDING THIRD-PARTIES AND BUYER'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS AND THEIR EMPLOYEES, OR PROPERTY, INCLUDING THAT OF BUYER OR THIRD-PARTIES, RESULTING FROM BUYER'S PURCHASE, TRANSPORTATION, RECEIPT, HANDLING, STORAGE, PROCESSING, USE OR RESALE OF THE GOODS, ALONE OR IN COMBINATION WITH OTHER SUBSTANCES. All technical advice, recommendations and services provided by Seller are intended for use by persons having skill and experience in the handling of hazardous chemicals, at their own risk, and Seller assumes no responsibility, and Buyer hereby waives all claims against Seller, for results obtained or damages incurred from the use of Seller's advice, recommendations or services. Buyer will indemnify and hold Seller harmless from and against all damages, costs and expenses resulting from special marking of the Goods or containers in accordance with Buyer's requests.

6. **FORCE MAJEURE:** Neither party will be liable for non-performance or delay in performance, except Buyer's obligation to pay for delivered Goods, due wholly or partly to any cause not in its control or not avoidable by reasonable diligence. Upon the occurrence of any such contingency, the party affected must give the other party reasonable notice thereof and may suspend or reduce deliveries during the period of such contingency, and the total Quantity deliverable under this Contract may, at the reasonable option of the affected party, be reduced by the quantities so omitted. The following, while not an exclusive listing, will, unless demonstrated clearly to the contrary, be considered not to be within a party's control or avoidable by reasonable diligence: labor controversies; court decrees; inability to use the full capacity of plants or facilities as a result of governmental action, machinery malfunctions or breakdown, or Acts of God; and inability, without litigation or the payment of penalties or unreasonable prices or the acceptance of unreasonable terms and conditions, to obtain fuel, power, labor, containers, transportation facilities, or materials necessary to produce the Goods.

7. **ALLOCATION:** In the event of shortage, Seller will allocate all Goods produced among its customers, its own requirements, and requirements of its or its parent's divisions, subsidiaries and affiliates in a manner and amount that Seller deems fair and reasonable, without obligation to obtain similar goods from other sources. The foregoing notwithstanding, if for any reason a shortage occurs in Seller's supply of the materials necessary to produce the Goods, Seller shall have the right to satisfy its own requirements, and the requirements of its or its parent's divisions, subsidiaries and affiliates for such materials, whether or not any of such materials are allocated to the production of Goods.

8. **SHIPMENT:** As ordered by Buyer in approximately equal monthly quantities. Seller will not be required to ship in any one calendar month more than 10% of the annual Quantity specified in this Contract for the then current contract year. **TITLE AND RISK OF LOSS PASSES TO BUYER WHEN THE GOODS ARE DELIVERED TO THE CARRIER AT THE SHIPPING POINT.**

9. **FREIGHT:** If Seller is to pay freight, Seller may initially designate the means of transportation and routing. If Buyer desires or requires a more expensive means of routing, Buyer will pay any extra cost involved.

10. **HANDLING and SAFETY:** Buyer acknowledges that the Goods may require special handling, storage, transportation, treatment or use to comply with applicable safety and environmental laws, and Buyer will take all actions necessary to comply with these laws and to avoid spills or other dangers to persons, property or the environment. Buyer has, and will use, the requisite expertise, personnel and equipment to handle, store, transport, use, consume and dispose of the Goods in compliance with all applicable laws, governmental regulations, actions, orders decrees, and requests, Seller shall furnish Buyer with Safety Data Sheets ("SDS") for the Goods and Buyer shall familiarize itself and its employees with the contents of the SDS. Buyer shall disseminate all the information in the SDS to persons whom Buyer reasonably foresees being exposed to the Good's potential hazards.

11. **LOADING, UNLOADING AND CONTAINERS.** Buyer certifies that containers and allied equipment presented by it at Seller's shipping point will be fit for the Goods. Seller may refuse to load Buyer's containers if Seller reasonably believes that the quality of the Goods will be prejudiced or that any unsafe condition exists. Buyer will (1) unload and release all transportation equipment promptly, so that Seller will incur no demurrage, other expense or loss, (2) comply with instructions Seller may give for return of transportation equipment, and (3) pay any invoice for demurrage, other expense or loss caused by Buyer within 10 days. Buyer will not make any agreement with any railroad that will adversely affect the mileage compensation paid by such railroad to Seller for railcars owned by or under lease to Seller. Buyer is allowed up to 7 days from the constructive placement of the railcar at the delivery point to release the railcar back to the railroad. The Buyer will pay a \$150 fee for every day the railcar is held past the allowable 7 days.

12. **TAXES:** If new or increased taxes, excises or other governmental charges (other than taxes based on Seller's income) are imposed on Seller for the production, sale or transportation of any of the Goods after the date of this Contract, Buyer will reimburse Seller for all amounts so imposed, or, if Buyer refuses to reimburse Seller for such amounts, Seller may, at its sole discretion, terminate this Contract as to such Goods.

13. **TRADE AND SANCTIONS:** Buyer shall not sell, export, re-export, or otherwise transfer Seller's products or technology in violation of U.S. export controls laws or economic or trade sanctions imposed by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) or other government authorities. Buyer represents and warrants that no transaction contemplated by this Agreement is prohibited by U.S. export controls, U.S. Anti-Boycott laws or economic or trade sanctions imposed by OFAC or other government authorities.

14. **CLAIMS:** Buyer will test and inspect the Goods for compliance with this Contract within a reasonable time after each shipment is received, and if Buyer fails to notify Seller that the Goods are defective or short in any respect, within 45 days after receipt, and before any part of the Goods (except for reasonable test and inspection quantities) has been changed from its original condition, Buyer will have waived any rights or claims against Seller related to any such defect or shortfall. Seller's invoice weights, volumes, sizes and tares will govern unless proved erroneous. Variations of any shipment from invoice quantity of 1% or less in the case of tank trucks or tank cars and 0.5% in the case of barges will be disregarded.

15. **NOTICES:** All notices under this Contract must be in writing and mailed or delivered to the appropriate address set forth in the beginning of this Contract or to such other address as the recipient may designate by notice to the other party.

16. **MISCELLANEOUS:** No sales representative or agent is authorized to bind Seller; orders placed with a sales representative or agent will not be binding on Seller until confirmed in writing by Seller's authorized representative at Seller's Headquarters.

This Contract constitutes the complete and exclusive statement of the terms of the contract between the parties regarding the sale and purchase of the Goods. In the event of a conflict between these Standard Terms and Conditions of Sale and the negotiated terms appearing on the cover page of this Contract, those negotiated terms will control. No additional terms or any rescission, waiver, alteration or modification of the Contract shall be valid unless it is made in a writing signed by an authorized representative of each party and specifically references the Contract. None of BUYER's inconsistent and/or additional terms and conditions submitted in acknowledging or accepting this Contract or in issuing purchase orders, releases, shipping instructions or other documents shall apply. BUYER's acceptance or use of any shipment of Goods after SELLER's offer of sale referencing or incorporating these Terms, but before the Contract is signed by either party, shall constitute acceptance of the terms of the Contract.

If either party attempts to assign this Contract (other than to an affiliate) by operation of law or otherwise, without the consent of the other party, the other party may declare this Contract void. The validity, performance, construction and effect of this Contract will be governed by Texas law, without regard to its doctrines or principles relative to conflicts or choice of laws.

The Goods or Services herein set forth have been made or performed by Seller in compliance with the Fair Labor Standards Act of 1938, as amended.