

General Terms and Conditions of Sale

- Scope of General Terms and Conditions.** These General Terms and Conditions govern all purchase orders and other contracts (individually and collectively, this "Contract") in which buyer ("Buyer") purchases or accepts goods or products (individually, a "Product" and collectively, the "Products") from Wacker Chemical Corporation ("Seller"). All other terms of purchase or sale in any purchase order, order confirmation, invoice or other Buyer document are rejected unless expressly accepted in writing signed by at least two (2) of Seller's authorized signatories.
 - Payments, Costs, Credit, Quantities, Orders, and Disputed Amounts.** Buyer shall pay for each shipment of Products whether or not Buyer has any claims or defenses arising out of other shipments. Seller's agreement to ship without payment is an extension of credit that is a financial accommodation to Buyer and may be stopped or changed at any time at Seller's sole discretion. All orders by Buyer shall be in writing via separate purchase orders. Upon receipt of orders, Seller issues acknowledgement of receipt. All orders are subject to Seller's acceptance via an order confirmation containing estimated delivery dates. Unless otherwise agreed to in writing by Seller, prices for all orders are contained in Seller's order confirmation. Orders, once confirmed, cannot be canceled or modified without Seller's written approval. Should Seller so agree, change fees may apply. Seller shall have no obligation to sell and deliver, and Buyer shall have no obligation to purchase, minimum quantities or volume of Products, except as expressly agreed upon in writing signed by at least two (2) of Seller's authorized signatories. Notwithstanding any language to the contrary contained in the Contract, if a delivery pursuant to an order confirmation occurs at a time when set pricing is not in effect (e.g. after the expiration of an agreed upon or initial price period, if any), the parties shall negotiate updated pricing in good faith. Such previously agreed upon pricing shall not be binding upon Seller if delivery is to occur after the expiration of any previously agreed upon pricing, if any. Buyer shall have no right of "set-off" or withholding against properly payable invoices issued by Seller or any business affiliated with Seller. Payment of the purchase price shall be due at the remittance address shown on the Seller's invoice 30 days following the date of Seller's invoice unless otherwise agreed in writing. Seller may charge interest at a rate of 1 percent per month on all balances outstanding past the due date. Buyer shall pay all of Seller's reasonable costs and expenses (including reasonable collection agency and attorneys' fees) to enforce and preserve Seller's rights hereunder.
 - Defaults.** Buyer will be in default of this Contract if any of the following have occurred: (1) a proceeding under 11 U.S.C. or any other federal or state insolvency law is started by or against Buyer; (2) Buyer fails to pay for any one or more shipments within the time specified; (3) if, in Seller's estimation, Buyer appears to be insolvent and/or generally unable to pay its debts when due and Buyer cannot provide adequate assurance of future performance; or (4) Buyer is otherwise in breach of this Contract. If Buyer defaults, Seller may: (a) stop extending credit, change credit terms or place Buyer on "C.I.A."; (b) suspend further shipments until any defaults have been cured and Seller has received assurances of future performance satisfactory to Seller; (c) suspend performance; (d) terminate this Contract; and/or (e) pursue any other right or remedy available at law or in equity. Buyer's default under this or any other agreement between Buyer and Seller shall be deemed a default under all agreements between Buyer and Seller until such default is cured. Each of the rights and remedies reserved to Seller in this paragraph shall be cumulative, and Seller's assertion of any right or remedy shall not preclude Seller's assertion of any other rights or remedies.
 - Shipping; Risk of Loss.** Unless otherwise agreed in writing, all Products will be shipped FCA (Incoterms 2010) from Seller's location. Risk of loss shall pass to Buyer in accordance with the applicable Incoterm. Seller shall retain a security interest in the Products until Seller's receipt of payment in full from Buyer. Any delivery dates or lead times provided by Seller are estimates only and subject to change without notification.
 - Suitability of Products Inspection.** Determination of the suitability of the Products purchased by Buyer for the use(s) contemplated by Buyer or Buyer's customers is the sole responsibility of Buyer. In order to mitigate or reduce damages, Buyer is responsible for ensuring all Products received conform to the Contract. Buyer shall promptly, and in any event prior to use and/or comingling, inspect Products for any damage to packaging, shortage, or non-conformance to this Contract. All claims for damage to packaging, shortage, or non-conformance which could reasonably be discovered in the course of such investigation shall be waived unless Buyer notifies Seller, in writing, within thirty (30) days following the date of delivery, describing the non-conformity with reasonable specificity. Failure to promptly inspect the Products and to notify Seller in writing of non-conforming Products constitutes a waiver of all claims and actions related to the non-conformity. Buyer shall do all that is necessary or desirable to preserve nonconforming Products for inspection and testing, to avoid incurring damage for any nonconforming Products, to cooperate with Seller in implementing the remedies under this Contract, and to protect nonconforming Products until Seller has agreed to the disposition or care of the nonconforming Products.
 - Compliance with Laws.** Buyer agrees to comply with all rules, regulations, ordinances and laws including those relating to Buyer's use of the Products and shall reimburse Seller for any costs incurred due to Buyer's failure to so comply.
 - Warranties; Buyer's Remedy; Seller's Liability Limitation.** Buyer is responsible for ensuring that the Products and specifications are adequate for Buyer's needs. Any Products specification changes shall not bind Seller unless agreed in writing, as evidenced by a document signed by at least two (2) of Seller's authorized signatories. **Seller warrants that the specifications of the Products will be within the upper and lower limits of those technical data fields reflected on the Certificate of Analysis and/or Inspection Certificate, as applicable, which accompanies the shipment of such Products, until: (i) the expiration of the shelf-life of the Product, as listed on Seller's documentation; or (ii) Buyer's use (whichever occurs first), provided the Products are stored properly and in accordance with Seller's documentation. In no event will any Seller warranty exceed one (1) year following the date of shipment. SELLER EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
- Buyer's exclusive remedy, and Seller's sole liability, for non-conforming Products or breach of warranty shall be, at Seller's option, replacement of the non-conforming Products at Buyer's original point of delivery or refund of the purchase price. Notwithstanding any language herein to the contrary, Buyer's exclusive remedy and Seller's aggregate liability for any and all suit(s), claim(s) or action(s) against Seller arising out of this Contract, including but not limited to those related to delivery or non-delivery of product or in tort, is expressly limited to the price for the quantity of the Products causing the occurrence from which Buyer claims its damages were caused; and Seller's total liability under this Contract for all claims, suits, and actions, whether based in contract, tort, or any other legal theory or otherwise, shall not exceed \$100,000. In no event will Seller be liable for any special, indirect, incidental, consequential or exemplary damages in connection with, or arising out of, this Contract, whether based in tort, contract, or any other legal theory or otherwise, including but not limited to loss of profits or revenues, loss of sales, loss of use, production delays, or loss of goodwill, and whether or not either party has been advised of the possibility of such damages. All legal proceedings by Buyer relating to the Products must be brought within one (1) year following the date of its shipment or, with respect to legal proceedings related to non-delivery, the requested delivery date, and Buyer waives all legal proceedings not brought within such period and all claims and defenses that could have been asserted in such proceedings. Buyer assumes all risk of liability, in contract or tort, for consequential damages, property damage, and personal injury (including death) arising in any way from Buyer's transportation and storage of the Products and its containers, use of the Products, including but not limited to using the Products in manufacturing, combining the Products with other substances, incorporating the Products in Buyer's finished good or product, selling Buyer's finished good or product, and disposing of the Products and its containers. Except to the extent of Seller's willful misconduct, as determined by a court of competent jurisdiction, Buyer shall indemnify, defend, and hold Seller and its employees, shareholders, parents, subsidiaries, agents and affiliates harmless from all claims, suits, demands, and actions arising out of or in connection with Buyer's sale of its own goods (including without limitation claims for personal injury, property damage, breach of contract, negligence, strict liability and intellectual property infringement) and all damages, costs, and expenses (including reasonable attorney's fees and other legal expenses) arising therefrom. This provision shall survive termination of this Contract and delivery, use, and application of the Products.
- Force Majeure; Allocation.** Seller shall not be liable for the delay of or failure to meet its obligations under this Contract, or the consequences to Buyer, arising from any event beyond Seller's control, including but not limited to: inability to obtain (on terms deemed economically and commercially practicable by Seller) raw materials, fuel or transportation; fire, floods, inclement weather and other acts of God; strikes, lockouts or other work stoppages; wars; sabotage; accidents; plant shut down; equipment failure; currency fluctuation or manipulation; production decisions not made by Wacker Chemical Corporation; and voluntary or involuntary compliance with any law. During the period of delay, and in any other times of shortage, Seller is relieved from its obligations hereunder and may allocate available Products in a fair and reasonable manner, as Seller determines in its sole discretion, without the obligation to obtain cover, or similar products, from other sources. Seller shall have the right to satisfy its own requirements and the requirements of its parent, subsidiary and affiliate companies first. Seller shall endeavor to, but has no obligation to, provide notice of any such shortages by issuing a notice of allocation, which may include Product allotment and/or caps.
 - Successors and Assigns.** This Contract shall be binding upon and inure to the benefit of the respective parties' successors and assigns. Neither party may assign this Contract without the prior written consent of the other, which shall not be unreasonably withheld.
 - Governing Law; Arbitration.** The laws of the State of Tennessee will govern the interpretation and enforcement of this Contract. Any dispute or controversy arising out of or related to this Contract, other than claims for specific performance or injunctive relief, shall be resolved by binding arbitration, in Hamilton County, Tennessee, or such other location agreed upon by Buyer and Seller, in accordance with the Commercial Arbitration Rules of the American Arbitration Association in effect at the time of the demand for arbitration. Except with respect to the foregoing, the parties agree to exclusively bring, file, and litigate any claims, suits, or actions arising from this Contract or related to the Products in state or federal courts of Hamilton County, Tennessee. The parties hereby disclaim the United Nations Convention on Contracts for the International Sale of Goods and expressly agree the same does not apply to the Agreement or the sale of any Products by Seller.
 - Proprietary Rights; Confidentiality.** All designs, drawings, specifications, samples and such other proprietary information, whether or not marked as such, made available by Seller shall be and remain the legal property of Seller, and shall be held confidentially by Buyer. Buyer acknowledges Seller's right to injunctive relief with respect to the foregoing. Buyer will cease to use such proprietary information upon termination of this Contract and will promptly return to Seller any and all such designs, drawings, specifications, and all other confidential information and data furnished.
 - Patent Infringement.** Seller shall, at its own expense, defend and control any suit against Buyer for infringement of any United States Letters Patent alleging the manufacture of the Products infringe any United States Letters Patent, and shall pay any award of damages assessed against Buyer in the suit to the extent only that the damages are awarded in connection specifically with the alleged infringement; however, the foregoing obligations shall not arise unless Buyer gives Seller prompt notice in writing of the institution of the suit and, to the full extent of Buyer's power to do so, Buyer permits Seller to defend and control the suit against these allegations. If a suit or claim results in any injunction or order that would reasonably prevent Seller from supplying any Product, Seller may, at its option: (i) secure an appropriate license to permit Seller to continue supplying those Products; (ii) modify the appropriate Product so that it becomes non-infringing; (iii) replace the appropriate Product with a non-infringing but practically equivalent Product; or (iv) provide a refund in the amount of the purchase price to Buyer for any Product Buyer has in inventory at the time and is prevented from using. The above fully expresses Buyer's exclusive remedy and Seller's sole responsibility with respect to infringement or alleged infringement of any intellectual property rights by the Products, and SELLER EXPRESSLY DISCLAIMS ANY OTHER WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED, WARRANTY AGAINST INFRINGEMENT with respect to the Products.
 - Product Improvement; Consolidation; Cessation.** Seller may, without liability or obligation and at any time: (i) cease or discontinue the manufacture and/or sale of any of the Products; (ii) consolidate Products with other of Seller's products; (iii) introduce new versions of any Product; and/or (iv) make iterative changes in Product manufacture (including location, method, and raw materials). Seller shall endeavor to provide notice of any such cessation or discontinuation; however, advance notice may not be possible, especially if such action is prompted by a governmental directive or suggestion, or if undertaken for the purpose of safeguarding human health or safety.
 - Prohibited Parties.** Neither Buyer nor any person that directly or indirectly owns 10% or more of the outstanding equity in Buyer (collectively, the "Buyer Persons") is, or has been determined by the U.S. Secretary of the Treasury to be acting on behalf of, a Specifically Designated National and Blocked Person, or has otherwise been designated as (i) a person or entity with whom an entity organized under the laws of the United States is prohibited from entering into transactions or (ii) from whom such an entity is prohibited from receiving money or other property or interests in property, pursuant to Executive Orders, regulations promulgated by the United States Treasury Department's Office of Foreign Assets Control ("OFAC"), or otherwise. In addition, no Buyer Person is located in, or operating from, a country subject to U.S. economic sanctions administered by OFAC. Should Buyer be found in violation of any of the aforementioned obligations, Seller may immediately suspend sales and shipments to any and all Buyer facilities and terminate this Agreement without liability and Buyer will indemnify Seller for all costs and liabilities arising from such violation.