

TERMS AND CONDITIONS

1. AGC Chemicals Americas, Inc. ("AGCCA") warrants that the products or materials (hereafter "Products") delivered hereunder meet AGCCA's standard specifications for the Products or such other specifications as may have been expressly agreed to herein. AGCCA MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY, EXCEPT AS EXPRESSLY PROVIDED HEREIN. Buyer assumes all risk and liability resulting from use of the Products delivered hereunder, whether used singly or in combination with other products.
2. No claim of any kind, whether as to Products delivered or for nondelivery of Products, and whether or not based on negligence, shall be greater in amount than the purchase price of the Products in respect of which damages are claimed and failure to give notice of claim within ninety (90) days from date of delivery or the date fixed for delivery (in the case of nondelivery) shall constitute a waiver by Buyer of all claims in respect of such Products. Products shall not be returned to AGCCA without AGCCA's prior permission. The remedy hereby provided shall be the exclusive and sole remedy of Buyer. In no event for any claim related in any way to this Agreement shall either party be liable for special, indirect or consequential damages, whether or not caused by or resulting from the negligence of such party.
3. AGCCA warrants that the use or sale of the Products delivered hereunder will not infringe the claims of any United States patent covering the Products themselves but does not warrant against infringement by reason of the use thereof in combination with other products or in the operation of any process.
4. BUYER SHALL PROHIBIT THE USE OF PRODUCTS IN A DEVICE WHERE THESE PRODUCTS COME INTO CONTACT WITH INTERNAL PORTIONS OF THE HUMAN BODY, OR INTO CONTACT WITH BODILY FLUIDS TO BE RETURNED TO THE BODY UNLESS BUYER AND AGCCA ENTER INTO A SEPARATE WRITTEN CONTRACT WHICH IS CONSISTENT WITH AGCCA MEDICAL APPLICATION POLICY AND EXPRESSLY ACKNOWLEDGES THE INTENDED APPLICATION.
5. Neither party shall be responsible or liable to the other for any damages arising out of nonperformance or delay in performance of any sale or purchase of Products due to acts of God, wars, riots, strikes, lockout, accidents, machinery or equipment breakdown, unavailability on commercially reasonable terms of transportation, utilities, labor or materials, any act, rule, regulation of any government or any other cause beyond the reasonable control of the party affected.
6. If AGCCA is unable to supply the total demand for Products specified herein, AGCCA may distribute its available supply among any or all purchasers, as well as departments and divisions of AGCCA, on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.
7. If any government action should place or continue limitations on the price provided for in this Agreement such that it would be illegal for AGCCA to charge, assess or receive the full amount of or to increase such prices as determined by this agreement, then AGCCA may (1) continue to perform under this Agreement subject to such adjustments in prices that AGCCA may deem necessary to comply with such government action; (2) revise this Agreement, subject to Buyer's approval, in order to most nearly accomplish its original intent, or (3) terminate performance of the affected portions of the Agreement without liability for any damages.
8. At Buyer's request, AGCCA may furnish such technical assistance and information as it has available with respect to the use of the Products covered by this Agreement. Unless otherwise agreed in writing, all such technical assistance and information will be provided gratis, and Buyer assumes sole responsibility for results obtained in reliance thereon.
9. Buyer acknowledges that it has received and is familiar with AGCCA's labeling and literature concerning the Products sold hereunder and will forward such information to its employees who handle, process or sell such Products and customers of such Products, if any. Buyer will not knowingly resell or give any of the Products in sample form to persons using or proposing to use the Products for purposes contrary to recommendations given by AGCCA or prohibited by law, but will sell or give them as samples only to persons who in the opinion of Buyer can handle, use and dispose of them safely.
10. Buyer shall reimburse AGCCA for all taxes (excluding income taxes), excises or other charges which AGCCA may be required to pay to any government (national, state or local) upon the sale, production or transportation of the Products sold hereunder.
11. If Buyer fails to comply with AGCCA's terms of payment or if AGCCA shall have any doubt at any time as to Buyer's financial responsibility, AGCCA may decline to make further deliveries except upon receipt of cash or satisfactory security.
12. AGCCA may assign this Agreement to an affiliated company or to a purchaser of all or substantially all of its business or assets, but it is not otherwise assignable or transferable by either party, in whole or in part, except with the prior written consent of the other party, which shall not be unreasonably withheld.
13. This document, along with documents specifically referred to herein, contains all of the terms and conditions with respect to the sale and purchase of the Products sold hereunder. These terms and conditions supersede any of previous date, and no modification thereof shall be binding on either party unless in writing and signed by both parties. No modification shall be effected by the acknowledgment or acceptance of purchase order forms stipulating different conditions. Unless Buyer shall notify AGCCA in writing to the contrary as soon as practicable after receipt of this document by Buyer, the Buyer's acceptance of the Products or payment therefore shall be equivalent to Buyer's assent to the terms and conditions hereof. Waiver by either party of any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may thereafter occur.
14. This Agreement shall be governed by the laws of Pennsylvania.