



MITSUBISHI CHEMICAL AMERICA, INC., ALPOLIC DIVISION  
TERMS AND CONDITIONS OF SALE

The Terms and Conditions listed below are the exclusive and binding agreement between the parties covering the sale of any and all materials and/or services sold herein (the “Products”), and in lieu of all other terms and conditions appearing on a Buyer purchase order, website, software, or elsewhere and apply to all quotations made and orders accepted by Mitsubishi Chemical America, Inc. (“Seller”). Additional or different terms proposed by Buyer are hereby rejected unless specifically agreed by the parties in writing. For the avoidance of doubt, click through, click wrap, “I agree” or other electronic signatures on a Buyer website or in Buyer software shall not be deemed a signed writing for any sale between the parties. Objection to any terms and conditions contained herein shall be deemed to have been waived unless written notice of such objection is received by Seller within ten (10) days of Buyer’s receipt of these Terms and Conditions and such objection is accepted in writing by Seller. Seller’s shipment of the Products shall not be interpreted as acceptance of terms and conditions in Buyer’s purchase order, on a Buyer website or software, or elsewhere, which are different from or in addition to any terms and conditions contained herein. The Terms and Conditions listed below comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral.

1. VARIATIONS: All Products, including those produced to meet exact specifications, shall be subject to tolerances and variations consistent with usages of the trade and regular practices concerning dimension, weight, packaging, normal variations in surface, deviations from tolerances and variations consistent with practical testing and inspection methods, and practices concerning over and under count of Products. All orders requiring custom production are subject to an allowed percentage +/- on production, shipping and billing based upon material and Sq Ft ordered. Seller specifically reserves the right, in its sole discretion, to make changes to its raw materials, suppliers and processes that it does not believe will materially negatively affect the quality or performance of the Products at any time without notice.

2. PRICE: Prices quoted by Seller and availability of Products are subject to change without notice, unless expressly stated on Seller’s proposal that prices are firm for a certain term or as otherwise agreed in a signed writing by the parties. Prices do not include taxes, duties, or the like, and do not include freight, which will be added separately on the invoice; freight charges are based on warehouse shipping location. Buyer will be invoiced for Products according to the price in effect at the time they are ordered. Sales tax will be applied to all invoices unless a valid resale tax-exemption number and certificate is provided or is on file with Seller in accordance with Section 18 below. All Products ordered in less than full-price quantities are subject to crating fees per item ordered, if applicable. Additional crating charges may apply if changes to order quantities are requested after order is packed and ready for shipment. Full crates and crating fees will be determined by Seller. Last minute order Special crating requests, of less than standard crating, are subject to the current crating fee per crate needed.

3. DELIVERY, TITLE, REFUSED ORDERS: Unless otherwise agreed in writing by Seller, delivery shall be EXW: Seller’s location (Incoterms 2020) using Seller’s standard methods for packaging and shipping such Products. Title to and risk of loss and liability for Products relating to or arising out of ownership or use of Product shall pass from Seller to Buyer at the time Products are made available to the carrier at Seller’s site. As collateral security for the payment of the purchase price of the Products, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the New York Uniform Commercial Code. Refused orders shall be subject to a 15% restocking fee in addition to all freight charges and full payment of Products ordered. No future orders will be shipped unless this charge is paid in full. In addition, Buyer is responsible for all freight charges on validly cancelled orders, subject to this order. All delivery dates are estimate only and Seller reserves the right to deliver in advance of estimated delivery date.



4. **INSPECTION:** Buyer shall inspect Products at the point of receipt of shipment. Regardless of whether Buyer inspects Products, all claims for alleged defects or shortfalls in Products are waived unless Seller is notified of the claim within three (3) days after receipt of shipment and furnishes such written evidence or other documentation as required by Seller. No claim shall be effective if made after Products have been altered or used. Buyer shall afford Seller prompt and reasonable opportunity to inspect all Products to which any claim is made. No material shall be returned to Seller without Seller's express consent, a return authorization, and return instructions in accordance with the return procedures set forth below in Section 17.

5. **FREIGHT DAMAGE:** Seller shall not be liable for physical damage incurred in transit or storage. If Buyer receives Product believed to be damaged during shipment, Buyer's sole remedy lies with the carrier and it should: (a) immediately notify Seller; (b) note any damage on the receipt and bill of lading; (c) file a claim with the carrier within three (3) days of receipt; and (d) retain all shipping cartons, packing materials and content in the same condition as it was received.

6. **PAYMENT TERMS:** Unless otherwise agreed in writing by Seller, terms of payment shall be net thirty (30) days from the date of invoice. If payment is not received within such period, the outstanding balance shall accrue interest at a rate of one and one half percent (1.5 %) per month until paid. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms and Conditions or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for thirty (30) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any setoff of any claim or dispute with Seller.

7. **CREDIT:** Buyer shall submit a credit application to Seller for approval. Credit is subject to advance approval by Seller, in its sole discretion. If the financial condition of Buyer at any time is such as to give Seller, in its judgment, reasonable grounds for concern about Buyer's ability to perform its obligations under a purchase order, Seller may require full or partial payment in advance or may suspend any further deliveries or continuance of the work to be performed by Seller until such payment has been received. Failure to furnish payment within ten (10) days of demand by Seller shall constitute a repudiation of the contract and in such event Seller shall be entitled to receive reimbursement for its cancellation charges in addition to any other rights available to it at law. In the event of bankruptcy or insolvency of Buyer or in the event any proceeding is brought by or against Buyer under the bankruptcy or insolvency laws, Seller shall be entitled to cancel any order outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its cancellation charges.

8. **WARRANTY:** Seller warrants that the Products will conform to the specifications agreed upon by the parties. In the absence of specifications, Seller's standard published warranties in effect at the time Buyer orders the Products shall apply. The original purchaser understands, agrees and accepts this warranty. Warranty becomes effective only when signed by a duly authorized representative of Seller and issued. If Buyer timely notifies Seller of any nonconforming Products covered by its warranty, Seller shall, in its sole discretion, either (i) repair or replace such nonconforming Products with conforming Products (or the defective part), or (ii) credit or refund the price of such Products at the pro rata contract rate. **THE FOREGOING SHALL BE THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY WARRANTY CLAIMS.** If Seller determines, in its sole discretion, that such Product is not non-conforming, Buyer shall pay all freight and other reasonable costs incurred by Seller related to the returned Product. Seller shall not be liable for a breach of the warranty set forth in Section 8 if: (i) Buyer makes any further use of such Products after giving such notice; (ii) the defect arises because Buyer failed to follow Seller's oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Products, or they are otherwise mishandled; or (iii) Buyer alters or repairs such Products without the prior written consent of Seller, or combines or converts such Products. **BUYER REPRESENTS AND WARRANTS THAT IT SHALL ONLY USE OR INSTALL FIRE RESISTANT (FR) PRODUCTS IN ELEVATIONS ABOVE FORTY (40) FEET AND THAT IT SHALL NOT USE OR INSTALL POLYETHYLENE (PE) PRODUCTS IN ELEVATIONS ABOVE FORTY (40) FEET.**



9. **DISCLAIMER OF FURTHER WARRANTIES:** THE WARRANTIES SET FORTH IN SECTION 8 ARE IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. BY ACCEPTING THESE TERMS AND CONDITIONS, BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATION OR WARRANTY MADE BY SELLER, OR ANY OTHER PERSON ON SELLER'S BEHALF.

10. **LIMITATION OF REMEDIES AND LIABILITY:** NOTWITHSTANDING ANY CONTRARY PROVISION HEREOF OR THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND TO THE FULLEST EXTENT NOT PROHIBITED BY APPLICABLE LAW, SELLER'S LIABILITY TO BUYER IN ANY CAUSE OF ACTION, WHETHER BASED ON CONTRACT OR TORT, INCLUDING WITHOUT LIMITATION NEGLIGENCE, OR ANY OTHER THEORY, SHALL BE LIMITED TO THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS GIVING RISE TO SUCH CLAIM. WITHOUT LIMITING THE FOREGOING, SELLER SHALL NOT BE LIABLE, AND BUYER WAIVES ALL CLAIMS AGAINST SELLER, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS AND LOSS OF USE). ANY CAUSE OF ACTION THAT BUYER MAY HAVE AGAINST SELLER AND WHICH MAY ARISE IN CONNECTION WITH THE PRODUCTS MUST BE COMMENCED WITHIN SIX (6) MONTHS AFTER THE CAUSE OF ACTION HAS ACCRUED.

11. **INDEMNIFICATION:** Buyer shall indemnify Seller for and hold Seller harmless from (i) any and all loss, damage or injury to persons or property or claims of intellectual property infringement or regulatory noncompliance resulting from Buyer's handling, storage, transportation, resale or use of Products in manufacturing processes, or in combination with other substances, or otherwise and (ii) all damages, costs and expenses resulting from special marking of Products or containers in accordance with Buyer's requests.

12. **CONFIDENTIAL INFORMATION:** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of Section 12. This Section does not apply to information that Buyer can demonstrate to Seller's reasonable satisfaction is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

13. **SERVICES:** All technical advice, recommendations and services provided by Seller are intended for use by persons having skill in the particular area of the services being provided. Such advice is provided to Buyer at its own risk, and Seller assumes no responsibility for any such advice, recommendations or services, and Buyer hereby waives all claims against Seller, for any results obtained or damages incurred or claims or regulatory noncompliance arising from the use of Seller's advice, recommendations or services, absent willful misconduct.

14. **FORCE MAJEURE:** Seller will not be liable for non-performance or delay in performance due wholly or partly to any cause not in its reasonable control or not avoidable by reasonable diligence ("Force Majeure"). Upon the occurrence of Force Majeure, Seller shall give Buyer notice thereof and may suspend or reduce deliveries during the period of Force Majeure, and the total quantity deliverable under this Agreement will be reduced by the quantities so omitted. The following, while not an exclusive listing, will be considered to be Force Majeure: labor controversies; severe weather conditions and court decrees;



inability to use the full capacity of plants or facilities as a result of governmental action; machinery malfunctions or breakdown; pandemic or epidemic; and the inability (without litigation or the payment of penalties or unreasonable price or the acceptance of unreasonable terms and conditions) to obtain fuel, power, labor, containers, transportation, facilities or material necessary to produce or transport the Products.

15. **SHORTAGES:** If shortages occur in Seller's supply of the Products for any reason other than a Force Majeure, Seller will allocate all Products produced among its customers, its own requirements, and the requirements of its or its parent's division, subsidiaries, and affiliates in a manner and amount that it deems fair and reasonable, without obligation to obtain similar goods from other sources. Seller may deduct any quantity not shipped to Buyer because of any such shortages of either Products or materials from the quantity specified in Buyer's Purchase Order.

16. **HANDLING; LOADING; UNLOADING AND CONTAINERS:** (a) Buyer acknowledges that the Products 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 dangers to persons, property or the environment. Buyer certifies that containers and allied equipment presented by it at Seller's shipping point will be fit for the Products. Seller may refuse to load Buyer's containers if Seller has concerns that the quality of the Products will be prejudiced or that any unsafe condition exists (provided, however, Seller shall have no obligation to do so). Buyer shall be responsible for the prompt unloading and release of all transportation equipment and shall pay any invoice for demurrage, other expense or loss caused by Buyer within ten (10) days of receipt of written notice from Seller. (b) Buyer shall unload railroad cars, trucks and barges furnished by Seller within the free time specified by tariffs or time periods on file with applicable regulatory bodies or promptly after receipt if no such tariffs or time periods are on file, and pay any charges resulting from its failure to do so directly to the common carrier upon receipt of invoice therefor. Buyer shall pay Seller's daily charges for trip leased tank cars for tank cars held longer than seven (7) days from constructive placement. BUYER ASSUMES FULL RESPONSIBILITY FOR USE AND CONDITION OF CARS, TRUCKS AND BARGES WHILE IN BUYER'S POSSESSION AND AGREES TO (1) COMPENSATE SELLER FOR LOSS OR DAMAGE TO SELLER PROPERTY AND (2) INDEMNIFY AND SAVE SELLER HARMLESS FROM ANY LOSS OR DAMAGE TO PROPERTY OTHER THAN SELLER PROPERTY AND FROM ANY INJURIES TO PERSONS RELATING IN ANY WAY TO THE USE OF SUCH CAR(S), TRUCK(S) AND BARGE(S) WHILE SUCH ARE IN BUYER'S POSSESSION. Buyer shall report to Seller promptly any damage that may be sustained by the car(s), truck(s) or barge(s) in Buyer's possession.

17. **RETURN AUTHORIZATION:** All returns require pre-approval of Seller. Buyer shall contact customer service to receive a Return Authorization ("RA"). All returned Product must include original packaging with all accessories and parts included. Seller may charge a restocking fee if it chooses to approve a return. The RA must be marked on all returned packages. Buyer is responsible for all freight charges and shall send returned Product postage pre-paid. Orders for custom production run may not be cancelled without penalty once raw materials have been ordered and may not be cancelled or returned once production has been completed. Except in the case of non-conforming Products within the applicable warranty period, all returns must be made within thirty (30) days of delivery of Product.

18. **TAXES:** (a) Buyer shall provide Seller with a valid State Sales Tax Exemption Certificate. If Seller does not have Buyer's tax exempt information on file, sales tax shall be applied to invoices. (b) 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 Products after the date of the purchase order, 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 the order as to such Products.

19. **NOTICES:** All notices, requests and other communications to any party hereunder shall be in writing (including facsimile transmission) and shall be deemed received on the earlier of (i) the date actually received as evidenced in writing,



regardless of how sent or (ii) three (3) business days after being mailed by United States certified or registered mail, return receipt requested, with postage prepaid, or (iii) the next business day, if sent by overnight courier.

20. **COMPLIANCE WITH LAW:** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Products under these Terms and Conditions or any resale of the Products by Buyer. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Sales hereunder, unless otherwise indicated, constitute domestic sales within the United States. If Buyer elects to export Products, Buyer shall constitute the US principal party in interest or exporter for all purposes under applicable law. Seller specifically reserves to itself all rights to drawback of duty or taxes paid on materials entering into the manufacture or production of the Products specified in any order. Buyer disclaims all interests in such rights and agrees to furnish Seller with proof of exportation and all other documents necessary to obtain payment of such drawbacks and to cooperate with Seller in obtaining such payment. Seller may terminate this order if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products.

21. **SALES AGENTS:** 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.

22. **GRATUITIES:** Buyer warrants that it has not offered or given and will not offer or give to any employee, agent, or representative of Seller any gratuity with a view toward securing any business from Seller nor attempted to influence such person with respect to the terms, conditions, or performance of any contract or purchase order with Seller. Any breach of this warranty shall be a material breach of each and every contract between Buyer and Seller.

23. **ASSIGNMENT:** Buyer shall not assign any purchase order, or any interest therein without the written consent of Seller. Any such actual or attempted assignment without Seller's prior written consent shall entitle Seller to cancel such purchase order upon written notice to Buyer.

24. **GOVERNING LAW:** The validity and interpretation of these Terms and Conditions shall be governed by the laws of the state of New York, without respect to its choice of law principles.

25. **RELATIONSHIP OF THE PARTIES:** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

26. **GENERAL:** (a) In the event that any of the provisions, or portions thereof, or interpretations by the parties or by either party of any provisions, or portions thereof, of these Terms and Conditions are held to be unenforceable or invalid by any court of competent jurisdiction, Seller and Buyer agree that the court shall enforce such provision to the maximum extent permissible, and the other terms and conditions will remain in full force and effect. (b) Waiver by Seller of any breach of any of the terms and conditions set forth herein shall not be construed as a waiver of any other breach, and the failure of Seller to exercise any right arising from any default of Buyer hereunder shall not be deemed to be a waiver of such right, which may be exercised at any subsequent time. (c) No amendment of these Terms and Conditions shall be valid and enforceable unless agreed to in writing by Seller. (d) These Terms and Conditions are subject to change at the sole discretion of the Seller.

**End**