

TERMS AND CONDITIONS OF SALE

The Order Acceptance or Order Acknowledgement (if any) delivered to Buyer by The Shepherd Chemical Company (“Seller”) and these Terms and Conditions of Sale become the Agreement (“Agreement”) between Seller and Buyer for the sale and purchase of goods (“Product”) described on the face of the Order Acceptance, Order Acknowledgement or other written description of the Product. All sales by Seller, unless covered by prior existing written agreement signed by Seller, are subject only to the following Terms and Conditions of Sale, which form a part of the Agreement. Unless expressly acknowledged in writing by Seller, no verbal agreement or understanding with Seller’s representative, written shipping instructions or Buyer’s purchase order or other acknowledgment shall affect or vary these Terms and Conditions which cover all matters agreed upon with reference to this sale, and all different, additional or contradictory terms and conditions that are part of a purchase order, an order acknowledgement or any other document issued or delivered by Buyer shall be null and void and of no force and affect. Any terms and conditions offered by Buyer that are different, in addition to, or in contradiction to the terms and conditions set forth herein are hereby rejected by Seller and shall be disregarded in their entirety. Buyer’s acceptance of shipment hereunder constitutes agreement to these Terms and Conditions of Sale.

1. **PRICE.** Buyer’s order for Product is accepted subject to delivery, when available, at Seller’s price, point of delivery, payment and other standard terms in effect at date of shipment. Unless otherwise provided in Seller’s Order Acceptance or Order Acknowledgement, Buyer shall pay all taxes, excises, fees or charges with respect to the sale and transportation of all Product shipped to Buyer. In the case of multiple or future deliveries, prices are subject to revision by Seller at any time. If Seller desires to revise the price, point of delivery or terms of payment for the Product hereunder, but is restricted or prevented from doing so by reason of any governmental law, regulation, order or action, Seller shall have the right to terminate this Agreement for sale of Product with respect to any Product not then delivered, effective upon delivery of written notice to Buyer. Payment terms for all billed amounts shall be net thirty (30) days from the date of invoice.

2. **EXCUSE OF PERFORMANCE.** No liability shall result from delay in performance or non-performance by Seller caused by circumstances beyond the control of any party affected including, but not limited to, acts of God, fire, flood, explosion, accident, riot, war, perils of the sea, sabotage, strike, lockout, labor trouble or shortage, embargo, Government action or prohibition, breakage or failure of machinery, or curtailment or inability to obtain or delay in obtaining material or supplies, equipment, fuels, water power or transportation at reasonable cost. If any of such circumstances limit Seller's supply of the Products to be sold under this Agreement, Seller shall have the right to prorate its available supply over its own manufacturing requirements and all of its customers solely in such manner as Seller deems equitable, and the requirements herein shall be appropriately reduced.

3. **BUYER'S CREDIT.** Seller reserves the right to terminate this Agreement or to suspend further deliveries in the event Buyer fails to pay for any one shipment when same becomes due. If at any time, in Seller's opinion, Buyer's credit is impaired, Seller shall have the right to require payment in advance, cash on delivery, or satisfactory security for future Product delivered.

4. **WEIGHTS AND CONTAINERS.** Seller's weights and counts shall govern unless proved to be in error. Returnable containers are the property of Seller and are loaned to the Buyer. Payment of a deposit, when required by Seller, does not convey title to such containers. Each empty container must be returned within sixty (60) days from the date of shipment, freight charges collect, and must not be used for any material other than that shipped therein. Upon receipt of the container within sixty (60) days, in good condition, any deposit will be returned or credited to the Buyer. Cost of containers not returned to Seller within the time specified shall be charged to Buyer's account.

5. **SHIPMENT.** Unless otherwise specified and agreed by Seller, all U.S. originated sales hereunder shall be F.O.B (Ohio U.C.C.) Seller's plant or warehouse or such other location as Seller may determine. All sales hereunder which originate outside the U.S. shall be ExWorks (Incoterms 2010). Unless otherwise specified and agreed by Seller, title, liability for and risk of loss to such Product shall pass to Buyer when Product is placed in the

hands of the carrier, and Buyer assumes all responsibility for shortages, losses, delays or damages in transit thereafter. Buyer will, in the event of loss or damage in transit, file its own claim with carrier. Seller will arrange for shipment to Buyer in accordance with Buyer's shipping instructions. If Buyer has not provided shipping instructions, Seller will arrange for shipment to Buyer in such manner as Seller selects, consistent with Seller's ability to schedule manufacturing and shipment. When shipment is made in bulk, certified weights and official sample at point of shipment shall govern. Product shall be shipped by Seller in accordance with Seller's standard shipping practices at Seller's place of shipment. Buyer shall pay the costs of any specialized packing, crating, freight express or cartage requested by Buyer, as may be required by law or if the Product requires specialized packaging. In the event Seller is required to pay fees, demurrage, or costs with respect to the shipping of the Product, Buyer hereby agrees to pay all such fees, demurrage, and other costs, including any subsequent undercharge claims, and to indemnify and hold Seller harmless from any claims for payment of any such fees, demurrage, or other costs unless caused by Seller's negligence or breach of this Agreement. Buyer shall pay all insurance, transportation and freight costs relating to the Product sold hereunder.

6. **WARRANTIES.** Unless otherwise agreed by Seller in writing, Seller warrants title and that all Product sold hereunder at the time of shipment shall conform to Seller's standard specifications in effect on the date of shipment or to the attached specifications, if any, and Seller reserves the right to change such specifications at any time with or without notice. Seller also warrants that the Product sold hereunder has been produced in accordance with the Fair Labor Standards Act of 1938, as amended. This warranty is limited to Product bearing Seller's label in Seller's original package. EXCEPT ONLY AS OTHERWISE SPECIFICALLY PROVIDED HEREIN OR AGREED IN WRITING BY SELLER, THESE WARRANTIES ARE EXCLUSIVE AND ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCT, EXPRESS OR IMPLIED, ARISING BY LAW OR CUSTOM, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WHETHER USED ALONE OR IN COMBINATION WITH OTHER SUBSTANCES. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.

SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM BUYER'S PURCHASE OR USE OF SUCH PRODUCT OR FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING THEREFROM. SELLER'S TOTAL LIABILITY TO BUYER FOR ANY BREACH OF THIS LIMITED WARRANTY, OR FOR ANY CLAIM THAT THE PRODUCT DELIVERED HEREUNDER WAS DEFECTIVE OR NON-CONFORMING, SHALL BE LIMITED TO THE INVOICE PRICE OF ANY PRODUCT SHOWN TO BE DEFECTIVE, NON-CONFORMING, OR IN VIOLATION OF THE LIMITED WARRANTY PROVIDED HEREIN.

If the Product sold hereunder is described by reference to Seller's standard specifications, and not otherwise, Seller warrants that the Product delivered hereunder does not infringe the claims of any United States patent covering the Product itself; however, this warranty does not include charges of infringement arising by reason of the Buyer's conversion of the Product to another form, or its use in combination with other material, or its use in the operation of any process. In the event any suit or legal proceeding is brought against Buyer based on a claim that such Product in itself constitutes an infringement of any United States patent, the Seller shall defend at its own expense that portion of any suit or legal proceeding relating to said claim and will pay any damages or costs including attorney's fees awarded on said claim against Buyer, provided Buyer gives Seller prompt written notice of such infringement claim and of the institution of such suit or proceeding and also gives Seller all necessary authority, information and reasonable assistance to enable Seller, at Seller's option, to settle or defend the same as to said claim. The foregoing states the parties' entire agreement as to charges of infringement.

7. **INSPECTION AND LIMITATION OF LIABILITY.** Buyer shall inspect, within thirty (30) days of receipt, each shipment of Product sold hereunder, for any damage, defect or shortage. All claims by Buyer or others for alleged damage, defects, shortage, non-delivery, negligence or any other cause, whether or not enumerated ("defective performance") shall be deemed waived unless made in writing and received by Seller within thirty (30) days after Buyer's receipt of Product; provided, however, that as to any defective performance not reasonably discoverable within said thirty (30) day period, all such claims shall be deemed waived unless made in writing and received by Seller within ninety (90) days after Buyer's

receipt or non-receipt of the Product or within thirty (30) days after Buyer learns of the facts giving rise to the claim, whichever shall first occur. Failure of Buyer to give notice of any claim within the applicable time period specified above shall be deemed an absolute and unconditional waiver of such claim. At Seller's request, Buyer shall promptly forward to Seller a representative sample of any such Product. Transportation charges for the return of Product shall not be paid by Seller unless authorized in advance by Seller. Product of a hazardous nature is purchased solely at Buyer's risk, and Buyer agrees to indemnify Seller against all claims and liability arising out of a safety-related property of the Product purchased from Seller, or products made in whole or in part from such Product, whether such claims and liability are for negligence or otherwise. Seller shall not be liable for, and Buyer assumes responsibility and agrees to indemnify Seller for all personal injury and property damage resulting from the handling, possession, use or resale of any Product, whether used alone or in combination with other Product. SELLER'S LIABILITY FOR ANY AND ALL DAMAGES, ACTIONS OR CLAIMS AS A RESULT OF RECEIPT BY BUYER OF DEFECTIVE OR OTHERWISE NON-CONFORMING PRODUCT, REGARDLESS OF THE NATURE OF SUCH CLAIMS, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH A CLAIM IS MADE. SELLER SHALL NOT BE LIABLE FOR LOST PROFITS OR FOR INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES.

8. **INDEMNIFICATION.** Buyer shall, and does hereby agree to, indemnify and save Seller, its employees and agents harmless of and from any and all loss, cost (including, without limitation reasonable attorney's fees), claims, demands, judgments, actions or proceedings arising out of, on account of, or in connection with property damage or personal injury arising from the negligent or improper use of Product, unless such damage or injury was solely caused by the negligence of Seller.

9. **COMPLIANCE WITH LAWS.** Buyer agrees that it shall be its responsibility to comply with all applicable federal, state and local laws and regulations relating to the care, handling, sale, disposal and distribution of Product purchased hereunder.

10. **ASSIGNMENT.** Buyer shall not assign its rights or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation without consent shall be void.

11. **PRODUCT DISCONTINUANCE.** Should Seller elect to discontinue, curtail or limit the production or sale of Product due to the application of any governmental statute, regulation or order including but not limited to price controls, transportation, energy controls, pollution control, or product safety which, in Seller's judgment, will render the production or marketing of the Product economically, technologically or commercially infeasible, Seller may terminate this Agreement upon thirty days prior written notice to Buyer.

12. **CONFIDENTIALITY.** All information provided by Seller hereunder, including, but not limited to, the terms and conditions of this Agreement, must be held in confidence by Buyer. This obligation shall survive the termination or expiration of this Agreement.

13. **INTERPRETATION.** Whenever possible, each provision of this Agreement and any invoices or subsequent written contracts executed pursuant to this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any invoice or contract related hereto shall be prohibited by or invalid under such law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any invoice or contract related hereto. Any failure by Seller to exercise any right or remedy hereunder shall not be construed as a waiver of the exercise of that right or any other right at any subsequent time prior to payment of all amounts due Seller.

14. **INTEGRATION.** This Agreement, together with any invoices issued hereunder and any other written contracts executed pursuant to this Agreement, incorporates all the understandings of the parties with respect to the matters contained herein and supersedes all prior agreements, negotiations or communications, whether oral, written, or implied concerning the subject matter of this Agreement. In the event of any discrepancy between this Agreement and any invoice or other agreement between the parties, the terms of this Agreement shall control.

15. **MISCELLANEOUS.** The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather these rights and obligations shall be governed by the internal law of the State of Ohio, including its provisions of the Uniform Commercial Code. The parties acknowledge that Seller's acceptance is made in reliance on Buyer's representation that it is not insolvent as that term is defined in the Uniform Commercial Code. No conditions, usage of trade, course of dealing, understanding or agreement purporting to modify, vary, explain or supplement the terms of this Agreement shall be binding, unless made in writing and signed by the party to be bound. Any change in the quantity stated herein requested by Buyer and accepted by Seller shall be a modification of the Agreement only as to such quantity and none of the other terms and conditions hereof shall be affected. No waiver by Seller with respect to any breach or default or right or remedy, and no course of dealing shall be deemed to constitute a continuing waiver of any other breach or default or right or remedy, unless such waiver be expressed in writing signed by Seller.