

## STANDARD TERMS AND CONDITIONS OF SALE AMERICAS

**All orders for product ("Product") are subject to written acceptance by Orion Engineered Carbons ("Seller") and to credit approval. The complete agreement between Seller and buyer ("Buyer") is contained herein and in such other document(s) agreed to in writing by Seller and Buyer (collectively, "Contract").**

1. **ACCEPTANCE AND PRICE:** Except as stated therein, quotations are held open for thirty (30) days from the date on the quotation. Prices quoted will be firm for orders scheduled by Seller to be delivered within sixty (60) days of the quotation date. For orders not scheduled to be delivered within sixty (60) days of the quotation date, Seller reserves the right to use prices in effect at the time of delivery, including any surcharges applicable to the cost of production, distribution or storage of Product. Prices do not include sales, use, excise, or other similar taxes or governmental charges, and all such present and future taxes and charges will be paid by Buyer. Payment terms are as set forth in the Sale Confirmation/Acknowledgment. If any government action, order or request prevents Seller from adjusting or continuing in effect the price stated in this Contract, Seller shall have the right to cancel this Contract with respect to all or a portion of Product deliverable thereunder, without liability whatsoever. Each delivery of Product is a separate and independent transaction, and payment for each delivery shall be made accordingly. All payments are to be made in full and are not subject to set-off, recoupment, abatement, counter-claim or other adjustment.

2. **DELIVERY:** Delivery to Buyer of Product, and corresponding transfer of title and of all risk of loss, shall occur upon Seller's loading of Product for transport from Seller's production facility or other mutually designated facility (the "Delivery Point"). Delivery dates are approximate. Buyer grants Seller a purchase money security interest in all Product delivered hereunder until full payment for that Product has been received by Seller, and shall execute such related documents as Seller may reasonably request. Seller reserves the right to pack the Product otherwise than as specified by Buyer but in a commercially reasonable manner. Seller's weights shall govern, absent manifest error.

3. **RETURNABLE CONTAINERS:** Except as provided below, returnable containers, if any, shall remain the property of Seller. Buyer shall pay a deposit fee, per container, to be determined from time to time by Seller. Upon Buyer returning such container, freight prepaid, within ninety (90) days from the date of invoice, in good and fully reusable condition, properly cleaned and without any residue of Product or any other materials, such deposit will be returned. If any returnable container is not so returned, title and all responsibility with respect to such container shall be deemed to have been transferred to Buyer at the Delivery Point, and the deposit fee shall be non-refundable and shall be retained by Seller.

4. **EXCUSED NON-PERFORMANCE/FORCE MEJEURE:** (a) Seller shall not be liable for breach of any obligation directly or indirectly attributable to circumstances beyond Seller's reasonable control. Such circumstances include, but are not limited to, acts of God, acts of Buyer, war, riots, accident, fires, explosions, floods, sabotage, terrorism, governmental laws, regulations, orders or action, national defense or security requirements, acts or failure to act of its suppliers or other third parties, natural disaster, weather conditions, or shortages of or inability to obtain (as and when required and upon Seller's usual terms and from its usual sources of supply) suitable or sufficient energy, labor, machinery, facilities, raw materials, transportation, supplies or other resources or services and other similar events that Seller cannot control. Labor difficulties, strike, lockout or injunction shall be conclusively presumed to be beyond Seller's reasonable control, and accordingly within the meaning and intent of this Paragraph 4. All or some of the quantities of Product deliverable under this Contract, or other performance by Seller that is affected by this Paragraph 4 may, in the sole and absolute discretion of Seller, be eliminated and/or suspended from the operation of this Contract (with the elimination and/or suspension of Buyer's corresponding obligations), but such Contract shall remain otherwise unaffected.

(b) In the event of inability for any reason to supply the quantity of Product stated in this Contract, Seller may, without any liability, allocate its available supply among any or all purchasers, as well as itself and its affiliates, in any manner it chooses.

(c) Seller shall have the right, without any liability, to discontinue all or any of its performance obligations under this Contract if, in its sole and exclusive good faith opinion, the manufacture, export, import, sale and/or use of the Product, or of any related component or process, by it or any of its affiliates may infringe any patent or intellectual property right. Partial performance by the Seller shall not constitute a breach of this contract.

5. **PRODUCT SAFETY:** BUYER WARRANTS AND AGREES TO TRANSPORT, STORE, HANDLE, USE, DISPOSE OF AND OTHERWISE DEAL WITH PRODUCT SAFELY AND IN STRICT COMPLIANCE WITH ALL LAWS AND REGULATIONS (MUNICIPAL, STATE AND FEDERAL) AND ALL APPLICABLE STANDARDS OF CARE, INCLUDING IN A MANNER NO LESS STRINGENT THAN IS SET FORTH IN SELLER'S LABELS, MATERIAL SAFETY DATA SHEETS AND OTHER SAFETY AND HEALTH INFORMATION, Buyer warrants that it will comply with all Federal, State and Municipal laws with regard to documentation and manifests that may be required for transport. Seller does not warrant the safety of the Product or its fitness for use in a particular application, whether alone or in combination with any other substance or in any process. Buyer assumes all responsibility for warning its employees, agents, affiliates, customers, independent contractors, wholesalers, resellers and end-users of any hazards associated with the Product or the Product as used in the Buyer's products.

6. **INDEMNIFICATION:** BUYER AGREES TO INDEMNIFY, DEFEND, AND HOLD SELLER HARMLESS FROM ANY AND ALL LIABILITY OF WHATEVER NATURE CAUSED IN WHOLE OR IN PART BY BUYER'S FAILURE TO COMPLY WITH THIS CONTRACT, WITHOUT REGARD TO WHETHER THAT LIABILITY IS ATTRIBUTABLE IN WHOLE OR IN PART TO THE NEGLIGENCE OF THE SELLER.

7. **WARRANTY:** SELLER MAKES NO WARRANTY OF, AND SHALL HAVE NO LIABILITY FOR, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF SELLER IS AWARE OF SUCH PURPOSE) OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, OTHER THAN THAT THE PRODUCT, UPON DELIVERY TO BUYER AT THE DELIVERY POINT SHALL MEET THE SPECIFICATIONS UNDER THIS CONTRACT. NO OTHER WARRANTY OR LIABILITY, EXPRESS OR IMPLIED, AND WHETHER ARISING BY OPERATION OF LAW OR CUSTOM, SHALL APPLY. Buyer agrees to inspect the Product immediately upon such delivery and to give

notice in writing to Seller of any claim within thirty (30) days of such delivery. Failure to give notice in writing as aforesaid within the specified time constitutes an unqualified acceptance of the Product and a waiver of all claims with respect thereto.

8. **LIABILITY:** Seller's liability under this Contract shall be limited to the purchase price of the Product supplied (or to have been supplied) hereunder in respect of which damages are claimed. All technical or other advice by Seller, whether or not at Buyer's request, with respect to the Product, its processing, further manufacture, other use or resale or otherwise, is given *gratis* by Seller and Seller shall not be liable for, and Buyer assumes all risk of, such advice and the results thereof. OTHER THAN AS SET FORTH IN THIS PARAGRAPH 8, SELLER SHALL IN NO EVENT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES, AND REGARDLESS WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE, INCORPORATION OF THE PRODUCT INTO ANOTHER PRODUCT OR OTHERWISE. Upon satisfactory proof of claim by Buyer, and as Buyer's exclusive remedy, Seller will, within a reasonable time, supply Buyer with replacement product of the same or equivalent type, free of charge, freight prepaid or, at Seller's option, refund the purchase price for the Product upon return of the Product or other delivered material, or the unused portion thereof. Buyer charges for replacements and returns for credit will not be allowed unless authorized by Seller in writing.

9. **LIMITATIONS OF ACTIONS:** Except as otherwise provided in Paragraph 7, above, the right to commence a legal action arising out of or in connection with this Contract or the Product expires one (1) year after the cause of action has accrued. Failure by Buyer to give written notice of a cause of action within such time period shall constitute a complete defense for Seller against all such actions, except mandatory local laws provide otherwise.

10. **MANUFACTURING DEVICES AND CONFIDENTIAL INFORMATION:** All manufacturing devices, designs, formulas, data, or other technical information of Seller or any of its affiliates relating to this Contract will remain Seller's or its affiliates' confidential property, and Buyer shall not have any rights thereto, nor any rights to disclose such items or information to any third party. Nothing in this Contract shall be construed (by implication, estoppel or otherwise) as granting, or as an undertaking by Seller to subsequently grant to Buyer any license, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other proprietary right.

11. **BUYER'S CREDIT/COLLECTION:** Seller reserves the right, among other remedies, either to terminate this Contract or to suspend further deliveries under it in the event Buyer fails to pay for any one delivery when payment is due. Should Buyer's credit standing become unsatisfactory to Seller, in its sole and exclusive judgment, advanced cash payments or satisfactory security may be required by Seller for future deliveries and for Product(s) theretofore delivered.

12. **ATTORNEY FEES:** Buyer shall be responsible for the payment of reasonable attorneys' fees and related costs and expenses incurred by Seller in (a) any claim or action by Seller to enforce this Contract; (b) successfully defending any claim or action by Buyer; and (c) any other action arising from the Contract or the Product.

13. **EXPORT COMPLIANCE & CODE OF CONDUCT:** Buyer warrants that it will not export or re-export any Product, other material, or information of Seller or its affiliates, in violation of export-control or other customs laws or regulations. Seller's Code of Conduct (reviewable under [http://www.orioncarbons.com/compliance\\_guidelines](http://www.orioncarbons.com/compliance_guidelines)) forms the basis of this business relationship and is binding for Seller and Buyer.

14. **BINDING EFFECT/ASSIGNMENT:** This Contract shall be binding on the successors and assigns of Buyer and Seller; *provided, however*, that Buyer shall not assign this Contract in whole or in part without the prior written consent of Seller.

15. **WAIVER/SEVERABILITY:** (a) The failure of Seller to insist upon strict performance of any of the provisions of this Contract will not constitute a waiver of those or any other provisions. No waiver by Seller shall be deemed to arise from any course of dealing or trade custom, and will only be effective if set forth in a separate writing, signed by Seller.

(b) Should any provision of this Contract be deemed wholly or partly invalid, this shall have no effect on the validity of the remaining provisions.

(c) WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ANY PURCHASE ORDER OR OTHER DOCUMENT OF BUYER CONTAINING PROVISIONS THAT ARE INCONSISTENT WITH OR IN ADDITION TO THIS CONTRACT SHALL NOT BE BINDING UPON SELLER, AND SELLER HEREBY EXPRESSLY REJECTS THEM, REGARDLESS OF ANY PERFORMANCE OR RECEIPT OF PAYMENT.

16. **GOVERNING LAW/WAIVER OF JURY TRIAL:** The contract and the legal relationship with purchaser shall be governed exclusively by the laws of the country where the Seller is located with the exclusion of the UN Convention on the International Sale of Goods (CISG). If Buyer is a merchant, the place of jurisdiction shall be the commercial domicile of the Seller. If Seller institutes legal proceedings against purchaser, Seller shall also have the option to institute legal proceedings at purchaser's place of jurisdiction. BUYER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY IT RELATED TO THIS CONTRACT SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BUYER HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.

17. **LANGUAGE:** Seller and Buyer expressly agree that this Contract as well as all documents and notices issued hereunder or relating hereto will be in English, unless both Parties agree on a different language in written form.

Status: 07/2018