

## TERMS AND CONDITIONS

1. **CONTRACT:** Upon AluChem of Jackson, Inc.'s ("A of J") acceptance of the order by A of J's acknowledgement hereof, Buyer shall be deemed to have agreed to all the terms and conditions contained herein. Unless otherwise approved in writing, the acceptance of A of J is expressly conditioned upon Buyer accepting such terms and conditions. Terms and conditions contained in Buyer's order or related documents which are different from or in addition to the terms and conditions stated herein, are expressly objected to by A of J and not binding upon it. A of J may revoke its acceptance hereof within fourteen days after the date of its acceptance.

A of J reserves the right to accept or reject all orders received by it and all orders may only be accepted at A of J's home office in Cincinnati, Ohio.

2. **PRICES:** Unless otherwise indicated on the face hereof, all prices are F.O.B. A of J's plant, Jackson, Ohio, and/or the shipping point of A of J's major suppliers, if applicable, and do not include any applicable federal, state or local sales, use, excise, value added or similar tax or other charges unless specifically indicated otherwise, which additional charges Buyer agreed to pay or for which it agrees to furnish evidence of exemption acceptable to the taxing authorities. All prices may be subject to change at any time prior to fourteen days after A of J's acknowledgment of acceptance. In any event, unless Buyer's order is accepted by A of J or A of J's offer is accepted by Buyer, the prices quoted by A of J shall become invalid thirty (30) days after date of quotation or such earlier date specified by A of J in the quotation.

3. **PAYMENTS:** The terms of payment shall be set forth on the face hereof. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If the financial condition or credit of Buyer at any time shall, in the judgment of A of J, not warrant shipment of goods ordered, A of J may at its option require full payment prior to shipment or refuse to ship and terminate any order outstanding without liability to Buyer. A service charge will be imposed on all overdue accounts. Buyer agrees to pay A of J's costs of collection of overdue accounts, including, but not limited to, attorneys' fees.

4. **CHANGES:** Prior to the date of delivery, Buyer may request modifications or changes in its order by serving a written request on A of J of the changes desired, whereupon A of J may accept or reject the same, and if accepted, Buyer agrees to pay an additional charge therefore as determined by A of J. Failure of A of J to accept the changes requested shall not be cause for Buyer's cancellation of its order.

5. **DELIVERY:** All delivery dates stated by A of J are approximate dates only and estimated in good faith to the best of A of J's ability. Time shall not be deemed to be of the essence in making delivery under an order unless specifically agreed to in writing by A of J. A of J reserves the right to ship prior to the estimated shipping date.

Delivery dates are also quoted subject to unavoidable delays and A of J shall be free from any and all liability and penalty for delayed shipment due to causes beyond its control including but not limited to strikes, fires, accident, explosion, riots, war or acts of God, or because of any priority system established by any government, any of its agents or any other authority having jurisdiction.

6. **SHIPPING TOLERANCES:** The total order and each shipment hereunder shall be subject to a shipping tolerance of plus or minus five percent (5%).

7. **EQUIPMENT:** Any equipment manufactured or acquired specifically to produce goods for Buyer shall be A of J's property and remain in A of J's possession, even though Buyer is charged therefore.

8. **CANCELLATION:** Once accepted by A of J, an order is not subject to cancellation in whole except where Buyer gives reasonable written notice to A of J to stop work and Buyer, along with said notice, agrees to pay A of J for all work in progress and any raw materials or supplies used (or for which commitments have been made by A of J in connection with the order), plus all costs and expenses otherwise incurred by A of J as computed in accordance with A of J's general accounting practices, plus a cancellation charge of 15% of the price stated on the face hereof.

9. **LIMITED WARRANTY:** A of J warrants that all products sold hereunder shall be free from defects in material and workmanship and shall conform to the specifications on the face hereof.

It is understood and agreed that Buyer's sole and exclusive remedy against A of J shall be either, at A of J's option, the replacement at the original point of Delivery, or the refund of the purchase price for goods returned to A of J at Buyer's expense and found by A of J to be defective, and A of J shall not be liable for other defects or shortcomings. A of J shall have no obligation for any labor costs in connection with the inspection, or repair of any defective goods. No obligation, either express or implied, has been undertaken by A of J with regard to suitability, capacity, performance or compliance with Buyer's specifications or needs. This warranty is contingent upon A of J's receipt of notice in writing from Buyer of a claimed defect prior to the expiration of thirty (30) days following the date of the delivery of the goods. No return shall be made without the prior written consent of A of J.

A OF J HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSES WHATSOEVER.

A of J neither assumes, nor authorizes any person to assume for it, any obligation or warranty other than those stated herein. Any suggestion to the contrary notwithstanding A of J shall not, in any event, have any liability under this warranty unless and until the goods supplied have been paid for in full. The warranty period shall begin, as described above, whether or not payment has been made.

10. **LIABILITY LIMITATION:** IN CONSIDERATION OF THE EXPRESS WARRANTY AND OTHER TERMS HEREIN CONTAINED, BUYER AGREES THAT BUYER'S EXCLUSIVE REMEDY AND A OF J'S SOLE LIABILITY ON ANY CLAIM, WHETHER TORT, CONTRACT OR WARRANTY, SHALL BE LIMITED TO REIMBURSEMENT OF THE PURCHASE PRICE AND NO OTHER REMEDY (INCLUDING BUT NOT LIMITED TO, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR LOST PROFITS, LOST SALES, INJURY TO PERSON OR PROPERTY OR ANY OTHER INCIDENTAL LOSS OR DAMAGES) SHALL BE AVAILABLE TO HIM. IN NO EVENT AND FOR NO CAUSE WHATSOEVER, INCLUDING ANY BREACH OR DEFAULT BY A OF J, SHALL A OF J HAVE ANY MONETARY LIABILITY TO BUYER IN EXCESS OF THE CONTRACT PRICE OR PRICES OF THE PERTINENT GOODS IN QUESTION.

11. **TITLE AND LIEN RIGHTS:** The goods shall remain personal property regardless of how they are affixed to Buyer's real property and A of J reserves a purchase money security interest in the goods until the purchase price has been fully paid. Buyer agrees to execute any documents requested by A of J which are necessary for attachment and perfection of its security interest. If Buyer defaults, A of J shall have all the rights of a secured creditor under the Uniform Commercial Code as enacted in the State of Ohio.

12. **INDEMNITY:** Buyer shall release, hold harmless, indemnify and defend A of J from and against any loss, liability, claims, suits, and costs caused by, arising out of, or relating to the design of goods supplied hereunder or the design of packages or containers in which they are shipped, if such goods, packages, or containers are made in compliance with Buyer's design or specifications.

13. **DAMAGES FOR BREACH:** Buyer expressly agrees that where permitted by law, Buyer shall be liable for all reasonable expenses and attorneys' fees incurred by A of J in enforcing its rights and remedies against Buyer resulting from Buyer's breach of this Agreement.

14. **APPLICABLE LAW:** Buyer expressly acknowledges that this Agreement is executed and has been delivered in Ohio and any order shall be governed in all respects by the laws of the State of Ohio. Buyer consents to the jurisdiction and venue of any State or Federal Court of general jurisdiction in Hamilton County, Ohio with respect to any proceedings arising out of this agreement.

15. **WAIVERS:** Waiver by A of J of a breach by Buyer of any provision hereof shall not be deemed a waiver of future compliance therewith, and such provision, as well as other provisions hereunder, shall remain in full force and effect.

A of J hereby expressly reserves the right to literal compliance with the terms hereof, even if unenforced in prior transactions with Buyer.

16. **ASSIGNABILITY:** Buyer may not assign this Agreement without A of J's prior written consent.

17. **ENTIRE AGREEMENT:** The terms and conditions contained herein and on the reverse side hereof shall supersede all prior oral or written statements of any kind whatsoever made by the parties or their representatives. No statement purporting to modify any of these terms or conditions shall be binding unless expressly agreed to in writing signed by both A of J and Buyer.

Unless otherwise specifically provided by separate written agreement duly signed by the terms and conditions specified above and on the reverse side hereof constitutes the entire agreement between A of J and Buyer, and no other terms or conditions shall be of any effect. Buyer will be deemed to have assented to all such terms and conditions not acceptable, Buyer must so notify A of J at once. Any additional or different terms or conditions contained in Buyer's order or response hereto shall be deemed objected to by A of J and shall be of no effect.