

# STANDARD TERMS OF SALE



## TERMS AND CONDITIONS OF SALE

Please read these terms and conditions carefully. They materially affect the parties' obligations. Graus Chemicals, LLC ("Seller") will accept orders from and do business with the buyer ("Buyer") only on the terms and conditions on this form.

## ACCEPTANCE; CONTRARY TERMS; ENTIRE AGREEMENT

This document contains all of the terms and conditions of the agreement (the "Agreement") between Seller and the buyer ("Buyer") of the goods and services to be sold or provided to Buyer (collectively, "Goods"), to the exclusion of any terms and conditions incorporated in Buyer's order or other documents of Buyer, and to the exclusion of any other statements and agreements except as set forth in a separate written agreement signed by Buyer and Seller that expressly incorporates by reference these Terms and Conditions. Seller's acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of these Terms and Conditions, and Buyer, upon placing an order, is presumed to have accepted these Terms and Conditions without modification. No alteration, waiver, modification of, or addition to this Agreement or to the Terms and Conditions herein shall be binding on Seller unless set forth in writing and signed by an officer of Seller. Any attempt to amend, modify, or change the provisions of this Agreement or these Terms and Conditions by a non-officer of Seller shall be null and void. No course of dealing, usage of trade or course of performance shall be relevant to supplement or explain any terms used in the Agreement.

## TAXES AND FEES

All sales, excise and similar taxes that Seller may be required to pay or collect with respect to the Goods are for the account of the Buyer, except as otherwise provided by law. Unless otherwise expressly stated in the Agreement, Seller will not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. If the Agreement expressly states that such charges are included in the price, any increase in such charges effective after the date hereof will be for the account of Buyer.

## NOTIFICATION OF CLAIMS; ACCEPTANCE

Buyer shall inspect the Goods upon delivery for any visible damage and verify all items shown on the Bill of Lading are present. If damage is evident, Buyer shall (a) document it on the delivery receipt with appropriate exceptions describing the damage or loss before signing, (b) request the carrier to inspect the damage or loss, and (c) promptly notify Seller of such damage or loss. If damage or loss is not reasonably apparent at time of delivery, Buyer shall notify Seller within five (5) business days of delivery of such damage or loss, and cooperate fully with Seller in any claims that are available against third parties. Failure by Buyer to give such notification shall result in a waiver of all claims which Buyer may otherwise have against Seller for such damage or loss resulting from, or occurring during, transit. If the Goods have arrived damaged to the point where it cannot be used, Buyer may refuse to accept the delivery from the carrier. Buyer shall notate on the delivery receipt the reason for refusal. Before refusing, Buyer shall contact Seller to identify any consequences of refusal.

## SHIPMENT

Unless otherwise expressly stated in writing, all shipments are FOB Seller's plant. Shipping dates on any order are estimates only. Seller will use reasonable commercial efforts to meet the estimated shipping dates. Unless otherwise stated herein, Seller may make delivery in installments. All installments will be separately invoiced and paid as billed without regard to subsequent deliveries. Failure to pay any installment when due will excuse Seller from making future deliveries. Seller will not be liable for normal variations in container dimensions, weights and quality. Weights, sizes and quantities as determined at Seller's plant or other source of supply will be conclusive in the absence of manifest error.

## PRICES; PAYMENT TERMS

(a) Unless specifically held open for a length of time on Seller's quotation, all prices are subject to change without notice and any unshipped balances on purchase orders will be invoiced to and paid by Buyer at prices in effect at the time of delivery. Invoices are payable in full 30 days following the invoice date. If by the terms of sale, credit is extended to Buyer, Seller reserves the right to revoke such credit if Buyer fails to pay for any Goods when due, and Seller may demand payment before any further shipment.

(b) In the event of conditions beyond Seller's control, Seller shall have the right to request a price increase, and both Seller and Buyer shall have the right to immediately terminate this Agreement if additional price increases are not accepted.

(c) Notwithstanding any provision in the Agreement, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations under the Agreement and any other contractual obligation in favor of Seller.

(d) Buyer agrees to pay service charges of 1.5% per month or the highest rate allowed by law (whichever is the lesser) from the due date of each invoice to date of payment. In the event Buyer's account is placed for collection, Buyer will be liable for the administrative cost and/or attorney fees incurred in the collection of funds owed to Graus Chemicals.

### **LIMITED WARRANTY AND REMEDIES**

Seller warrants to Buyer that the Goods sold hereunder will conform to the applicable specifications. If the Goods fail to conform to the applicable specifications, Seller will, at its option, replace such Goods, rework such Goods so that they conform to the applicable specifications (if practical), or give a credit therefore equal to the price paid by Buyer. Such replacement, rework or credit shall be Seller's sole obligation and Buyer's exclusive remedy hereunder for breach of this limited warranty, and shall be conditioned upon Seller receiving written notice of any alleged breach of this warranty within a reasonable time after discovery of such defect, but in no event later than 30 days from date of shipment. At Seller's request, Buyer shall return to Seller any Goods for which a warranty claim has been made, FOB seller's plant with freight prepaid. THE FOREGOING WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **NO CONSEQUENTIAL DAMAGES**

SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS, LABOR COSTS OR DAMAGE TO EQUIPMENT, ARISING FROM THE SALE OR USE OF THE GOODS, FROM THE GOODS BEING INCORPORATED INTO OTHER ARTICLES, FROM ANY BREACH OF THE AGREEMENT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT OR OTHER THEORY OF LIABILITY.

### **PRODUCT RISK**

Buyer represents and warrants that it has the appropriate knowledge and information regarding the risks associated with handling, using, transporting, storing, and disposing of the Product, including without limitation those risks set forth in the Safety Data Sheet ("SDS") for the Product. Buyer affirms that it shall maintain compliance with all safety and health related governmental requirements concerning the Product purchased hereunder and shall take all reasonable precautions to inform its employees, agents, contractors, and customers of any risks associated with the Product, including without limitation dissemination of pertinent information contained in the SDS.

### **SAFETY DATA SHEETS**

Unless otherwise expressly stated or required by applicable law, Buyer shall be responsible for providing to its purchasers of the Goods accurate Safety Data Sheets for such Goods.

### **LIMITATION OF RESPONSIBILITY AND DAMAGES**

SELLER WILL HAVE NO RESPONSIBILITY FOR ANY GOODS MODIFIED BY BUYER OR MADE OR MODIFIED BY SELLER IN ACCORDANCE WITH BUYER'S ORDER, AND BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS AGAINST ALL DAMAGES, COSTS OR EXPENSES, INCLUDING ATTORNEYS' FEES, PAID OR INCURRED BY SELLER IN CONNECTION WITH ANY CLAIM OF INFRINGEMENT OF A PATENT, COPYRIGHT OR TRADEMARK, TRADE SECRET, OR OTHER PROPRIETARY RIGHT WHICH ARISES OUT OF SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS. SELLER SHALL HAVE NO RESPONSIBILITY WITH REGARD TO ANY SETTLEMENT, ADMISSION OR PROMISE MADE BY BUYER WITHOUT SELLER'S PRIOR WRITTEN CONSENT, NOR WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER, INCLUDING LOST PROFITS, CLAIMED TO HAVE BEEN SUSTAINED BY BUYER OR ANY USER OF GOODS ARISING OUT OF ANY CLAIM OF INFRINGEMENT.

### **DESCRIPTIONS**

Except for the specifications for the Goods provided by Seller as part of the technical information for the Goods, all descriptions, samples and other particulars of the Goods provided by Seller, whether contained in plans, photographs, catalogs, price lists or advertising material or otherwise, are only approximate, are included solely for Buyer's guidance, and do not form part of the Agreement.

### **TRADEMARKS**

Buyer warrants that Buyer owns or has the right to use any trademark that Seller affixes to the Goods at the request of Buyer.

### **EXCUSE FROM PERFORMANCE; ALLOCATION**

Seller shall not be considered in default in the performance of its obligations hereunder or be liable in damages or otherwise for any failure or delay in performance which is due to strike, lockout or concerted act of workers or other industrial disturbance; fire, explosion, flood or other natural catastrophe; civil disturbance, or riot or armed conflict whether declared or undeclared; curtailment, shortage, rationing or allocation of normal sources of supply of labor, materials, transportation, energy or utilities; mechanical breakdown or equipment failure; accident; act of God; delay of suppliers or subcontractors; effects of or voluntary compliance with acts of government and government regulations (whether or not valid); embargo; imposition of anti-dumping or countervailing duties increasing the price of the materials for the goods; or any other cause whether similar or dissimilar to any of the foregoing causes and which is beyond Seller's reasonable control. Promptly upon learning of such event and ascertaining that it has or will affect its performance hereunder, Seller shall give notice to Buyer stating the nature of the event, its anticipated duration and any action being taken to avoid or minimize its effect. If the event lasts or in Seller's judgment is expected to last

more than 30 days, Seller may terminate the Agreement. In addition to the foregoing, if Seller determines that its ability to supply the goods, or obtain a sufficient quantity of any material used in the manufacture of the Goods, is hindered limited or made unpractical, seller may allocate its available supply of the Goods (without being obligated to acquire additional supplies of the Goods or materials) among itself and its purchasers in Seller's sole discretion. Seller shall have the right to request a price increase, and both Seller and Buyer shall have the right to immediately terminate this Agreement if additional price increases are not accepted.

#### **GENERAL**

(a) No modification or waiver of the Agreement or any of its provisions shall be valid unless expressly agreed to by Seller in writing and signed by an officer of Seller. No waiver by Seller of any default under the Agreement shall be a waiver of any other or subsequent default.

(b) Any notice required pursuant to this Agreement shall not be valid or effective unless it is in writing and delivered by U.S. mail or by Email to Seller at

Graus Chemicals, LLC  
100 Easy St. #768  
Carefree, AZ 85377  
Email: info@grauschemicals.com

c) The unenforceability or invalidity of one or more of the provisions of the Agreement will not affect the enforceability or validity of any other provision of the Agreement.

(d) Buyer may not assign any of its rights, duties or obligations under the Agreement without Seller's prior written consent and any attempted assignment without such consent, even if by operation of law, shall be void.

(e) The Agreement is governed by and shall be construed in accordance with the laws of the State of Arizona, including the Uniform Commercial Code as enacted by such state, without giving effect to its conflict of laws principles.

#### **GOVERNING LAW; JURISDICTION; VENUE**

This Agreement shall be covered by and construed in accordance with the laws of the State of Arizona without giving regard to its conflict of laws' provisions. Buyer hereby consents to personal jurisdiction for purposes of this Agreement in the State of Arizona, and agrees that Maricopa County, Arizona shall be proper venue for any action brought under this agreement.

#### **CONTACTING US**

If you have any questions or concerns about this Agreement, please contact us.