

## **TERMS AND CONDITIONS OF SALE**

**AGREEMENT.** This document establishes those terms and conditions under which the seller indicated on the face of Seller's response to Buyer's request to quote or as otherwise indicated ("Seller") sells its products to the purchaser ("Buyer") as and when orders are placed by Buyer and accepted by Seller. All orders are accepted subject to and incorporate these Terms and Conditions of Sale ("T&Cs"). Terms set forth on the face of Seller's invoice or an executed written agreement between the parties shall prevail over any inconsistent terms herein. By placing an order with Seller, Buyer agrees to these T&Cs. These T&Cs override any different or additional terms or conditions contained in any purchase order or other document submitted by Buyer unless such different or additional terms or conditions are specifically agreed to in writing by Seller. Upon acceptance by Seller of an order, these T&Cs and this document constitute the "Agreement" between Buyer and Seller for the purchase and sale of the products set forth therein ("Products"). For the avoidance of doubt, Seller's acceptance of an order is conditional on these T&Cs in the absence of an executed written agreement between the parties.

**DELIVERIES.** Seller shall attempt to meet requested delivery dates contained in Buyer's orders but will not be liable for failure to do so. Any time or date for delivery specified by Seller is an estimate only. Seller reserves the right to make early, allocated or installment shipments and invoice Buyer accordingly. Seller's weights and quantities stated on the delivery note shall govern except in the case of proven error provided to Seller within seven (7) days of delivery.

**CHANGES.** Buyer may not modify, cancel or otherwise alter orders after the order is in process without Seller's written consent. Any such cancellation, modification or alteration shall be subject to additional conditions as may be imposed by Seller at such time, including reimbursing Seller for any costs, expenses and losses relating to such change. Seller may also change estimated delivery dates.

**PAYMENT.** Payment terms are net 30 days from invoice date. Seller shall issue invoices upon shipment of Products. Each installment delivery constitutes a separate order with regard to payment. Payments shall be made at the direction, to the location and in the currency specified on the invoice. Any amounts unpaid after the due date shall accrue interest at a rate of 1.5% per month, or the maximum rate allowed by law, whichever is less. No part of any amount payable to Seller may be reduced due to any counterclaim, set-off, adjustment or other right which the Buyer might have against Seller or any other party. If Buyer fails to pay for any one or more shipments when due, Seller shall have the right, in addition to other remedies, to either: (a) suspend or cancel future deliveries, or (b) require cash payment on or before shipment/delivery. Should Buyer's financial viability become unsatisfactory to Seller, cash payment or satisfactory security may be required by Seller before proceeding with further Product deliveries. Buyer agrees to furnish Seller with credit information on request.

**PRICE.** Unless otherwise set forth on the face of an accepted purchase order, the price for the Products shall be determined by Seller on the date of order acceptance. Seller price quotations are provisional only and Seller reserves the right to change such price at any time. Prices do not include taxes, duties, shipping costs and other charges, and in some cases may not reflect materials surcharges.

**TAXES AND CHARGES.** Buyer shall reimburse Seller for all taxes, excises or other charges that Seller may be required to pay to any governmental entity or collect for any governmental entity upon the production, sale, transportation, delivery or use of the Products sold hereunder.

**SHIPMENT, TITLE AND RISK OF LOSS.** Seller will ship and deliver the Products in accordance with the trade term FCA, shipping point (Incoterms 2020). Title and risk of loss to Products transfers to Buyer upon delivery of the Products to the carrier at the shipping point.

**NO LICENSE.** The sale of any Product hereunder does not transfer to Buyer any right or license under any patent, trademark or other intellectual property right with respect to any such Product. Seller retains ownership of all intellectual property rights to the Products sold hereunder.

**WARRANTIES.** Seller warrants that at the time of delivery to Buyer, Products sold hereunder shall conform to Seller's standard written specifications for such Products. Determination of the suitability of the Products for the uses and applications contemplated by Buyer shall be the sole responsibility of Buyer. Any suggestions or recommendations made by Seller concerning uses or applications of the Products are believed to be reliable, but Seller makes no warranty or guarantee of the results to be obtained since the conditions of the use and application by Buyer and others are beyond Seller's control. Seller is not liable for claims caused by the following: 1) negligence of Buyer or third party; 2) alteration, contamination or misuse of the Product; 3) any specification or modification made at the request of Buyer; 4) Buyer's failure to follow health and safety instructions provided by Seller or in accordance with industry standards; 5) Buyer's failure to properly handle or store the Products, including environmental conditions; and/or 6) Buyer's failure to comply with laws. Finally, Seller has no liability for any warranty claims: 1) submitted after expiration of the claim period; or 2) if Seller is not given reasonable opportunity to examine the Products to which the claim relates and Buyer does not return such Products to Seller upon Seller's request.

**CLAIM PERIOD; DISCLAIMER.** In no event shall Buyer make a warranty claim or commence any action against Seller later than the earlier of 7 days after discovery of the breach or 6 months after delivery of the Products to which the claim relates. Buyer's failure to give Seller written notice of any claim or action within the applicable time period shall constitute an absolute and unconditional waiver of such claim or action. EXCEPT AS SET FORTH IN THESE T&Cs, SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, NO MATTER WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR AGAINST INFRINGEMENT. BUYER ASSUMES ALL RISKS RESULTING FROM THE USE OF THE PRODUCT PURCHASED, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS.

**LIMITATION OF LIABILITY.** SELLER'S SOLE LIABILITY, AND BUYER'S EXCLUSIVE REMEDY AGAINST SELLER FOR ANY AND ALL CLAIMS, WHETHER FOR BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, IS LIMITED, AT SELLER'S ELECTION, TO: (a) SHIPMENT OF REPLACEMENT PRODUCT, (b) MODIFICATION OF THE PRODUCT, OR (c) REFUND OR ISSUANCE OF A CREDIT TO BUYER IN AN AMOUNT EQUAL TO THE PRODUCT'S PURCHASE PRICE. NOTWITHSTANDING THE FOREGOING, IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR ENHANCED DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF OPPORTUNITY OR DIMINUTION IN VALUE, RESULTING OR ARISING FROM OR IN CONNECTION WITH BREACH OF SELLER'S WARRANTIES OR THESE T&Cs OR ANY CAUSE ARISING FROM OR IN CONNECTION WITH THE PRODUCT. TO THE EXTENT PERMITTED BY LAW, ANY STATUTORY REMEDIES WHICH ARE INCONSISTENT WITH THIS PROVISION ARE EXPRESSLY WAIVED BY BUYER. WITHOUT LIMITING THE FOREGOING, IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS.

Product claimed to be nonconforming shall not be returned or discarded except as provided herein. In no event shall Seller be liable for any loss, damage, cost or expense attributable to any act, omission or misrepresentations by Buyer or any third party.

**BUYER OBLIGATIONS.** In addition to other obligations stated herein, Buyer assumes all risk and liability for loss or damage resulting from the handling, storage, use, or application of the Product and containers delivered hereunder. Buyer agrees to familiarize itself and keep informed (without reliance on Seller) concerning any hazards to persons and/or property involved in handling and using such Product and containers. Buyer shall advise its employees, customers, agents, distributors, consultants, independent contractors and others who handle or use, or may foreseeably handle or use, such Product, of any hazards. Buyer hereby agrees to indemnify, defend and hold Seller, its subsidiaries and affiliates and their respective directors, officers, shareholders, employees, agents, successors and assigns, harmless from and against any and all liabilities, losses, costs or damages, including reasonable attorneys' fees, resulting from claims (unless finally determined to be the result of the gross negligence or willful misconduct of Seller) resulting from (a) use or handling of the Product by Buyer or its affiliates, whether or not the Product is combined with any other materials, substances or equipment or is used in any manufacturing process; (b) failure of Buyer or its affiliates to comply with laws; (c) misappropriation and/or infringement of intellectual property rights, including but not limited to patent, trademark or copyright infringement,

resulting from use or handling of the Product by Buyer or its affiliates (for purposes of this Section, any reference to Buyer and its affiliates shall include Buyer's and its affiliates' officers, directors, employees, agents and representatives). In the event that Seller brings an action to enforce its rights under these T&Cs, and is successful in such action, Seller shall be entitled to reimbursement from Buyer of all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) to enforce its rights hereunder.

**EXCUSES FOR NONPERFORMANCE.** Seller shall not be responsible for nonperformance or delays in performance due to causes beyond Seller's control, including but not limited to the acts or omissions of Buyer, acts of God, pandemics, strikes or other labor disputes, acts of terror, war, plant shutdowns, voluntary or involuntary compliance with any law, order, regulation, recommendation or request of any governmental authority, inability to obtain fuel, material or parts, delays or unavailability of transportation, breakdowns of machinery or equipment, fires, explosions or accidents. In addition, Seller shall be excused in the event of its inability to obtain raw materials (on a commercially reasonable basis) necessary for manufacturing the Product. Should any such event occur, Seller shall have the right to allocate remaining production and/or supply among its customers as it determines, and Buyer hereby releases Seller from liability for any resulting incomplete fulfillment of any order.

**RETURNS.** No conforming Product will be accepted for return by Seller, and no order may be cancelled by Buyer, without Seller's prior written consent. Such consent will be granted at Seller's sole discretion, and Seller may impose a 25% restocking charge on returned Products. All Products must be returned to Seller in accordance with the instructions provided by Seller, and at Buyer's sole cost. Seller shall not agree to accept any Products with an expired "use by" date, nor any Products with less than 50% remaining shelf life.

**RETURNABLE CONTAINERS.** If shipment requires use of returnable containers, title to such returnable containers shall remain with Seller and they shall be returned to Seller in good condition (normal wear and tear excepted) within 60 days of Product delivery (freight charges collect). Upon request of Seller, Buyer agrees to pay Seller the reasonable value of the returnable containers if Buyer fails to return them to Seller or fails to return them in suitable condition. Seller may require a returnable container deposit at its sole discretion. All containers shall be empty and free of residue before return.

**COMPLIANCE WITH LAWS.** Each party shall, in performance of this Agreement, comply with all applicable laws and governmental rules, regulations and orders.

**ANTI-CORRUPTION COMPLIANCE.** Buyer certifies that it (i) has been and will continue to be in full compliance with Seller's Foreign Corrupt Practices Act/Anti-Corruption Policy (the "Policy") (which can be found on Seller's website: [www.elementsolutionsinc.com](http://www.elementsolutionsinc.com)) and all applicable anti-corruption laws, including, without limitation, the U.S. Foreign Corrupt Practices Act (collectively, "Applicable Laws"); and (ii) has not and will not pay, offer, or promise to pay, or authorize the payment of, directly or indirectly, any monies or anything of value to (a) any governmental official, government employee, political party, or candidate for political office for the purpose of influencing any act or decision to obtain or retain business or otherwise gain an improper advantage, or (b) any private individual that could reasonably be expected to cause the recipient to violate his or her duty of loyalty or trust. Seller may audit Buyer's books and records and conduct other internal review to verify compliance with the Policy and Applicable Laws. Buyer agrees that it shall immediately advise Seller in writing if Buyer learns of, has reason to know of, or suspects any violation of the Policy or any Applicable Laws involving Seller, any of Seller's affiliated companies, or the actions of Buyer or its representatives in connection with this Agreement.

**MISCELLANEOUS.** This Agreement is not assignable by Buyer. If any provision herein is held to be invalid or unenforceable by a court of competent jurisdiction, such provision shall be amended to as closely as possible achieve the intended effect of this Agreement in a valid, lawful and enforceable manner, or if not possible, then deleted and ineffective to the extent thereof, all without affecting any other provision of this Agreement. The parties disclaim applicability of the U.N. Convention on the International Sale of Goods to the sale of Products hereunder. This Agreement shall be governed by the laws of the jurisdiction of Seller's principal place of business, and Buyer agrees to be subject to jurisdiction in the courts of the jurisdiction of Seller's principal place of business. Except as otherwise provided, all notices provided for by this Agreement shall be given in writing either by actual delivery or by e-mail or registered or certified mail, return receipt requested, and shall be deemed to be received on the date personally delivered or sent by e-mail, or three (3) days after deposited in the mail postage prepaid. If litigation ensues between the parties, the prevailing party shall be entitled to recover its reasonable legal fees. Except as provided in the first paragraph of these T&Cs, this document constitutes the

entire written agreement of the parties covering the sale and purchase of the Products and there are no understandings, agreements, representations, express or implied, that are not contained herein regarding the subject matter hereof. No modification of these T&Cs shall be binding on Seller unless approved by Seller in writing.