



Creative Chemicals LTD. TERMS AND CONDITIONS

1) Definitions and Interpretation

In these Conditions, unless the context otherwise requires, the following definitions shall apply:

"Buyer" means the person or company whose Purchase Order for the Goods or Equipment is accepted by Creative Chemicals.

"Conditions" means the standard terms and conditions of sale set out in this document and (unless the context otherwise requires) including any special terms and conditions agreed in writing between the Buyer and Creative Chemicals.

"Contract" means the agreement between the Buyer and Creative Chemicals relating to the sale and purchase of the Goods or Equipment, consisting of the Specification, the Conditions and the Order Confirmation.

"Default" means any act, statement, omission, breach of obligation (whether expressed or implied, condition or warranty) contained in, precedent or collateral to the Contract, breach of duty under statute or at common law or negligence by or on the part of Creative Chemicals in connection with or arising out of the subject matter of the Contract in respect of which Creative Chemicals is legally liable to the Buyer. A number of defaults which together result in or contribute to substantially the same loss or damage shall be treated as one Default occurring on the date of the occurrence of the last such default.

"Delivery" means when Creative Chemicals has made the Goods or Equipment available to the Buyer with the carrier agreed upon in accordance with the Incoterms (as defined in the Incoterms in force on the date the Contract is concluded) set out in the Contract and **"Delivered"** and **"Deliver"** shall be construed accordingly.

Creative Chemicals (or the "Company") means Creative Chemicals LTD.

"Goods or Equipment" means the goods or equipment which Creative Chemicals is to supply in accordance with the Conditions.

"Specification" means the specification for the relevant Goods or Equipment as set out in the "product identification" section of Creative Chemicals's TDS.

"TDS" the technical data sheet for the relevant Goods or Services as provided by Creative Chemicals to the Buyer.

2) Basis Of The Sale - The Buyer may issue to Creative Chemicals an enquiry at any time in writing regarding the purchase of specific Goods or Equipment. On the basis of such a request, Creative Chemicals may provide an indicative quotation and TDS for the Goods or Equipment. Quotations issued to the Buyer by Creative Chemicals:

- a. are for information only and shall not constitute an offer to the Buyer which is capable of acceptance;
- b. may be withdrawn or varied at any time; and
- c. unless otherwise specified, shall be automatically withdrawn after 30 days.

The Buyer may issue an order (the "Purchase Order") in writing based on Creative Chemicals's quotation and TDS and commercial proposal. No Purchase Order shall be deemed accepted by Creative Chemicals until its authorized representative issues a written confirmation ("Order Confirmation") to the Buyer, at which point a binding Contract shall come into existence. Each Order Confirmation shall contain the price, quantity, payment terms and estimated Delivery date for the Goods or Equipment.

3) Contracts – By ordering or accepting any goods ("Goods") or equipment ("Equipment") from, Buyer agrees to the terms and conditions set forth herein and in any attachment hereto. It is agreed that any purchase order or other document made or issued by Buyer incorporates these terms and conditions and excludes all other terms and conditions including those that the Buyer may include in any purchase order. Purchase orders and other documents which modify, make additions to, contradict, or are in any way inconsistent with the terms and conditions stated herein are not considered accepted, and thus a contract, until acknowledged and agreed to in writing by Creative Chemicals and delivered to Buyer. Subject to the foregoing, any different or additional terms in a purchase order or other document of Buyer are hereby expressly rejected, notwithstanding Creative Chemicals' act of shipping or delivering goods or similar act of Creative Chemicals. Creative Chemicals' agreement to provide Goods or Equipment is expressly conditioned upon Buyer's acceptance of the terms and conditions contained herein.

4) Prices – **LIST PRICES AND ANY DISCOUNT SCHEDULES OF Creative Chemicals ARE SUBJECT TO CHANGE WITHOUT NOTICE. ALL ORDERS WILL BE INVOICED AT THE PRICES IN EFFECT AT THE TIME AN ORDER IS ACCEPTED BY CREATIVE**



CHEMICALS. The price of the Goods or Equipment shall be the price set out in the Order Confirmation. Creative Chemicals reserves the right by giving notice to the Buyer at any time before Delivery, to increase the price of the Goods or Equipment to reflect any increase in the cost to Creative Chemicals which is due to any factor beyond the control of Creative Chemicals (such as, without limitation, any significant increase in the costs of labour, materials or other costs of manufacture), any change in Delivery dates, quantities or specifications for Goods or Equipment which is requested by the Buyer, or any delay caused by instructions of the Buyer or failure of the Buyer to give Creative Chemicals accurate information or instructions. Any order whose delivery is delayed as per Buyer's request or is scheduled by Creative Chemicals in excess of one hundred and twenty days will be invoiced at the published list prices and discounts effective at the shipment time or, if specifically stated and agreed to at the time of order acceptance by Creative Chemicals.

5) **Taxes** – Unless otherwise indicated, prices are exclusive of all municipal, provincial and federal taxes, customs, duties and other levies. All taxes, customs, duties and other levies, either present or future that Creative Chemicals may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, shipment, storage, processing, use or consumption of any of the Goods or Equipment, including but not limited to taxes upon or measured by the receipts from sale, use, excise, value added and other similar taxes thereof, shall be for the account of Buyer. Buyer shall indemnify Creative Chemicals for any amounts which Creative Chemicals is required to make payment of due Buyer's failure to do so.

6) **Intellectual Property** – Creative Chemicals and any of its third party suppliers retain all right, title and interest in and to the specifications for and other technical information regarding the Goods or Equipment and any other intellectual property rights in the Goods or Equipment.

7) **Clerical Errors** – Creative Chemicals reserves the right to correct all clerical errors or omissions in any documents whether quotations, invoices, contracts, quotes, list prices, discount schedules or any other documentation.

8) **Force Majeure** – In no event shall Creative Chemicals be liable for any losses, costs, damages (including loss of profit) or other expenses resulting from failure or delay in delivery due to (i) orders bearing priority rating established pursuant to law, (ii) strikes, lockouts, differences with workmen, local labor shortages or other labor dispute, (iii) fire, flood severe weather conditions or other casualty or other acts of God, (iv) riots, strife, war, insurrection, civil disturbance or acts of terrorism (including impeding threat of any of the foregoing), (v) government regulations or requirements or acts of government (foreign or domestic) including embargoes or blockades, (vi) interruption, delay, shortages or failure of raw materials, supplies, fuel, power, or transportation, breakdown of equipment, or (vii) any other causes beyond Creative Chemicals' control, whether similar or dissimilar to those enumerated. Creative Chemicals shall have additional time as may be reasonably necessary to perform its obligations hereunder in the event of the occurrence of any of the events described above.

9) **Default** – If Buyer fails to fulfill the terms of payment related to the Goods or Equipment, Creative Chemicals may at its option (i) defer further deliveries or shipments relating to any other order until such payments are made, (ii) cancel this sale or any other sale or order, (iii) repossess the Goods or Equipment; (iv) recover all costs of collection including, but not limited to, reasonable lawyer's fees; and (v) combine any of the rights and remedies described in this document as may be permitted by applicable law, such remedies being in addition to all other remedies available at law or inequity. Creative Chemicals further reserves the right, even after partial delivery or shipment on account of any order, to require from Buyer satisfactory security for performance of Buyer's obligations, and refusal to furnish such security will entitle Creative Chemicals to suspend deliveries or shipment until such security is furnished, and, at Creative Chemicals' option to cancel any order and seek payment for any partial delivery or shipment.

10) **Claims Notice** – Upon receipt of shipments from Creative Chemicals, Buyer should inspect all Goods or Equipment for shortages and incorrect materials. Any claim for shortages or incorrect materials must be filled in writing and received by Creative Chemicals within ten (10) days from the time such shipment was received by Buyer and, in such case, Buyer must afford Creative Chemicals the opportunity to inspect same or the Goods or Equipment will be conclusively deemed to have been received by Buyer without shortage or defect and with conformity with order and no claims will be allowed. Any claim, whether receiving or warranty in nature, must be made in writing and received by Creative Chemicals within ten (10) days from the time such shipment was received by Buyer or such claim will be forever waived. Buyer waives any rights to revoke its acceptance of Goods or Equipment.

11) **Delivery** – Delivery times are approximate only and shall depend on prompt receipt by Creative Chemicals of all information necessary to proceed with the Goods or Equipment immediately and without interruption. Creative Chemicals



reserves the right to make delivery in installments, and a delay with respect to any installment shall not affect any other installments. Any delivery of Goods or Equipment that is delayed at Buyer's request, by causes within Buyer's control or due to Buyer's inability to accept delivery may be placed in storage by Creative Chemicals at Buyer's risk and Buyer shall be responsible for all freight, storage, insurance, and other expenses incurred thereby. In no instance does Creative Chemicals guarantee delivery times, nor will Creative Chemicals assume any and Buyer releases Creative Chemicals for a liability for damages, losses, or expenses resulting from Creative Chemicals' failure to deliver Goods or Equipment within estimated delivery times. Any orders on hold more than sixty days may be treated by Creative Chemicals as a cancelled order and returned goods.

12) Risk and Property - Notwithstanding Delivery and the passing of risk in the Goods or Equipment, or any other provision of the Contract, the property in the Goods or Equipment shall not pass to the Buyer until Creative Chemicals has received in cash or cleared funds payment in full of the price of the Goods or Equipment and all other Goods or Equipment agreed to be sold by Creative Chemicals to the Buyer for which payment is then due. Until such time as the property in the Goods or Equipment passes to the Buyer, the Buyer shall:

- a. hold the Goods or Equipment as Creative Chemicals's fiduciary agent and bailee;
- b. keep the Goods or Equipment separate from those of the Buyer and third parties and properly stored, protected, insured and identified as Creative Chemicals's property; and
- c. be entitled to resell or use the Goods or Equipment in the ordinary course of its business (unless Creative Chemicals revokes such entitlement in writing.) On any such sale or use of the Goods or Equipment the Buyer shall sell or use those Goods or Equipment as have been longest in its possession.

Until such time as the property in the Goods or Equipment passes to the Buyer (and provided that the Goods or Equipment are still in existence and have not been resold) Creative Chemicals shall be entitled:

- a. on 4 days' notice to enter upon any premises where the Goods or Equipment are stored to inspect them; and
- b. at any time to require the Buyer to deliver up the Goods or Equipment to Creative Chemicals and, if the Buyer fails to do so forthwith, to enter upon any premises of the Buyer or any third party where the Goods or Equipment are stored and repossess the Goods or Equipment.

The Buyer shall not be entitled to pledge or in any way charge by way of security for any indebtedness any of the Goods or Equipment which remain the property of Creative Chemicals, but if the Buyer does so, all monies owing by the Buyer to Creative Chemicals shall (without prejudice to any other right or remedy of Creative Chemicals) forthwith become due and payable.

The provisions set out in this clause shall be without prejudice to the obligation of the Buyer to purchase the Goods or Equipment.

2) Change Orders or Cancellations – Orders received and accepted by Creative Chemicals may not be changed or cancelled by Buyer unless approved by Creative Chemicals in its sole discretion. Changes or cancellations of Goods or Equipment considered non-standard or special, including without limitation, orders for Goods or Equipment especially manufactured to Buyer specifications or orders for substantial quantities, will not be accepted without full reimbursement of all related expenses incurred to date. All cancellations and change order requests must be made in writing to and approved by Creative Chemicals subject to appropriate charges to Buyer.

3) Return of Goods or Equipment – No Goods or Equipment will be taken back and credited without prior written approval from Creative Chemicals. Any return of Goods or Equipment to Creative Chemicals shall be subject to Creative Chemicals' approval and to such Goods or Equipment being in the same condition as when they originally left Creative Chemicals' facility for shipment to Buyer. In issuing credits, Creative Chemicals will deduct up to 30% restocking fees (in its sole discretion), shipping, and reconditioning expenses from the Buyer's credit.

4) Design Changes – Creative Chemicals and its manufacturers reserve the right to change, discontinue, or alter the design and construction of any Goods or Equipment without prior notice and to have no obligation or liability for such changes, alterations, or discontinuance of Goods or Equipment previously or subsequently sold.

5) **Shipments** – All prices are quoted EXW (Incoterms) Creative Chemicals, Vancouver, British Columbia; however, Creative Chemicals will bear responsibility, cost and risk of loading Goods or Equipment to completion of loading. Creative Chemicals' responsibility for Goods or Equipment end when a carrier receives the Goods or Equipment from Creative Chemicals. Creative Chemicals does not insure shipments beyond the point to such transportation company and, therefore, all claims of lost or damaged Goods or Equipment in transit must be filed directly with the transportation company by Buyer.

6) **Miscellaneous Charges** – Any extra expenses incurred by Creative Chemicals such as engineering, tagging, taxes, service calls, export crating, or other expenses will be added to the invoice after notification to Buyer of the extra cost.

7) **Payment Terms** – All invoices for Canadian buyers are due and payable in the lawful currency of Canada thirty (30) days from the date printed on the invoice unless otherwise stated by Creative Chemicals. All invoices for international buyers will be confirmed, irrevocable Letters of Credit in USD currency due on delivery to Canadian freight forwarder, Canadian port unless otherwise stated. All amounts past due of Buyer will be charged interest at the lesser of the rate of 1¼% per month (21% per annum) or the maximum annual rate allowable by law. The acceptance of any Buyer's order is subject to approval of Creative Chemicals' Credit Department, and Creative Chemicals may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to Creative Chemicals' Credit Department.

8) **Published Data** – All published dimensions, weights, temperatures, pressure ratings, and other data are approximate and subject to change.

9) **Quotations** – The quantities listed on any quotations are to be considered estimates only; actual quantities should be confirmed based on the requirements of the project.

10) **Conflict with Applicable Law; Severability** – If any provision of these terms and conditions shall be judged by a court or body of competent jurisdiction to be invalid, illegal or unenforceable in any respect, such adjudication shall not effect or modify any other provision of these terms and conditions and the effect thereof shall be confined to the provision as to which such adjudication is made.

11) **Set-off** – Buyer shall not set off against any amounts due to Creative Chemicals, any amounts claimed by Buyer against Creative Chemicals for any reason whatsoever.

12) **Import/Export** – All Goods or Equipment sold and shipments made hereunder shall at all times be subject to the export control laws and regulations of Canada and any other applicable jurisdictions, and any amendments thereof. Buyer is responsible for compliance with all import and export control laws and regulations. Buyer will obtain import, export, and re-export approvals and licenses required for the Goods and/or Equipment delivered and will retain documentation evidencing compliance with those laws and regulations. Buyer agrees that it shall not, except as said laws and regulations expressly permit, make any disposition of Canadian origin Goods and/or Equipment or technical information obtained from Creative Chemicals (directly or indirectly), by way of trans-shipment, re-export, diversion or otherwise, other than in and to the ultimate country of destination specified in the invoice or order and/or declared as the country or ultimate destination on Creative Chemicals' invoices. If Buyer designates a freight forwarder for export shipments from Canada, then Buyer's freight forwarder will export on Buyer's behalf and Buyer will be responsible for any failure of Buyer's freight forwarder to comply with all applicable export requirements.

13) **Indemnity** - The Buyer shall indemnify and keep Creative Chemicals indemnified against all costs, expenses, damages and demands incurred by Creative Chemicals in respect of:

a. any alleged infringement of the patents, trademarks, copyright, design or other industrial property rights used by Creative Chemicals at the request of the Buyer;

b. any alleged breach of any statute or regulation concerning the preparation, marketing and distribution of the Goods or Equipment;



c. any alleged breach of any statute or regulation relating to trade descriptions or weights and measures where Creative Chemicals relies or has relied upon information relating thereto or labels provided by the Buyer, and the breach does not arise from the negligence or Default of Creative Chemicals;

d. any claims arising and made which arise by reason of or in connection with a defect in the Goods or Equipment or in the end product manufactured and/or supplied by the Buyer in which the Goods or Equipment are comprised, which defect is attributable either to the compliance by Creative Chemicals with the instructions given by the Buyer or to the Buyer's design of the end product.

14) Warranties, Liability and Remedies - Creative Chemicals warrants that the Goods or Equipment will correspond (within tolerances specifically stated or established by usage or trade custom) with the Specification, (or with any other specification expressly agreed in writing between the Buyer and Creative Chemicals at the time of Delivery) and will be free from defects in material and workmanship, on Delivery and for such period after Delivery (if any) as agreed in writing between the Buyer and Creative Chemicals and set out in the Order Confirmation subject to the following conditions:

a. Creative Chemicals shall be under no liability in respect of any defect in the Goods or Equipment arising from any design or specification supplied by the Buyer;

b. Creative Chemicals shall be under no liability in respect of any defect arising from fair wear and tear, wilful damage, negligence, failure to follow Creative Chemicals's instructions (whether oral or in writing), misuse or alteration of the Goods or Equipment without Creative Chemicals's approval;

c. Creative Chemicals shall be under no liability under the above warranty (or any other warranty, condition or guarantee) if the total price for the Goods or Equipment has not been paid by the due date for payment;

d. the above warranty does not extend to any technical advice or recommendation provided by Creative Chemicals to the Buyer as to the storage, application or use of the Goods or Equipment whether provided verbally or in writing; and

e. the above warranty does not extend to materials not manufactured by Creative Chemicals, in respect of which the Buyer shall only be entitled to the benefit of any such warranty or guarantee as is given by the manufacturer to Creative Chemicals.

Subject as expressly provided in these Conditions all warranties conditions or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

Where any valid claim in respect of any of the Goods or Equipment which is based on any defect in the quality or condition of the Goods or Equipment or their failure to meet the Specification is notified to Creative Chemicals in accordance with these Conditions, Creative Chemicals shall, at its sole discretion, replace the Goods or Equipment (or the part in question) free of charge or refund to the Buyer the price of the Goods or Equipment (or a proportionate part of the price) but Creative Chemicals shall have no further liability to the Buyer.

All information contained in the TDS, except the Specification, is based on data believed to be reliable but Creative Chemicals makes no warranties, express or implied as to its accuracy and assumes no liability arising out of its use. The information contained in the TDS falls within the normal range of the relevant Product properties but should not be used to establish specification limits or used alone as the basis of design.

15) Liability and Remedies - Buyer acknowledges that it has entered into the Contract in reliance only on the representations, warranties, promises and terms contained or expressly referred to in the Contract and, save as expressly set out in the Contract, Creative Chemicals shall have no liability in respect of any other representation, warranty or promise made prior to the date of the Contract unless it was made fraudulently. Buyer shall inform Creative Chemicals of any Default and afford it reasonable opportunity to correct the Default. Creative Chemicals will not be liable for the following loss or damage arising directly or indirectly out of any Default and even if foreseeable by Creative Chemicals:

a. economic loss including administrative and overhead costs, loss of profits, business, contracts, revenues, goodwill and production;

b. loss arising from any claim made against the Buyer by any other person; or



c. loss or damage arising from the Buyer's failure to fulfil its responsibilities or any matter under the control of the Buyer.

Creative Chemicals's entire liability in respect of all Defaults shall be limited to an amount equal to the value of any sums paid by the Buyer under the Contract.

16) Delivery in Stages - Where the Goods or Equipment are to be Delivered in instalments, each Delivery shall constitute a separate contract and failure by Creative Chemicals to Deliver any one or more of the instalments in accordance with these Conditions or any claim by the Buyer in respect of any one or more instalments shall not entitle the Buyer to treat the Contract as a whole as repudiated.

17) Assignment – This document and Buyer's obligations hereunder may not be delegated or assigned by Buyer without Creative Chemicals' written consent, and any assignment attempted without such consent shall be deemed to be null and void and shall effect, at Creative Chemicals' option, a cancellation of all Creative Chemicals' obligations hereunder. Creative Chemicals may assign this document and its interest therein, without the consent of Buyer.

18) Interpretation – This document shall be governed by and construed in accordance with the laws of the Province of British Columbia and the Parties agree to attorn to the exclusive jurisdiction of the courts located in such Province. The application of the United Nations Convention on Contracts for the International Sales of Goods or Equipment is excluded.

19) Acceptance of Waivers and Limitations – Buyer acknowledges that: (i) he, she or it is a sophisticated purchaser of goods of the types described herein, (ii) he, she or it fully understands the nature and extent of the waivers and limitations on Buyer's rights and remedies set out herein and it accepts such waivers and limitations, and (iii) any rule of construction to the effect that any ambiguity contained herein is to be resolved against a drafting party shall not be applicable to the interpretation of these terms and conditions.

20) Electronic Transactions – The Parties agree to permit and recognize the execution or acceptance of this document and the order by means of an "electronic signature" as that term or similar term is defined in the *Electronic Transaction Act* or equivalent legislation of the governing jurisdiction. Accordingly, the absence of a manual signature in ink by any Party hereto shall not affect the written electronic communication that constitutes this Agreement in any respect, provided that an electronic signature is transmitted herewith. Notices required or permitted hereunder may be delivered in an electronic form, and if so delivered, shall satisfy the notice requirements set forth herein or arising under applicable law.

21) Exclusion of other matters - These Conditions set out the entire agreement and understanding between the parties and supersede all prior agreements, understandings or arrangements (whether oral or written) in respect of the subject matter of these Conditions. Each party acknowledges that it has entered into this Agreement in reliance only on the representations, warranties, promises and terms contained in this Agreement and, save as expressly set out in this Agreement, neither party shall have any liability in respect of any other representation, warranty or promise made prior to the date of this Agreement unless it was made fraudulently.

22) Language – Buyer and Creative Chemicals hereby declare that they have specifically requested and do hereby confirm their request that the present order and terms and conditions be drafted and executed in the English language.