

## TERMS AND CONDITIONS OF PURCHASE OF GOODS



1. **PURCHASE DOCUMENTS.** The attached purchase order or agreement (the "PO") and all attachments, including these Terms and Conditions of Purchase ("Terms and Conditions," and together with the PO, the "Agreement") for the purchase of certain goods ("Goods") are the complete agreement by and between Evonik Corporation or any one of its affiliates or subsidiaries purchasing the Goods as set forth on the PO ("Buyer") and the entity selling the Goods ("Seller"), and constitute the full understanding of the parties, and the complete and exclusive statement of the terms of their agreement. No other document, including Seller's proposal, quotation, and acknowledgement forms, and no condition, understanding or agreement purporting to modify or vary the terms of the Agreement shall be binding unless hereafter made in writing and signed by the parties. Any PO not acknowledged in writing within five (5) days after receipt by Seller and not rejected by Seller is deemed to have been accepted. In the event of a conflict between the PO and these Terms and Conditions, the PO shall govern and control.

2. **PROPRIETARY INFORMATION/CONFIDENTIALITY.** Seller shall consider all information furnished by Buyer to be confidential and shall not disclose any such information to any third party, or use such information itself for any purpose other than performing obligations under this Agreement, unless Seller obtains prior written permission of Buyer to do so. Seller shall not advertise or publish the fact that Buyer has contracted to purchase Goods from Seller, nor shall any information relating to any order be disclosed without Buyer's prior written permission. Unless otherwise agreed to in writing, no information disclosed in any manner or at any time by Seller to Buyer shall be deemed confidential or proprietary and Seller shall have no rights against Buyer with respect thereto. This Section 2 shall survive the termination or expiration of the Agreement.

3. **PRODUCT WARRANTY.** SELLER EXPRESSLY WARRANTS THAT ALL GOODS FURNISHED UNDER THIS AGREEMENT SHALL CONFORM TO ALL SPECIFICATIONS AND APPROPRIATE STANDARDS, SHALL BE NEW AND SHALL BE FREE FROM ALL DEFECTS IN MATERIAL OR WORKMANSHIP, SHALL BE MERCHANTABILITY AND FIT FOR BUYER'S PARTICULAR PURPOSE, AND THAT SELLER HAS TITLE TO THE GOODS FREE FROM ANY LIENS, CLAIMS OR ENCUMBRANCES WHATSOEVER. Seller shall indemnify and save Buyer harmless from any breach of this warranty and no limitations on Buyer's remedy in Seller's documents shall operate to reduce this indemnification. Seller shall extend all warranties it receives from its vendors to Buyer and Seller's warranty shall extend to Buyer's customers. This warranty is in addition to all warranties express or implied in law. All warranties shall survive inspection, testing and acceptance of Goods by Buyer and expiration or termination of this Agreement.

4. **NONCONFORMING GOODS.** Buyer shall have the right of inspection and approval, and may, in addition to its other remedies, reject and return Goods or require replacement Goods at Seller's sole cost and expense if defective and/or not in compliance with specifications or the warranty. If Seller fails to correct defects in or replace nonconforming Goods promptly, then Buyer, after reasonable notice to Seller, may make such corrections or replace such Goods and charge Seller for the cost incurred by Buyer in doing so. Destruction costs of non-conforming Goods shall be reimbursed by Seller as well. In the event Buyer receives Goods whose defects or nonconformity is not apparent on examination, Buyer reserves the right to require replacement of such non-conforming Goods, as well as payment of damages.

5. **PRICES AND TAXES.** Except as otherwise set forth herein, all prices described in the PO are firm unless otherwise agreed to in a writing signed by Buyer, constitute Seller's entire compensation for its performance under this Agreement, and include all charges for foreign, federal, state and local taxes, import duties, license fees, insurance, packing, freight, tariffs or other governmental charges, if any, applicable to this transaction. Buyer shall not be responsible for any additional costs. There is no minimum order quantity or volume required from Buyer when ordering Goods, unless otherwise specified in the PO.

6. **PRICE WARRANTY.** Seller represents and warrants that all of the prices, warranties, benefits, terms and conditions granted to Buyer hereunder are now and shall be no less favorable than the prices, warranties, benefits, terms and conditions granted to Seller's other customers. If at any time during the term of the Agreement or any extension thereof, Seller shall offer more favorable prices, warranties, benefits, terms, or conditions for substantially the same or similar goods as those provided under the Agreement, then Seller shall within fifteen (15) days after the effective date of such offering, notify Buyer of such fact in writing and offer Buyer the more favorable offering. If during the term of the Agreement, Buyer receives an offer from another supplier to supply the Goods to be supplied hereunder at a lower price than named herein, Seller shall at its option either (a) meet such lower price, or (b) permit Buyer to purchase from such source while such lower price is in effect, and the quantity purchased by Buyer will be deducted from any quantity covered by the Agreement.

7. **DELIVERY/MANUFACTURING LOCATION.** Delivery of Goods shall be as is set forth in the PO, and any delay in delivery is at the exclusive liability of Seller. Unless otherwise stated on the PO, all payment terms shall be based on the date the invoice is received. In the event that Goods are delivered in a quantity less than what is stated on the PO, Seller agrees to either (i) credit Buyer for such amount on a subsequent purchase of additional Goods by Buyer, or (ii) immediately refund Buyer for such amount, at Buyer's sole discretion. In addition to its other rights and remedies contained herein, if delivery of Goods is not completed by the time promised, Buyer reserves the right without liability, to terminate the Agreement by notice effective when received by Seller as to items not yet shipped and to purchase substitute items elsewhere and charge Seller with any loss incurred. All manufacturing of the Goods shall occur in a facility approved by Buyer. In the event that Seller decides to change the manufacturing location of the Goods, Seller shall immediately notify Buyer of such change.

8. **DISPUTED INVOICES AND RIGHT TO SET OFF.** If Buyer disputes all or any portion of an invoice, it shall be required to pay only the amount not in dispute. Buyer shall be entitled to set off any amount Seller owes Buyer or any of Buyer's affiliates, against amounts payable under this Agreement or any other agreement. Payment by Buyer shall not result in a waiver of any of its rights under the Agreement.

9. **TITLE AND RISK OF LOSS.** Title to the Goods and risk of loss remain with Seller until delivery of the Goods to, and acceptance of Goods by, Buyer. Further, title shall pass to Buyer free and clear of claims, liens and encumbrances (save Seller's right to receive payment therefor) upon delivery to and acceptance by Buyer.

10. **FORCE MAJEURE.** Delay in performance or failure to perform hereunder shall be excused to the extent caused by act of God, labor trouble, fire, act of governmental authority, failure of transportation or supplies, accident or any other cause beyond the reasonable control of the party claiming such excuse and not the result of its failure to exercise due diligence. The party claiming such excuse shall give written notice to the other party as soon as practicable after the occurrence of the event giving rise to the claim and shall provide in such notice its best estimate of the unexpected delay period. Notwithstanding the foregoing, in the event that Seller declares a force majeure event, Buyer shall receive a pro rata allocation of any remaining Goods available to Seller.

11. **PATENTS.** Seller warrants that all Goods supplied hereunder, and their composition, manufacture and sale will not infringe any patent, trademark, copyright, trade secret or other intellectual property right owned or controlled by Seller or any other corporation, firm or person, and Seller agrees it will, at its own expense upon receipt of notification to promptly release and hold harmless Buyer, and assume full responsibility for defense of any suit or proceeding that may be brought against Buyer or its affiliate(s), agents, customers, or other vendors for alleged patent or other intellectual property infringement as well as for any alleged unfair competition, whether or not, resulting from similarity in design, trademark or appearance of Goods furnished hereunder. Seller further agrees to indemnify Buyer, its affiliate companies, its agents and customers against any and all expenses, losses, royalties, profits and damages (including court costs and attorneys fees) resulting from any such suit or proceeding, including any settlement. Buyer may be represented by and actively participate in any such suit or proceeding if it so desires. This Section 11 shall survive termination or expiration of the Agreement.

12. **INDEMNIFICATION.** Seller shall defend, indemnify and hold harmless Buyer, its parents, subsidiaries and affiliates, and its and their respective directors, officers, partners, employees, agents, successors and assigns (the "Indemnified Parties") against all claims, demands, lawsuits, damages, liabilities, loss, costs or expenses (including court costs and attorneys' fees) and judgments or settlements of any kind arising out of or resulting in any way from Seller's, or Seller's agents, employees and contractors acts or omissions, or failure to comply with any obligations of this Agreement, or from any breach of any representation or warranty under the Agreement. Seller shall not settle or compromise any such claim or consent to the entry of any judgment without the prior written consent of each respective Indemnified Party and without an unconditional release of all claims by each claimant or plaintiff. This Section 12 shall survive termination or expiration of the Agreement.

13. **NO WAIVER.** Failure of Buyer to insist on strict performance of any of these Terms and Conditions shall not be considered a continuing waiver of any provisions contained herein and shall not constitute a course of dealing which would alter any terms contained herein.

14. **RELATIONSHIP OF PARTIES.** Neither party undertakes, by the Agreement or otherwise, to perform or discharge any liability or obligation of the other party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other party. Nothing contained in the Agreement is intended to give rise to a partnership or joint venture between the parties or to impose upon the parties any of the duties or responsibilities of partners or joint venturers.

15. **COMPLIANCE WITH LAWS.** Seller agrees to fully observe and comply with all applicable laws, rules, regulations, orders and any binding social/ethical obligations pertaining to the production, sale, marketing, packaging, and shipping of the Goods ordered, including all anti-corruption laws that are applicable to the contractual relationship between Seller and Buyer. Upon request, Seller shall furnish Buyer certificates of compliance with such laws, rules, regulations, orders, and social/ethical obligations. In addition to any other right to terminate pursuant to Section 17, any violation of such obligations of compliance in connection with this Agreement shall be deemed to be a breach of contract and Buyer shall have a right to immediately terminate this Agreement upon notice to Seller.

16. **EQUAL EMPLOYMENT OPPORTUNITY – BUYER** is an Equal Opportunity employer that complies with all applicable laws regarding equal employment opportunity, including the Equal Opportunity clause of 41 CFR Part 60-1.4, the Affirmative Action clauses of 41 CFR Parts 60-250.4 and 741.4.; Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and 38 USC Section 4212 (the Vietnam Era Veterans' Readjustment Assistance Act of 1974). SELLER warrants that it is an Equal Opportunity employer and complies with the above laws

17. **ADEQUATE PERFORMANCE.** Buyer may terminate this Agreement or any part hereof for cause in the event of any default by Seller, or if Seller fails to comply with any of the Terms and Conditions. "For cause" includes, but is not limited to: late deliveries, deliveries of Goods that are defective or that do not conform to the Agreement and failure to provide Buyer, upon request, reasonable assurances of future performance if so requested. In the event of termination for cause, Buyer shall not be liable to Seller for any amount, and Seller shall be liable to Buyer for any and all damages sustained by reason of the default which gave rise to the termination. Upon termination of this Agreement for any reason, Buyer shall not be liable to Seller, either for compensation or for damages of any kind or character whatsoever. The foregoing rights are in addition to, and not in limitation of, any other remedy Buyer may have at law or equity. Notwithstanding the foregoing, in the case of default of any provision of this Agreement by Seller, Buyer may obtain Goods from other sources and hold Seller responsible for any damages occasioned thereby.

18. **SEVERABILITY.** If any provision of this Agreement is invalid or unenforceable under any statute, regulation, ordinance, executive order or other rule of law, such provision shall be deemed severed from the balance of the Agreement and the validity of the remaining provisions shall not be affected thereby.

19. **ASSIGNMENT.** This Agreement shall be binding on the successors and assigns of Seller; provided, however that Seller shall not assign the Agreement, in whole or in part, without the prior written consent of Buyer.

20. **AMENDMENT.** Any amendment to any provision of these Terms and Conditions must be in writing and signed by the parties, and must specifically refer to the provision of these Terms and Conditions being amended to be effective. E-mail between representatives of the parties shall not constitute a writing sufficient to amend these Terms and Conditions.

21. **GOVERNING LAW/WAIVER OF JURY TRIAL.** This Agreement shall be interpreted and enforced in accordance with the laws of the State of New Jersey, U.S.A., without regard to conflicts of law principles. The parties hereby irrevocably submit to the exclusive jurisdiction of the federal and state courts located in the State of New Jersey for the resolution of any claim under this Agreement, and the parties agree not to assert any defense to any suit, action or proceeding based upon improper venue or inconvenient forum. THE PARTIES AGREE THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY IT RELATED TO THIS AGREEMENT SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY WAIVE ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.