

**STANDARD TERMS AND CONDITIONS OF SALE – EFFECTIVE 3/18/16  
(For Products and Services)**

**1. TERMS OF SALE.** These Standard Terms and Conditions of Sale (“Terms”) shall apply to Seller’s Invoice, Quotation Acknowledgment and Certificate of Analysis, in which these Terms are specifically incorporated by reference (the Invoice, Quotation, Acknowledgment, Certificate of Analysis, together with these Terms, the “Agreement”). All purchases by Buyer of products or services described in the Agreement are expressly limited to and conditioned upon acceptance of these Terms, regardless of whether Buyer purchases such products or services through any media or means, including, but not limited to, verbal or written purchase orders, electronic orders via EDI, acknowledgements, confirmations or other writings from Buyer to Seller. Unless such provisions are expressly agreed to by Seller in a writing signed by Seller, any additional or conflicting terms and conditions contained on, attached to or referenced by Buyer’s writings, or other prior or later communication from Buyer to Seller, shall have no effect on the purchase of any such products or services by Buyer from Seller and are expressly rejected by Seller. These Terms, along with the Quotation or Acknowledgment in which they are incorporated by reference, are deemed an offer for sale by Seller. If Buyer does not accept in writing Seller’s offer to sell, Buyer’s commencement of performance (including ordering, purchasing or taking delivery of product or accepting services) shall, in all cases, constitute Buyer’s unqualified and unconditional acceptance of the Agreement. These Terms are binding upon Buyer, irrespective of whether Buyer has signed and agreed to these Terms.

**2. PRICES.** Unless otherwise stipulated in writing, quoted prices will be valid for five (5) days. Prices are based upon Seller’s specifications. Quoted prices are exclusive of all taxes (except taxes levied on Seller’s income) including federal, state and local use, sales, property or similar taxes paid or required to be collected by Seller. Quoted rates for cleaning bulk products (tanker, roll off, vac box) assume Buyer’s material will freely flow or dump. Buyer acknowledges that additional wash and/or dig out charges for Buyer’s material that do not flow or dump completely may result in Seller increasing its prices at Seller’s discretion.

**3. PAYMENT TERMS/CREDIT.**

(a) Buyer shall pay all invoices, without deduction, in U.S. Dollars. If the Agreement does not state payment terms, payment shall be received by Seller no later than ten (10) days from the due date on Seller’s invoice. Delay in payment will result in Buyer being responsible for interest at a rate of one and a half percent (1½%) per month compounded monthly (19.6% per annum), or the maximum rate allowed by law, whichever is less, on the outstanding amount of any unpaid invoice beginning on the day after the payment due date. Notwithstanding the foregoing, in no event shall the late payment charge for a month be less than Five Dollars (\$5.00). If the payment due date is a Saturday, Sunday or holiday where banks located in the State of Ohio are authorized or required to be closed, Buyer shall make such payment on the business day after such due date. All claims of Buyer relating to any invoice must be made in writing within 30 days of receipt of invoice or claim shall be deemed waived.

(b) Seller makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Buyer. In the event credit is provided by Seller to Buyer, or Performance Assurance (as hereinafter defined) is required by Seller of Buyer, Buyer will provide to Seller, as requested by Seller, such annual or interim reports containing Buyer’s and/or the Buyer’s Performance Assurance provider’s consolidated financial statements for a particular fiscal year or accounting period, as requested. In all cases, such statements shall be in accordance with generally accepted accounting principles.

(c) Notwithstanding the foregoing, if Seller determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may: (i) suspend deliveries of products and/or services; (ii) require prepayment by wire transfer of immediately available funds; and/or (iii) require Performance Assurance. Buyer hereby waives written notice of any such action. “Performance Assurance” means collateral in the form of either cash, letter(s) of credit, guaranty or other security acceptable to Seller in its sole discretion.

## MAGNUS & HARDY TERMS & CONDITIONS OF SALE

(d) In the event Buyer fails to timely pay Seller any payments due Seller (whether under this Agreement or pursuant to any other obligation of Buyer to Seller) in accordance with Seller's terms, Seller may, in addition to any other remedies it may have under this Agreement, defer further shipments until such payments are made or, at its option, cancel the unshipped balance without any liability to Buyer.

**4. TAXES AND GOVERNMENTAL CHARGES.** Except as otherwise specifically set forth in this Agreement, Buyer shall pay all taxes (excluding federal, state or local income or franchise taxes of Seller), all import duties, levies and impositions, all other governmental charges, assessments, fees and any interest or penalties thereon ("Taxes and Governmental Charges"), whether payable by Seller or Buyer, imposed or levied on or with respect to this Agreement or the amounts payable hereunder, the products, or the possession, sale, use, furnishing or ownership of the products. If this Agreement specifically provides that Seller shall pay any of the foregoing, Seller shall pay the amount thereof at the rates in effect on the date of this Agreement. If the total amount thereof is, at any time and for any reasons (whether as a result of new or increased duties, taxes or other charges or otherwise), greater (or less) than the aforementioned amount as of the date of this Agreement, the difference shall be charged (or credited) to Buyer. The contract price for the products or services to be provided by Seller under this Agreement will be increased by any Taxes and Governmental Charges with respect to the supply to Seller of any products, materials or services to be incorporated in the products or services being sold or performed by Seller under this Agreement.

**5. SHIPPING.** Seller shall use commercially reasonable efforts to make shipments on date(s) agreed by Seller. Shipments are made F.O.B. Seller's facility. All products shall be deemed to be delivered, and risk of loss shall pass to Buyer at such time as product is loaded onto a transportation carrier vehicle. Buyer is free to arrange and pay for its own shipping and handling F.O.B. Seller's facility. Buyer shall pay, and be exclusively liable for, all costs of shipping, handling, delivery and any related insurance. All claims by Buyer for damage, loss or delays in transit shall be made by Buyer against the carrier, and Seller shall have no responsibility or obligations with respect to any such damage, loss or delay. If Seller arranges transportation for Buyer, such arrangements shall be at Buyer's sole risk and expense, and transfer of title and risk of loss as specified above shall not be effected. Buyer shall pay any increase in transportation costs that are charged to Seller subsequent to its invoice to Buyer, including any surcharges. All railcars and tank trucks provided by Buyer must be presented clean and ready to be loaded. Seller may refuse to load a railcar or tank truck not ready to be loaded, in Seller's sole discretion.

**6. BUYER SHIPPING DELAYS.** Delays in the manufacturing or shipping schedule caused by Buyer may result in additional charges, including, but not limited to, a surcharge to offset increased material cost, storage fees (including railcar storage) or other applicable costs.

**7. PRODUCT STEWARDSHIP; SAFETY AND HEALTH.** Buyer is responsible for the safe use, selection, handling and disposal of the products being sold to it hereunder. Buyer will: (a) familiarize itself with any product information provided to, or made available to, Buyer by Seller, including material safety data sheets, warnings; and safety and health information concerning the product and/or the containers for such products sold hereunder ("Safety Information"); (b) communicate such Safety Information to all persons who Buyer can reasonably foresee may be exposed to such materials or containers; (c) follow safe handling, use, storage, selling, transportation and disposal practices; and (d) take reasonable action to avoid dangers to persons, property or the environment. Buyer acknowledges and affirms that it is responsible for verifying the cleanliness of its equipment before delivering a tank for washing. Upon delivery of the tank, Buyer releases Seller from any future liability and acknowledges that Seller will not be responsible for claims relating to future product contamination, demurrage, load rejections, travel and /or subsequent interior tank charges, etc.

## **8. LIMITED WARRANTY; DISCLAIMER.**

(a) Subject to the limitations set forth below, Seller hereby makes the following warranties with respect to the products or services sold or provided by it under this Agreement: at the time of shipment, materials and work performed thereon by Seller are warranted to conform in all substantial respects to the Seller specifications and/or samples in the Agreement. Seller's prices are based upon this limited warranty and any different or greater warranty coverage which Buyer requests may require a price adjustment. This warranty shall not apply to any goods, services or parts thereof furnished or solicited by Buyer or acquired from others at Buyer's request and/or Buyer's

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specifications. The foregoing warranties shall not apply to any work or service not manufactured or performed by Seller.

(b) If the products are claimed not to conform in all substantial respects to specifications and/or samples, Seller, upon written notice promptly given, will either examine the goods at its site or issue shipping instructions for their return to Seller (transportation costs prepaid by Buyer). In the event any products or services are determined by Seller to be defective and covered by this warranty, transportation costs (cheapest way) to and from Seller's plant, will be borne by Seller and reimbursement or credit will be made for amounts so expended by Buyer. In case of a dispute as to whether the products or services meet contract specifications, Seller or Buyer may designate a mutually acceptable independent testing company to make an examination and in such case, said testing company's findings shall be conclusive and binding on both parties (the expense of which examination shall be borne by Seller with respect to each item found not to conform to specification and by Buyer with respect to each item found to conform to specifications).

(c) With respect to any claim of breach of warranty hereunder, Buyer shall notify Seller in writing within three (3) days from the date of delivery or whenever product is commingled, stored or mixed with other product, whichever is earlier. Buyer's failure to give such written notice of such claim within such three-day period shall constitute an unqualified acceptance of the product or service and a waiver of all claims with respect thereto. In the event timely notice is given by Buyer, but Seller fails to comply with its obligations hereunder, Buyer agrees that any action for a breach of warranty or any other provision of this Agreement will be, and must be, commenced within one (1) year from the date the alleged breach was discovered or should have been discovered, whichever occurs first.

(d) BUYER AND SELLER EXPRESSLY AGREE THAT SELLER'S SOLE OBLIGATION UNDER THIS WARRANTY SHALL BE TO ISSUE CREDIT, REPAIR OR REPLACE (ALL AT SELLER'S OPTION) ANY ITEM OR PART THEREOF MANUFACTURED OR SERVICED BY SELLER WHICH SELLER DETERMINES TO BE OTHER THAN AS WARRANTED; NO ALLOWANCE SHALL BE MADE FOR ANY LABOR, CHARGES OF BUYER FOR REPLACEMENT OF PARTS, ADJUSTMENTS OR REPAIRS OR ANY OTHER WORK, UNLESS SUCH CHARGES ARE AUTHORIZED IN WRITING IN ADVANCE BY SELLER.

(e) THE WARRANTIES SET FORTH IN SECTION 8(a) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES AND COMPRISE SELLER'S SOLE AND ENTIRE WARRANTY OBLIGATION AND LIABILITY TO BUYER, ITS CUSTOMERS AND ASSIGNS IN CONNECTION WITH PRODUCTS AND SERVICES SOLD HEREUNDER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR ANY PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.

**9. LIMITATION OF LIABILITY.** SELLER'S TOTAL LIABILITY TO BUYER FOR DAMAGES FOR ANY CLAIMS, LOSSES OR DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO ANY CAUSE WHATSOEVER IN RELATION TO THIS AGREEMENT, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND/OR GROSS NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY OR OTHER CAUSE, (a "CLAIM") SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH SUCH CLAIM RELATES. NOTWITHSTANDING THE FOREGOING SENTENCE, UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, INTERRUPTION OF BUSINESS, LOST PROFITS, REVENUE OR OPPORTUNITY, CLAIMS OF THIRD PARTIES OR FOR INJURY TO PERSONS OR PROPERTY OR FOR ANY OTHER SPECIAL, EXEMPLARY, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OF ANY KIND OR NATURE.

**10. FORCE MAJEURE.** Seller shall not be liable for delays in the performance of, or the nonperformance of, any of its obligations under this Agreement if such default is the result of causes beyond its reasonable control including, but not restricted to, acts of God, acts of government, acts of Buyer, fires, strikes, floods, accidents, epidemics, quarantine restrictions, war, acts of terrorism, insurrection or riot, civil or military authority, compliance with priority or allocation orders or preference ratings issued by the government, weight embargoes, car shortages, wrecks or delays of transportation, inadequate transportation facilities, unusually severe weather or inability to obtain necessary labor, fuel, materials, supplies or manufacturing facilities on terms deemed commercially

practicable by Seller and delays of a subcontractor due to such causes, provided that Seller agrees that Seller shall give prompt notice of any anticipated delay caused by such causes beyond its reasonable control.

**11. CANCELLATION/MODIFICATION OF ORDER.** Buyer acknowledges that any products being purchased hereunder are being produced especially for Buyer. In no event shall Buyer have the right to cancel, modify or delay releases with respect to any order where the material and order is in process, except with the Seller's consent and subject to conditions then to be agreed upon, which shall include protection of Seller against all losses. Should the Seller elect to limit, curtail or discontinue production or sale of the product due to significant changes in raw material markets including, but not limited to, fats, oils and greases, which in the Seller's judgment will render the production or marketing of the product economically, technologically or commercially impracticable and infeasible, Seller may cancel or delay any order or work with Buyer to determine mutually agreeable alternatives to continue production.

**12. COMPLIANCE WITH LAW.**

(a) Buyer agrees to comply with all applicable laws, treaties, conventions, directives, statutes, ordinances, rules, regulations, orders, writs, judgments, injunctions or decrees of any governmental authority having jurisdiction ("Laws") pertaining to the fulfillment of the Agreement.

(b) Buyer will be responsible for compliance with all Laws applicable to the product(s) sold hereunder once such product(s) has been delivered by Buyer in accordance with this Agreement, including, without limitation, those related to operations, safety, maintenance, equipment, size and capacity, and pollution prevention.

(c) If any license or consent of any government or other authority is required for the acquisition, carriage or use of the product(s) sold hereunder, Buyer will obtain the same at its expense, and if necessary, provide evidence of the same to Seller on request. Failure to do so will entitle Seller to withhold or delay shipment, but failure to do so will not entitle Buyer to withhold or delay payment of the price therefore. Any expenses or charges incurred by Seller resulting from such failure will be paid for by Buyer within ten (10) days of receipt of Seller's written request.

(d) Except as permitted under U.S. Laws, any product(s) sold by Seller to Buyer hereunder will not be sold, supplied or delivered by Buyer directly or indirectly to any party or destination that, at the time of such sale, supply or delivery, is declared an embargoed/restricted party or destination by the government of the United States of America or by the United Nations. Within two (2) days after Seller's request, Buyer will provide Seller with appropriate documentation to verify the final destination of any product(s) delivered hereunder.

**13. INFRINGEMENT.** Buyer agrees that it will not induce Seller to use any patent, secret process, trade secret, know-how, drawings, plans, specifications or other confidential knowledge or information belonging to any third party. Buyer further agrees that it will defend, indemnify and hold harmless Seller against any damages, costs, expenses or other liabilities (including reasonable attorney's fees) arising out of, or relating to, any claim brought against Seller relating to the infringement (or alleged infringement) of any patent or any use by Seller of any secret process, trade secret, know-how, drawings, plans, specifications or other confidential or proprietary knowledge or information belonging to any third party arising from the Seller's manufacture, use or sale of any products in accordance with any information, materials, specifications, drawings, plans, instructions or samples furnished by Buyer.

**14. CONFIDENTIALITY; EQUITABLE RELIEF.** All proposals, drawings, technical data and other proprietary information (including information that constitutes a "trade secret" under applicable state law) disclosed or furnished by one party to the other: (i) shall be kept confidential; (ii) shall remain the exclusive property of the party furnishing or disclosing such information; and (iii) shall be returned to the party furnishing such information upon request. The parties agree that a violation or threatened violation of the provisions set forth in this Section 14 will result in irreparable harm to the nondefaulting party, and, accordingly, the parties agree that, in such an event, the nondefaulting party shall be entitled to institute judicial proceedings and seek immediate injunctive relief (or similar equitable relief) against such violation or threatened violation without any requirement to post a bond as a

condition of such relief, as well as damages at law as may be recovered by such party, and the attorney fees it incurs in enforcing any of the covenants contained in this Section 14.

**15. SECURITY INTEREST.** To secure Buyer's obligations to Seller, Seller hereby reserves, and Buyer hereby grants to Seller, a security interest, including any applicable purchase money security interest, in all products (and all proceeds from the sale of such products by Buyer) sold by Seller to Buyer. Buyer hereby authorizes Seller to file any financing statement or other document, which is, or becomes, necessary for Seller to perfect the security interest granted to it under this Section 15.

**16. ARBITRATION.** Any controversy or claim arising out of or in connection with the negotiation, execution and/or performance of this Agreement (other than the failure by Buyer to pay for products or for services provided when due hereunder) shall be submitted to arbitration in accordance with the then-current rules of the American Arbitration Association. The arbitration shall be conducted in Lake County, Ohio, or at such other place as the parties may agree upon, by one person independent of the parties appointed by them by mutual agreement (the "Arbitrator"). Failing the appointment of an Arbitrator by the parties, such Arbitrator shall be appointed by the president of the American Arbitration Association or his designee. Judgment on any award may be entered in any court having jurisdiction as hereinafter provided. The arbitral award shall be enforceable under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Notice of process in connection with arbitral or judicial proceedings may be served upon the parties by registered or certified mail, with the same effect as if personally served. Any money awards shall be expressed in United States currency and shall include a reasonable interest component. The costs of any such arbitration proceeding shall be paid by the party against which the award is rendered.

**17. LAW AND JURISDICTION.** This Agreement will be governed by and construed and enforced in accordance with the Laws of the State of Ohio applicable to agreements made and to be performed entirely within such state, without regard to conflict of laws rules thereof. The United Nations Convention on Contracts for the International Sale of Goods, or any subsequently enacted treaty or convention, shall not apply or govern this Agreement or the performance hereof or any aspect of any dispute arising hereunder. Subject to the provisions of Section 16, the parties agree that any action brought by any party shall be brought and resolved exclusively by the state and federal courts located in Lake County, Ohio, and the courts to which an appeal therefrom may be taken, provided that any party shall have the right, to the extent permitted by applicable law, to proceed against any other party or its property in any other location to the extent necessary for the enforcing party to enforce a judgment or other court order or arbitral award. Each of the parties hereby consents to the jurisdiction of such courts and waives all questions of jurisdiction and venue. The parties agree that either or both of them may file a copy of this Section 17 with any court as written evidence of the knowing, voluntary and bargained Agreement between the parties irrevocably to waive any objections to venue or to convenience of forum. Legal process in any proceeding may be served on any party anywhere in the world.

**18. SEVERABILITY.** In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and any such illegal, invalid or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

**19. WAIVER.** Except as otherwise specifically set forth in this Agreement, no modification or termination hereof or waiver of any of the obligations hereunder shall be effective unless in writing and signed by the party against whom such modification, termination or waiver is sought to be enforced. The failure by Seller to enforce at any time any of the provisions herein, shall not constitute a waiver and shall in no way be construed as a waiver of such provisions or options, nor in any way be construed to affect the validity of this Agreement or any part thereof, or the right of the Seller thereafter to enforce each and every such provision.

**20. INDEPENDENT CONTRACTOR.** In the case of any services to be performed by Seller for Buyer, Seller shall perform such services under this Agreement as an independent contractor and not as an agent or employee of Buyer. Seller shall not be responsible for any charges for items, services and/or labor ordered or supplied by Buyer unless such items or services have been specifically ordered by Seller pursuant to properly issued purchase order of Seller.

**21. BINDING EFFECT; ASSIGNMENT.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Buyer may not assign any rights or claims, or delegate any duties under this Agreement, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.

**22. INDEMNIFICATION.** Buyer shall indemnify and hold harmless Seller, its officers, directors, employees and agents from and against any claim (including reasonable costs, litigation expenses and attorneys' fees) for personal injury to or death of any person or damage to property by whomsoever owned, to the extent caused by the negligent acts or omissions of the Buyer, its agents or employees arising out of or relating to its use of Seller's products and services.

**23. ENVIRONMENTAL MATTERS.** Seller and Buyer agree that Seller shall not have any responsibility for any hazardous or toxic materials, wastes or substances ("hazardous substances") at Buyer's site and that Seller shall have no discretion or control over (or participation in) the use, treatment, storage, transportation, disposal, release, investigation or remediation (collectively, "handling") of any such hazardous substances and no authority or obligation to make decisions or implement actions to prevent, abate or remediate any conditions caused by the handling of such hazardous substances. BUYER AGREES TO PROVIDE A CERTIFICATE OF ANALYSIS IN A FORM AS SPECIFIED BY SELLER, FROM TO TIME TO TIME, PROVIDING THE CONTENTS OF EACH SHIPMENT. Buyer agrees to release, hold harmless, defend and indemnify Seller from and against all actual or threatened claims, demands, orders, losses, lawsuits, liabilities, damages, penalties, fines, expenses and costs (including attorneys' and expert fees) arising from or related to: (i) the handling of hazardous substances at Buyer's site or in relation to the products or the services sold or provided by Seller hereunder; and (ii) any noncompliance (or alleged noncompliance) with Environmental, Health and Safety Laws with respect to Buyer's site, or any products and services sold or provided by Seller hereunder. For purposes of this Section, "Environmental, Health and Safety Laws" means any federal, state, local or foreign laws, regulations, codes, rules, orders, ordinances, permits or requirements pertaining to the environment or workplace safety and health, including without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 USC § 9601 et seq. (as amended), the Resource Conservation and Recovery Act, 42 USC § 6901 et seq. (as amended) and the Occupational Safety and Health Act, 29 USC § 651 et seq. (as amended).

**24. ENTIRE CONTRACT.** This Agreement supersedes all prior agreements, whether written or oral, between the parties with respect to its subject matter and constitutes a complete and exclusive statement of the terms of the Agreement between the parties with respect to its subject matter. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, SELLER IS MAKING NO REPRESENTATIONS OR WARRANTIES TO BUYER AND ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO EFFECT OR FORCE.