

## EMCO CHEMICAL DISTRIBUTORS CANADA LTD. TERMS AND CONDITIONS OF SALE

**1. SALE OF PRODUCTS.** Buyer, from time to time, may issue a purchase order or a release under a blanket purchase order, for goods ("Products") from EMCO Chemical Distributors, Inc. ("Seller"). Acceptance of any purchase order or blanket purchase order is subject to credit approval by Seller and acceptance of the order by Seller via written confirmation (email or fax).

**2. TERMS AND CONDITIONS OF SALES.** If Buyer and Seller have entered into a separate written agreement of any kind (an "Agreement"), these Terms and Conditions of Sale ("T&C's") shall control to the extent that they are not in conflict with the other Agreement. If Buyer and Seller do not have a separate agreement, then these T&C's constitute the agreement between Buyer and Seller. **BY REQUESTING A QUOTE FROM SELLER OR PRESENTING AN ORDER TO SELLER AND ABSENT A SEPARATE SIGNED AGREEMENT, BUYER CONFIRMS THAT THESE T&C's SHALL GOVERN ALL PURCHASES OF PRODUCTS BY BUYER FROM SELLER, AND NO CHANGES OR ADDITIONS OR DIFFERENT TERMS (CONTAINED IN A PURCHASE ORDER RECEIVED BY SELLER OR OTHERWISE) WILL CHANGE THESE T&C's UNLESS SPECIFICALLY ACKNOWLEDGED IN WRITING AND SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. NO SELLER EMPLOYEE OR AGENT HAS THE AUTHORITY TO MODIFY THESE T&C's VERBALLY.**

**3. PRICE AND PAYMENT.** Buyer represents that it is not an insolvent person or bankrupt, as those terms are defined in the *Bankruptcy and Insolvency Act* (Canada). Buyer further represents that it is solvent at the time it places any purchase order with Seller. Buyer agrees to pay the prices quoted in the Seller's written order confirmation and is responsible for any additional applicable costs or price changes in effect on the date of shipping, as well as shipping and handling charges, fuel surcharges, taxes and duties. Seller shall collect applicable taxes unless Buyer submits a valid tax exemption certificate, and indicates which Products are covered by it. Payment will be due within thirty (30) days of the invoice date. Payment is not contingent on Buyer's ability to collect or obtain funds from any other party. Credit card sales are billed at the time of purchase and a 3% surcharge will be added to the order total. Buyer agrees to pay a charge on all amounts past due at the rate of 1 ½% per month (18% per year) or the maximum lawful rate, whichever is less. In the event of non-payment, Buyer agrees to pay Seller's costs of collection, including reasonable legal fees, expenses and court costs, if any, incurred by Seller, and all applicable interest charges.

**4. DELIVERY.** (a) All Product is packaged for ground transportation.  
(b) Buyer shall provide to Seller detailed shipping instructions within a reasonable time prior to shipment. Buyer shall be responsible for any increased costs or delays in delivery resulting from Buyer's failure to supply such instructions in a timely manner.  
(c) Buyer may not withhold payment in the event of delay caused by Buyer.  
(d) All specified delivery dates are Seller's best estimates. Seller reserves the right to modify the delivery dates with notice to Buyer. In the event Buyer requests a change in the scheduled delivery date within three (3) business days of the scheduled shipping date and such change is accepted by Seller, a fee of \$500 may be applied to the order.  
(e) Title and risk of loss shall pass to Buyer at point of delivery if Product is delivered by Seller's truck. If delivery is not by Seller's truck, title and risk of loss shall pass to Buyer upon delivery to carrier at point of shipment as all sales are EXW Seller's Location unless Buyer and Seller agree otherwise in writing.  
(f) In the event Buyer is unable to take delivery of any shipment or refuses delivery of a scheduled shipment, Seller will store the shipment at Buyer's sole risk and expense and payment for shipment and all associated expenses shall immediately become due.  
(g) In instances of bulk carload, tank truck or tank car shipments, shipper's weights shall govern. Unless otherwise specified, packing shall be Seller's standard packing.  
(h) Buyer is responsible for checking all Products to ensure Products are delivered without damage and that the correct volumes, concentration levels and types of Products have been received.

### 5. WARRANTIES AND CLAIMS.

(a) Seller warrants that at the time and place of shipping from Seller's shipping location, (i) if Seller provided specifications for Products or if no specifications are provided by Buyer, then Products shall conform to Seller's specifications or to the industry standard as of the time Products are blended and/or packaged; and (ii) if

Buyer provided specifications for Products then Products shall conform to the Buyer's specifications as of the time Products are blended and/or packaged. **THE FOREGOING WARRANTIES ARE GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE. SELLER EXPRESSLY EXCLUDES WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY, AND WARRANTIES AS TO QUALITY OR CORRESPONDENCE WITH PRIOR DESCRIPTION OR SAMPLE.**

(b) Buyer acknowledges that on occasion Seller acts as a distributor for Products not branded and/or not packaged by Seller (resale products) and that matters relating to the quality of such Products are not within the Seller's control. **ACCORDINGLY, SELLER MAKES NO WARRANTIES WHATSOEVER CONCERNING RESALE PRODUCTS, INCLUDING WARRANTY OF MERCHANTABILITY AND/OR FOR A PARTICULAR PURPOSE.** Manufacturer warranty may apply.

(c) Seller will not sell, resell, certify or offer to sell, resell or certify Products as Active Pharmaceutical Ingredients ("API") to any entity, either directly or through the use of third parties.

(d) Seller may, at its sole option, elect to credit Buyer for the purchase price of any non-conforming Product in lieu of replacement.

(e) Seller assumes no liability for any errors that are caused by the inaccuracy or incompleteness of Buyer-supplied data.

(f) Replacement of and/or credit for non-conforming Products is subject to and conditional upon:

- Buyer's account with Seller being current and in good standing;
- Seller receiving timely written notice of alleged non-conforming Product from the Buyer;
- Buyer providing Seller with independent evidence satisfactory to Seller that the Product does not meet specifications and such evidence may include but is not limited to by-products, waste, retains, records, pictures, and other supporting documentation;
- The provision of samples of the Product for testing;
- Proof of proper storage of the Product in accordance with Seller's and/or manufacturer's instructions; and
- Description of Buyer's use of the Product.

Buyer agrees to hold at no cost to Seller the Product and any alleged non-conforming Product and any resulting waste, by-products, retains, records, pictures, and other supporting documentation pending the investigation and inspection. The conditions of any tests of the Product for conformance with any specifications shall be mutually agreed upon and Seller shall be notified of, and may be represented at, all tests that may be made by or for Buyer.

(g) Buyer represents and warrants that it will not use any Product, nor a by-product thereof, in any of the following activities and will not perform research using any Product, nor the by-product thereof, for any of the following activities: (i) nuclear use whatsoever, whether developing, designing, manufacturing, constructing testing or maintaining a device, weapon or component or subsystem of a device or weapon; (ii) chemical weapons, weapon systems or other similar military use, or (iii) illicit drug manufacturing or use.

(h) Buyer represents and warrants there will be no diversion of any shipment that is contrary to any applicable law, including without limitation, *Export and Import Permits Act*, *Corruption of Foreign Public Officials Act*, and the *Special Economic Measures Act*.

(i) If Seller is distributing Products for Buyer, Buyer is solely responsible for ensuring that the content of each safety data sheet ("SDS") and label for its Products is accurate and fully compliant with all applicable laws, statutes, rules, regulations and ordinances, including, but not limited to, the Workplace Hazardous Materials Information System Regulation under the Occupational Health and Safety Act (Ontario), as well as any similar legislation or regulation in any other province. Seller retains the right to reject a purchase order from Buyer for distributed Products if Seller reasonably believes the SDS or label provided by Buyer fails to comply with any applicable law, and after being notified of such by Seller, Buyer fails or refuses to adequately address and/or correct the issue(s) raised by Seller.

(j) Buyer assumes all risk for use and/or misuse of the Products.

(k) **THE WARRANTY IN THIS SECTION 5 CONSTITUTES THE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S SOLE OBLIGATION WITH RESPECT**

**TO PRODUCTS PURCHASED HEREUNDER. THIS WARRANTY ONLY APPLIES TO THE ORIGINAL PURCHASER OF THE PRODUCTS.**

**6. LIMITATION OF LIABILITY AND INDEMNIFICATION.**

(a) BUYER ACKNOWLEDGES THAT THE PRODUCTS SOLD UNDER THIS AGREEMENT ARE OR MAY BE SUSPECTED TO BE HAZARDOUS TO HUMAN HEALTH AND BUYER ASSUMES ALL RISK AND LIABILITY FOR THE USE (OR MISUSE) OF THE PRODUCTS. BUYER SHALL FAMILIARIZE ITSELF AND KEEP INFORMED (WITHOUT RELIANCE ON SELLER) WITH RESPECT TO ANY HAZARDS TO PERSONS OR PROPERTY INVOLVED IN HANDLING AND USING THE PRODUCTS AND THE CONTAINERS IN WHICH SUCH PRODUCTS ARE SHIPPED. BUYER SHALL ADVISE ITS EMPLOYEES, INDEPENDENT CONTRACTORS, AND OTHERS WHO HANDLE AND USE THE PRODUCTS FOR BUYER AND SHALL TAKE SUCH ACTION AS IS REASONABLY NECESSARY TO ADVISE OTHERS, INCLUDING WITHOUT LIMITATION THE CUSTOMERS OF THE BUYER, WHO ARE FORESEEABLY THE ULTIMATE USERS OF THE PRODUCTS, OF THE SUSPECTED OR PROVEN HAZARDS OF THE PRODUCTS.

(b) BUYER ASSUMES ALL RISKS AND RESPONSIBILITY RESULTING FROM THE HANDLING, USE, STORAGE, SALE OR RESALE OF THE PRODUCTS, WHETHER USED SINGLY OR IN A COMBINATION WITH OTHER PRODUCTS. SELLER ASSUMES NO OBLIGATION OR LIABILITY FOR ANY TECHNICAL OR SAFETY ADVICE GIVEN BY SELLER WITH REFERENCE TO THE USE OF THE PRODUCTS OR RESULTS WHICH MAY BE OBTAINED THEREFROM, AND ALL SUCH ADVICE IS GIVEN AND ACCEPTED AT BUYER'S SOLE RISK.

(c) DUE TO WHAT MAY BE THE HAZARDOUS NATURE OF THE PRODUCTS SOLD HEREUNDER, IT IS RECOGNIZED THAT THE BUYER PURCHASES SUCH PRODUCTS SOLELY AT THE BUYER'S RISK, AND THAT IN NO EVENT SHALL THE SELLER BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, EXEMPLARY, SPECULATIVE OR CONSEQUENTIAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OR HAS NOTICE OF THE POSSIBILITY OF SUCH DAMAGES, AND BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER, ITS SUBSIDIARIES, AFFILIATED COMPANIES AND THEIR RESPECTIVE EMPLOYEES, DIRECTORS, OFFICERS AND AGENTS (COLLECTIVELY, "SELLER'S RELATIVES") HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, JUDGMENTS, SETTLEMENTS, COSTS AND EXPENSES ARISING OUT OF SUCH USE, HANDLING, STORAGE, SALE OR RESALE OF THE PRODUCTS.

(d) BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER RELATIVES' TOTAL LIABILITY HEREUNDER, WHETHER IN CONTRACT, TORT, OR STRICT LIABILITY FOR INDEMNITY, DEFENSE OR OTHERWISE SHALL BE LIMITED TO THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCT WITH RESPECT TO WHICH SUCH CLAIM IS MADE, SUBJECT IN ALL CASES TO AN AFFIRMATIVE OBLIGATION ON THE PART OF THE CLAIMING PARTY TO MITIGATE ITS DAMAGES. BUYER HEREBY SPECIFICALLY WAIVES ALL OTHER RIGHTS, IF ANY, TO INDEMNIFICATION BY SELLER WHICH MAY BE AVAILABLE AT LAW OR IN EQUITY, INCLUDING INDEMNIFICATION UNDER STATE, FEDERAL OR COMMON LAW. SELLER SHALL HAVE NO LIABILITY TO BUYER HEREUNDER IF THE PRODUCT IS NOT USED IN ACCORDANCE WITH ITS INTENDED PURPOSE, THE MANUFACTURE'S INSTRUCTIONS OR THE REQUIREMENTS OF THE FEDERAL FOOD, DRUGS AND COSMETIC ACT OR OTHER APPLICABLE LAW.

**7. EVENTS BEYOND SELLER'S CONTROL.** Seller shall not be responsible if events beyond Seller's control occur make it impossible or commercially unreasonable for Seller to perform, including so-called "Acts of God" or "force majeure" events, vendor delays, and raw material shortages. Should shipments be held or stored beyond the delivery date for convenience of Buyer, Seller may, at its option, assess reasonable charges for any expense incident to such delay.

**8. EXPORTS.** Buyer is responsible for compliance with all Canadian export control rules and regulations. Buyer shall not name Seller as shipper or exporter of record in connection with the export or re-export of any Products purchased from Seller. Buyer shall ensure that Products Buyer receives from Seller are exported by Buyer only in compliance with applicable laws. *Export and Import Permits Act* (Canada) and regulations. The Products may not be resold to, disposed of, or transported on or by a carrier owned, flagged, leased, or chartered by, any country, person or entity which would cause Seller to be in violation of or be penalized by Canadian or other applicable economic sanctions laws. Buyer certifies that it will not use, or knowingly support the use by others of, such products, technology or software in the design, development, production or use of nuclear, chemical or biological weapons, land mines or ballistic missiles.

**9. TERMINATION; SUSPENSION.** Seller may terminate this agreement or adjust Buyer's payment terms effective immediately upon written notice to Buyer in the event

(a) Buyer fails to pay any Seller invoice, within the time provided in this agreement (b) Buyer generally fails to pay its debts as they become due, (c) Seller reasonably believes Buyer's creditworthiness has deteriorated or Buyer is insolvent (whether based on the reasonable belief by Seller that Buyer's liabilities exceed its assets; the existence of a bankruptcy or reorganization, assignment for the benefit of creditors or other similar proceeding involving Buyer; a liquidation of a significant portion of the assets of Buyer; or otherwise) and (d) a sale of a majority of the assets, or a change of control of the ownership, of Buyer. If Buyer is in default hereunder, including failure to pay invoices, Seller may suspend shipments of Product, require cash in advance of deliveries and/or reduce payment terms until all invoices are current and Seller receives adequate assurance of future performance.

**10. RETURNABLE CONTAINERS.** BUYER ACKNOWLEDGES AND AGREES THAT ALL RETURNABLE CONTAINERS SHALL REMAIN THE PROPERTY OF SELLER AND SHALL NOT BE USED BY BUYER FOR PURPOSES OTHER THAN THE STORAGE OF PRODUCT DELIVERED THEREIN BY SELLER. Buyer undertakes to return such containers to Seller promptly when empty, but in no event later than thirty (30) days from the date of delivery. Buyer shall pay Seller's container deposit charges as established by Seller from time to time, and Seller shall remit to Buyer the amounts of such deposit when making return of the empty containers, provided they are returned to Seller in good and reusable condition (normal wear and tear excepted) within thirty (30) days of delivery, or the deposit shall be forfeited and retained by Seller. In addition to the forfeiture of the deposit, Buyer shall be liable to Seller for an amount equal to the difference between the deposit and the replacement costs of any returnable container that is not returned to Seller. Buyer accepts sole responsibility for the disposal of any containers and their contents in accordance with applicable law. Buyer agrees to defend, indemnify and save Seller harmless from and against any and all claims, losses, damages, fines or expenses arising from Buyer's handling, use, storage, transport or disposal of any container and its contents.

**11. BULK/TANK FULL RETURNS.** If Buyer rejects all or any portion of Product that complies with specifications at time of delivery at Buyer's designated location (including but not limited to a rejection due to Buyer's lack of storage capacity), Buyer will be liable for: (i) freight and handling fee to cover all associated expenses related to the rejected delivery and return of Product to Seller's facility; and (ii) a diversion/disposal fee. Seller reserves the right to reduce the quantity of Product ordered by Buyer on future purchase orders for recurring incidents.

**12. GENERAL.**

(a) Cancellation of any order or return of any Product determined non-conforming by Seller will be subject to acceptance by Seller and to a restocking charge in accordance with Seller's policy then in effect.

(b) Neither course of performance or dealing, nor usage of trade, nor prior writings or agreements shall be used to qualify, explain or supplement any of these T&C's.

(c) Failure by either party, at any time or from time to time, to require the performance by the other of any term hereof shall not constitute a waiver of such term or provision.

(d) The invalidity, in whole or in part, of any term herein, shall not affect any other term, each of which shall be enforced to the full extent permitted by law.

(e) Buyer may not assign, delegate or transfer any rights or obligations governed by these T&C's without the prior written consent of Seller.

(f) Notice shall be deemed properly given if sent by email, facsimile, overnight courier mail, hand-delivered, or registered mail with return receipt. A safety data sheet ("SDS") shall be deemed properly given if sent via Canadian or electronic mail.

(g) Seller shall be entitled to reference Buyer as a customer of Seller and utilize photographs of Buyer's applications utilizing Seller's products in Seller's marketing materials.

(h) These T&C's, as well as any other Agreement between Buyer and Seller, shall be governed by the substantive law of the Province of Ontario and the federal laws of Canada applicable therein, without giving effect to its conflicts of laws principles. The exclusive venue for any suit or claim between Buyer and Seller arising out of or relating to the Agreement and/or the T&C's, shall be Toronto, Ontario. The United Nations Convention on the International Sale of Goods shall not apply.

(i) Buyer waives all warranty claims unless made in writing and delivered to Seller within thirty (30) days after receipt of Product. Any action on behalf of Buyer for breach of contract must be commenced within one (1) year after the cause of action has accrued.

(j) These T&C's shall be binding on the parties and their permitted assigns, heirs, executors and personal representatives

(k) **The parties have requested that these Terms and Conditions and all documents contemplated thereby or relating thereto be drawn up in the English language. Les parties ont requis que ces termes et conditions ainsi que tous les documents qui y sont envisagés ou qui s'y rapportent soient rédigés en langue anglaise.**