

## TERMS AND CONDITIONS

### 1. PRICE ADJUSTMENT.

- (A) Seller may adjust the price to avoid any impending force majeure situation, including, but not limited to, electric surcharges.
- (B) Separately, Seller shall apply an energy surcharge on all invoices for soda ash based on the forward three-month average NYMEX futures contract for natural gas at the Henry Hub. Seller shall use the closing price as of the 15<sup>th</sup> of the month prior to the beginning of each calendar quarter. The following table shall be used for the energy surcharge:

| <u>NYMEX Henry Hub</u> | <u>Energy Surcharge</u>   |
|------------------------|---|
| < \$5.00/MMBtu         | \$0.00/ton  |
| \$5.00 - \$5.99/MMBtu  | \$1.50/ton  |
| \$6.00 - \$6.99/MMBtu  | \$3.00/ton  |
| \$7.00/MMBtu and above | \$3.00 + \$1.50/ton for each \$1.00/MMBtu increase above \$6.00/MMBtu |

2. DELIVERY/RISK OF LOSS. Unless otherwise specified herein, (a) deliveries shall be made in approximately equal monthly quantities, except that Seller reserves the right to limit monthly deliveries to the pro rated estimated or minimum quantity provided for in this contract; (b) delivery of goods to the carrier at the point of shipping shall constitute delivery to the Buyer; and (c) all risk of loss or damage in transit shall be borne by the Buyer. Any time or date stated for delivery is an estimate only and the Seller shall not be liable for failure to deliver at the specified time or on the specified date, nor shall such failure on the part of the Seller be deemed to be a breach of the contract or any of its terms and conditions or part thereof. Notwithstanding anything to the contrary herein, if emergency costs are due to circumstances beyond Seller's control and Seller is not negligent, then Buyer shall be responsible for such costs.
3. SELLER REMEDIES. Each shipment shall constitute a separate and independent transaction and Seller may recover for each such shipment without reference to any other. If Buyer is in default with respect to any terms or conditions of this contract or Buyer's creditworthiness materially changes in Seller's reasonable opinion, in addition to any other remedy available to Seller, Seller may, at its sole option, defer further shipments hereunder until such default be remedied (in which event Seller may elect to extend the contract period for a time equal to that for which shipments were so deferred), or Seller may decline further performance of this contract. Notwithstanding anything to the contrary, if, at any time in the sole judgment of the Seller, the financial responsibility of Buyer shall become impaired, Seller may decline to make further deliveries under this contract except upon receipt, before shipment, of payment in cash or satisfactory security for such payment.
4. WEIGHT. In case of all shipments, shipper's weight shall govern.
5. WARRANTY/ASSUMPTION OF THE RISK. Seller warrants that the material delivered hereunder meets Seller's standard specifications or if attached, those specifications attached, and made a part of this contract. SELLER MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES; THE FOREGOING WARRANTIES ARE IN LIEU OF, AND TO THE EXCLUSION OF, ALL OTHER WARRANTIES AND REPRESENTATIONS INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY. EXCEPT FOR PRODUCT NOT MEETING SELLER'S WARRANTY ABOVE, BUYER ASSUMES AND INDEMNIFIES SELLER FROM ALL RISK AND LIABILITY FOR ANY AND ALL LOSSES, DAMAGES OR INJURIES TO PERSONS OR PROPERTY RESULTING FROM THE USE OF SAID MATERIAL IN MANUFACTURING PROCESSES OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE.
6. LIMITATION OF LIABILITY. Seller's aggregate liability, whether as to materials delivered or for nondelivery of materials, and whether arising in tort (including negligence and liability without fault), contract or otherwise, shall not be greater in amount than the purchase price of the materials in respect of which such damages are claimed; and the failure to give written notice to Seller of a claim within thirty (30) days from date of delivery, or the date fixed for delivery, as the case may be, shall constitute a waiver by Buyer of all claims in respect of such materials. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, BUYER'S MANUFACTURING COSTS, LOST PROFITS OR GOOD WILL.
7. CONTAINER DEMURRAGE AND/OR RENT. All containers used in making deliveries hereunder shall only be used for delivery of material and shall not be used by Buyer for storage of material. Unless otherwise specified herein, should Seller reasonably determine that Buyer is unduly retaining such containers, Buyer shall be liable to Seller for rent on such containers, at Seller's current rate therefor, and Seller may, at its sole option, add to the price of materials sold hereunder the amount of any increase in transportation charges and/or demurrage for shipments to Buyer.
8. TAXES. Buyer shall reimburse SELLER for all taxes (other than income taxes), increases in or new taxes, excises or other charges which Seller may be required to pay to any government (national, state, provincial or local) upon, or measured by, the sale, production, transportation or use of any material sold hereunder.
9. FORCE MAJEURE. Neither party shall be liable for its failure to perform hereunder (except for the payment of monies) if said performance is made impracticable due to any circumstances beyond the reasonable control of the party affected, including, but not limited to, acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, plant shutdown, equipment failure, computer failure, the need to shut down for safety reasons, voluntary or involuntary compliance with any law, order, rule or regulation of government agency or authority, or inability to obtain material (including power and fuel), equipment or transportation at reasonable costs. The affected party may omit purchases or deliveries during the period of continuance of such circumstances and the contract quantity shall be reduced by the quantities so omitted. During any period when Seller shall be unable to supply the total demands for any material provided for in this contract, whether caused by the circumstances specified above or otherwise, Seller may allocate any available material among all its buyers, including its own divisions and departments, on such basis as it may deem fair and practical.
10. ENTIRE AGREEMENT. This contract constitutes the entire agreement between the parties and there are no understandings, representations or warranties of any kind, express or implied, not expressly set forth herein. No modification of this contract shall be of any force or effect unless such modification is in writing and signed by an authorized representative of the party to be bound thereby, including, but not limited to, Buyer's purchase order forms containing terms or conditions at variance with those set forth herein.
11. ASSIGNMENTS. This contract shall be binding upon and inure to the benefit of the respective successors and assigns of each of the parties hereto, but shall not be assignable by Buyer without the prior written consent of Seller. Any such assignment or attempted assignment by Buyer without Seller's prior written consent shall be void.
12. WAIVER. Seller's waiver of any breach, or failure to enforce any of the terms and conditions of this contract, at any time, shall not in any way affect, limit or waive Seller's right thereafter to enforce and compel strict compliance with every term and condition hereof. The acceptance by the Seller of any payment after the specified due date shall not constitute a waiver of the Buyer's obligations to make further payments on the specified dates.
13. APPLICABLE LAW. The Buyer and Seller agree that this contract shall be deemed to have been made and executed in the State of Delaware and that any dispute arising under this contract shall be resolved in accordance with the laws of the State of Delaware, excluding conflicts of laws. EACH PARTY HERETO EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY. Unless expressly stated otherwise, International Chamber of Commerce Incoterms 2010 shall govern the trade terms herein.
14. TERMINATION. The parties hereto agree that this Agreement is a "forward contract" and that Seller is a "forward contract merchant" under the Bankruptcy Code. The occurrence of any of the following acts or events shall constitute a material breach of this Agreement, entitling the non-breaching party to terminate this Agreement and obtain damages, if any, pursuant to this Agreement, Section 556 of the Bankruptcy Code and/or other applicable laws:
- (A) The Buyer's failure to pay any sum due to the Seller;
- (B) If Buyer fails to purchase Product covered by this Contract for a period of three (3) months (cumulatively), except for reasons excusing performance under FORCE MAJEURE, then Seller shall have the right to terminate the Contract.
- (C) In the event Seller is prevented by any governmental restriction from increasing any price or applying any surcharge herein or from continuing any price already in effect, Seller may terminate this contract by written notice dispatched thirty (30) days prior to date of termination.
- (D) The failure to cure a non-monetary default of this Agreement within thirty (30) days of written notice thereof; and
- (E) A party becomes insolvent, suspends payments to its creditors, commits an act of bankruptcy, notifies its creditors of its inability to meet its debts, commences a bankruptcy filing, or a trustee/custodian is appointed before the commencement of a bankruptcy (Section 365(e)(1)(A-C) of the Bankruptcy Code).
15. EXPENSE. The losing party in any dispute resolved by the courts, shall reimburse upon presentation the winning party for all costs and expenses, including, but not limited to, reasonable inhouse and outside counsel fees and expenses, plus interest thereon at the rates set forth in Paragraph 18 below.
16. GENERAL. Both parties represent that they each have the right and authority to enter this Agreement free from any other competing contractual obligations. The provisions of this contract shall be deemed severable, and the invalidity of any provision shall not affect the validity of the remaining provisions of this contract. The paragraph headings are for reference only and are not to be used in interpreting the contract. No provision of this contract shall be interpreted against or to the disadvantage of either party by reason of such party having or being deemed to have structured or dictated such provision.
17. NOTICES. All notices hereunder shall be in writing and delivered by hand, overnight delivery, prepaid certified mail, return receipt requested to the addresses set forth above; for Seller - Attention: Director of Marketing and a copy to the General Counsel.
18. INTEREST. Interest shall accrue on all unpaid and overdue amounts at the lower of (a) the prime rate as announced from time to time by Citibank N.A., N.A., New York, New York (the "Prime Rate") plus five percent (5%) per annum or (b) the maximum rate permitted by applicable law.
19. ELECTRONIC SIGNATURES. Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means any electronic sound, symbol, or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record.

20. POST-TERM SALES. Notwithstanding anything herein to the contrary, if Seller supplies Buyer with Product after expiration of the term as set forth hereunder then the Terms and Conditions shall continue to apply to such sales until the parties enter into a subsequent written agreement that is intended to be the entire agreement pertaining to such post-term sales as evidenced by inclusion of a clause in such agreement comparable to Section 10 (entitled "Entire Agreement") hereunder."