

CPI ENGINEERING SERVICES, INC. – STANDARD TERMS AND CONDITIONS OF SALE (USA)

1. **Governing Terms and Conditions:** The terms and conditions set forth in this document are intended to establish standard terms and conditions of sale for all sales by The Lubrizol Corporation and its subsidiaries and affiliates (collectively, the "Seller") to the purchaser ("Buyer") unless otherwise provided in a written agreement signed by and between Buyer and Seller. This document, together with the quotations, order acknowledgments, invoices and specifications (and all supplements and attachments thereto issued by Seller from time to time) shall constitute the entire agreement ("Agreement") between Buyer and Seller for each such sale. In the event of any inconsistency between these standard terms and conditions and the provisions on the quotation, order acknowledgment or invoice or on any supplement or attachment thereto, the provision contained on the quotation, order acknowledgment or invoice or on such supplement or attachment shall control. Additional or different terms provided in Buyer's purchase order which vary in any degree from any of the terms herein are hereby objected to and rejected. If this Agreement shall be deemed an acceptance by Seller in response to an offer by Buyer and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Seller shall constitute an acceptance expressly conditioned upon Buyer's assent to all of the terms and conditions of this Agreement. Any conduct by Buyer (including, without limitation, payment for, or use of, the goods) which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Buyer of this Agreement and all of its terms and conditions.
2. **Prices, Taxes and Permits:** All prices are subject to change without notice. Seller's price shall be its price in effect at the time of shipment. All prices exclude sales, use, franchise, license, excise and other taxes in respect of manufacture, sale or delivery of the goods furnished hereunder, export or import duties and inspection fees, and all interest and penalties thereon, all of which shall be paid by Buyer unless a proper exemption certificate is furnished. If Buyer shall fail to pay and discharge any such amounts when due, Seller may at its option, pay the same, in which event Buyer shall promptly reimburse Seller for such sums paid.
3. **Terms of Payment:** Subject to on-going credit approval by Seller, the terms of payment shall be net thirty (30) days from date of invoice, and Buyer's payment shall be cash in United States funds payable pursuant to Seller's instructions. Seller reserves the right to withhold shipment for Buyer's: (a) late payment; (b) non-payment; and (c) failure to provide assurances of payment upon request by Seller. Seller further reserves the right to make delivery in installments, and all such installments are to be separately invoiced and paid for at the then current price when due per invoice, without regard to subsequent deliveries. Any payment that is not received by the date required herein shall accrue interest at a rate of eighteen percent (18%) of the outstanding balance per annum, or the maximum rate allowed by applicable law, whichever is lower, from the date such payment is due until the full invoiced amount and accrued interest is fully paid. In addition, Buyer shall be responsible for Seller's collection costs and attorneys' fees in collecting any past due amounts.
4. **Delivery, Title & Risk of Loss:** Unless otherwise agreed in writing, delivery shall be Ex Works (EXW) Seller's manufacturing facility. Buyer assumes all responsibility for risk of loss of, or damages to or caused by, the goods furnished hereunder, in accordance with such INCOTERM. Title to the goods shall transfer to and vest in Buyer at the same time that risk of loss transfers to Buyer, to the extent permissible by law. The term Ex Works (EXW) shall have the meaning given to it by INCOTERMS 2000 as published by the International Chamber of Commerce or any superseding definitions of the INCOTERMS published by the International Chamber of Commerce. Delivery dates are approximate and subject to confirmation. If Buyer delays shipment, payments are to be made as specified and the goods furnished hereunder shall be held at Buyer's risk and subject to reasonable storage charges. If goods are furnished in tank cars provided by Seller, Buyer agrees to: (a) unload shipments within forty-eight (48) hours after receipt; (b) pay Seller a reasonable charge for failure to so unload; and (c) pay any demurrage charges at a rate of fifty dollars (\$50) per tank car per day.
5. **Warranties:** Seller warrants to Buyer that at the time of delivery: (a) the goods sold hereunder shall conform to Seller's then current specifications; (b) Seller has good title to such goods; and (c) such goods are free and clear of all liens and encumbrances created by Seller. Seller makes no warranty of any results Buyer might obtain in any particular application. Buyer's sole and exclusive remedy for any breach of warranty shall be limited, in Seller's sole discretion, to replacement at Buyer's installation of any defective goods or refund of the purchase price thereof. Buyer shall not return goods unless authorized in advance in writing by Seller. Seller shall have the right to inspect the goods at Buyer's installation. Buyer's failure to give written notice that goods are non-conforming within thirty (30) days of delivery shall constitute a waiver by Buyer of all warranty claims. Notwithstanding the foregoing warranties and remedies, Seller shall have no obligation hereunder if the goods become defective as a result of improper storage, contamination, adulteration, improper use or misapplication after delivery thereof to Buyer. The above warranties extend only to Buyer. **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, BY SELLER. BUYER ACKNOWLEDGES THAT IT IS PURCHASING THE GOODS SOLELY ON THE BASIS OF THE COMMITMENTS OF SELLER EXPRESSLY SET FORTH HEREIN.**
6. **LIMITATION OF LIABILITY:** SELLER SHALL NOT BE LIABLE TO BUYER IN ANY ACTION OR CLAIM FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR STATUTORY DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED UPON CONTRACT, TORT (INCLUDING, TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOLE, CONCURRENT OR OTHER NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, AND STRICT LIABILITY OF SELLER), STATUTE OR OTHERWISE EVEN IF SELLER HAS BEEN ADVISED OF SUCH POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY FOR ANY CLAIM OF ANY KIND, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, SHALL IN NO CASE EXCEED (AT SELLER'S SOLE DISCRETION) THE PURCHASE PRICE ALLOCABLE TO THE GOODS OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM OR THE REPLACEMENT OF SUCH DEFECTIVE GOODS OR SUCH UNIT THEREOF BY SELLER. FOR UNDELIVERED GOODS, SELLER'S LIABILITY IS LIMITED TO THE DIFFERENCE BETWEEN THE MARKET PRICE AND SELLER'S PRICE. SELLER SHALL NOT BE LIABLE FOR PENALTY CLAUSES OF ANY DESCRIPTION. ANY ACTION RESULTING FROM ANY CLAIM ARISING UNDER THIS AGREEMENT WHICH IS BROUGHT BY BUYER AGAINST SELLER MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.
7. **Patent Indemnity:** If a United States Federal Court, or a foreign court of last resort from which no appeal can be taken, awards damages against Buyer directly arising out of a claim of infringement by the goods supplied hereunder of any existing valid U.S. or foreign patent owned by a third party, Seller shall indemnify Buyer for such damages to the extent specified in Sections 5 and 6 hereof; provided, however, that such indemnity is conditioned upon Buyer's notification of Seller in writing within five (5) business days from the receipt by Buyer of the first notice of said claim of infringement. Seller shall have the right to control and participate in the defense of any such infringement action. Such participation, however, shall not constitute any admission of liability whatsoever by Seller. Any indemnification by Seller shall be conditioned upon Buyer's full assistance and cooperation in the defense of any such action. Seller shall have no obligation or other liability to Buyer for infringement arising from the use of the goods furnished hereunder in the operation of any process or in combination with other materials or arising from any alteration in the goods made by Buyer. Buyer shall indemnify and save harmless Seller in a similar fashion where the alleged infringement is a result of application, use or alteration to which said goods are put by Buyer or by others. The foregoing provisions of this Section 7 state the entire liability of Seller with respect to potential claims of patent infringement by the goods furnished hereunder and are given in lieu of all other warranties, express or implied, respecting infringement. Buyer assumes all risk of patent infringement by reason of any use Buyer makes of the goods in combination with other substances or in the operation of any process.
8. **INDEMNITY:** SELLER SHALL NOT BE LIABLE TO BUYER FOR, AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER AND ITS RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS AND EMPLOYEES, AND THE SUCCESSORS AND ASSIGNS OF THE FOREGOING, FROM AND AGAINST, ALL OR ANY PART OF ANY CAUSES OF ACTION, CLAIMS, LIABILITIES, LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) (COLLECTIVELY "CLAIMS") FOR INJURY, ILLNESS OR DEATH TO PERSONS (INCLUDING, WITHOUT LIMITATION, THIRD PARTIES AND BUYER'S EMPLOYEES AND ITS AGENTS, CONTRACTORS, SUBCONTRACTORS AND CUSTOMERS, AND THEIR RESPECTIVE EMPLOYEES) AND DAMAGES TO OR LOSS OF PROPERTY (INCLUDING, WITHOUT LIMITATION, THAT OF BUYER OR THIRD PARTIES) ARISING OUT OF OR RESULTING FROM BUYER'S PURCHASE, OWNERSHIP, TRANSPORTATION, RECEIPT, HANDLING, STORAGE, PROCESSING, ALTERATION, USE, DISPOSAL OR RE-SALE OF THE GOODS, ALONE OR IN COMBINATION WITH OTHER SUBSTANCES OR IN THE OPERATION OF ANY PROCESS.
9. **Force Majeure:** Seller shall be relieved from liability hereunder for failure to perform any or all of its obligations, for the time and to the extent of such failure to perform where Seller's failure is occasioned by any cause or causes of any kind or character reasonably beyond the control of Seller (any such cause herein called "Force Majeure"), including, without limitation: Acts of God, accidents, fire, explosion, flood and hurricanes; strikes, lockouts or other industrial disturbances; riots or civil commotion; war, declared or undeclared; compliance with any laws, rules, regulations, ordinances, codes or Executive Orders of any kind and nature now or hereafter in effect promulgated by any federal, state, county or local government, or any other government (domestic or foreign) or any other governmental agency (domestic or foreign) (collectively, the "Laws") including, without limitation, priority, rationing, allocation or pre-emption orders or regulations affecting the conduct of Seller's business which Seller in its sole discretion deems it advisable to comply with as a legal or patriotic duty; cancellation of Seller's license to operate its plant; shortage or breakdown or other failure of facilities used for manufacture or transportation; shortage of labor; inability to secure, in Seller's sole discretion, all at reasonable prices or on account of shortages of, transportation, power, fuel, materials or supplies; or total or partial shutdown due to Seller's normal plant turnaround or as required by Seller's operation. If Seller is rendered unable by Force Majeure to carry out its obligations under this Agreement, Seller shall give notice to Buyer, and upon the giving of such notice the obligations Seller, so far as they are affected by such Force Majeure shall be suspended during the continuance of any inability so caused. Upon the cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such delay shall not, except by mutual agreement, operate to extend the term of this Agreement or obligate Seller to make up deliveries or Buyer to purchase quantities so missed. Settlement of strikes or lockouts shall be entirely within the sole discretion of Seller, and Seller shall not be required to settle strikes or lockouts by acceding to the demands of the employees involved, when such course is inadvisable in Seller's sole discretion. Seller shall not be responsible for reasonable delays in filling any order when due. "Reasonable delays" include, without limitation, delays to which Buyer, when notified, makes no objection. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. In the event of inability, for any reason, to supply the goods to be furnished hereunder, Seller may allocate its available supply of goods or raw materials among any or all Buyers, as well as departments, divisions, subsidiaries or affiliates of Seller or among Seller's product lines on such basis as Seller may in its sole discretion deem practical without liability for any failure of performance which may result therefrom.
10. **Compliance with Laws:** Buyer shall comply with all Laws in any way relating to Buyer's purchase, ownership, transportation, receipt, handling, storage, processing, alteration, use, disposal or resale of the goods, alone or in combination with other substances or in the operation of any process.
11. **Responsible Practices:** Buyer acknowledges that Seller has furnished product literature or information, such as a Material Safety Data Sheets, that include warnings and safety and health information related to the goods furnished hereunder. Buyer shall: (a) familiarize itself with such information; (b) adopt and follow safe handling, storage, transportation, use, treatment and disposal practices with respect to the goods furnished hereunder, including, without limitation, special care and practices as Buyer's use of the goods requires including, without limitation, all such practices required by applicable Laws; (c) instruct its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, transportation and disposal of the goods furnished hereunder (including, without limitation, information contained in Seller's most current MSDS); and (d) comply with applicable safety and environmental Laws and take action necessary to avoid spills or other dangers to persons, property or the environment. Seller may suspend goods shipments and/or cancel this Agreement on fifteen (15) days notice if Buyer fails to comply with any of its commitments under this Section 11. Buyer shall indemnify, defend and hold Seller harmless against any and all third party causes of action, claims, liabilities, losses, costs, damages and expenses (including, without limitation, attorneys' fees and expenses) to the extent arising out of Buyer's failure to comply with any of its commitments under this Section 11.
12. **Miscellaneous:** All notifications, requests, demands and other communications required or permitted under this Agreement (including, without limitation, notices of breach and/or termination of this Agreement) shall be in writing and addressed and delivered to the recipient at the address, facsimile number or email specified by a party pursuant to this provision. Notice shall be deemed given: (a) on delivery, when delivered in person or by courier during a business day, otherwise on the next business day after delivery; (b) the same day, when sent by facsimile or email during a business day, otherwise on the next business day after transmission or sending, provided that the sender has a transmission report confirming transmission of the correct number of pages to the other party's facsimile number or proof that the email has been sent to a proper email address, or (c) five (5) business days after deposit in the U.S. mail to be sent by certified mail, return receipt requested. This Agreement may only be modified or amended in a writing signed by both parties. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited. However, Seller shall have the right to terminate this Agreement if any provision related to price is invalid or unenforceable. Seller's failure to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of any right to exercise the same or different rights in any subsequent instance. Seller's waiver of any breach of this Agreement by Buyer in a particular instance shall not operate as a waiver of subsequent breaches of a same or different kind. Any waiver must be in writing and signed by Seller. Seller may assign its rights and delegate its obligations under this Agreement. Buyer's rights and obligations under this Agreement are personal in nature and shall not be transferable by assignment, delegation, operation of law, subcontract or otherwise without Seller's prior written consent and any attempt to do so shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. The rights and remedies of Seller in this Agreement are cumulative and not exclusive. Seller's rights and remedies and Buyer's obligations and responsibilities which have accrued before, or by their nature would extend beyond, the expiration, termination or other cancellation of this Agreement, shall survive such expiration, termination or other cancellation and continue to bind the parties and their permitted successors and assigns indefinitely until fulfilled or waived (including, without limitation, Sections 3, 5, 6, 7, 8, 11 and 12). This Agreement shall be governed by the laws of the state of Ohio without regard to principles of conflict of laws. Both parties hereby irrevocably consent and submit to the exclusive jurisdiction of the state courts of Ohio and of the United States District Courts located in the state of Ohio in connection with any litigation arising out of the Agreement, and both parties hereby expressly waive any objection they have or may have as to the venue of any such courts. The rights and obligations of the parties under this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

BUYER HEREBY ACKNOWLEDGES THAT SELLER HAS SUFFICIENTLY CALLED TO BUYER'S ATTENTION THE UNDERLINED AND BOLDFACED PROVISIONS OF THESE TERMS AND CONDITIONS.