

# TERMS AND CONDITIONS—PURCHASE ORDER

SELLER'S INITIALS: \_\_\_\_\_

Seller's written acknowledgment of this Purchase Order ("Contract") (whether by execution of a copy of this Contract or otherwise), Seller's performance of any services covered by this Contract, or Seller's shipment of any goods covered by this Contract (such goods and services being collectively referred to as "Products") shall conclusively evidence Seller's acceptance of this Contract, which acceptance shall be strictly limited to the express terms and conditions contained on (i) the preceding page(s) of this Contract (collectively, "Cover Page"); (ii) this page (the "T&C Page"); and (iii) all riders and addenda, if any, that are attached to this Contract and signed by authorized representatives of Buyer and Seller (collectively, "Riders"). The provisions and documents referred to in the Cover Page, this T&C Page, and the Riders shall constitute the final, exclusive and entire expression of the agreement between Buyer and Seller with respect to the Products covered by this Contract and shall supersede all prior and contemporaneous agreements, understandings, negotiations, discussions and proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Contract. Any additional or different provisions, whether contained in Seller's acknowledgment of this Contract or in other communications by Seller, are expressly objected to and rejected and shall be deemed a material alteration of this Contract, and shall not be binding upon Buyer unless set forth in a writing signed by Buyer's authorized representative.

- SHIPPING.** Deliveries of Products, including performance of services, shall be strictly in accordance with the schedule set out or referred to in this Contract and in the exact quantities ordered or, if no time limit is specified, within a reasonable time. Seller shall bear all risk of loss of all Products covered by this Contract until such Products have been fully unloaded at the delivery location designated in this Contract, and, unless otherwise expressly provided in this Contract, the Products shall be shipped FOB that delivery location. Seller understands and agrees that **TIME IS OF THE ESSENCE** of this Contract and that complying with the specified date(s) or work schedule is equally as important as maintaining the Prices and Specifications (as defined below). If delivery of Products is not completed by the time(s) promised, then, subject to Paragraph 10 below, Seller shall notify Buyer immediately, at which time, Buyer shall have the right in its sole discretion to cancel all or any part of this Contract, without liability, by notice effective when received by Seller as to Products not yet shipped and to purchase substitute Products and charge Seller with any loss incurred. Seller or Seller's delivery agent shall obtain a signed receipt for each delivery of Products under this Contract, and Seller shall include a complete legible packing list with each shipment. Shipments not accompanied by packing lists shall be conclusively deemed to be in the amount of Buyer's count or weight. Partial shipments shall not be made without the prior written approval of an authorized representative of Buyer.
- PRICE; TAXES.** The prices for Products stated in the Cover Page or Riders ("Prices") shall remain in effect for the entire term of this Contract stated in the Cover Page or Riders ("Term"), unless amended in writing in accordance with Paragraph 8. Unless otherwise expressly provided in the Cover Page or the Riders, all Prices are stated in U. S. Dollars. Seller warrants that the Prices are complete, and that no additional charges of any type (including shipping, packaging, labeling, custom duties, storage, insurance, boxing, and crating) shall be added to the Prices without Buyer's express written consent. Unless Buyer otherwise agrees in writing, or unless Seller provides to Buyer a tax exemption certificate acceptable to the applicable taxing authorities, Seller shall pay all federal, state, municipal and other governmental excise, sales, use, occupational, export, import or like taxes or governmental charges (other than those based upon Buyer's net income) resulting directly or indirectly from this Contract.
- PAYMENT.** Unless otherwise expressly provided in this Contract, an invoice will be issued on or after the date of shipment, and Buyer shall pay the net amount shown due on the invoice on or before the 60th day after Buyer's receipt of Seller's invoice, except for any amounts disputed by Buyer in good faith. The parties shall seek to resolve all such disputes expeditiously and in good faith, and Seller shall continue performing its obligations under this Contract notwithstanding any such dispute. Without prejudice to any other right or remedy, Buyer reserves the right to set off any amount owing to Buyer by Seller against any amount payable by Buyer to Seller.
- INSPECTION.** Buyer's payment for Products delivered under this Contract shall not constitute Buyer's acceptance of such Products, and Buyer reserves the right (payment notwithstanding) to reject Products or revoke acceptance of Products and return at Seller's risk and expense any nonconforming or defective portion of any shipment without invalidating the remainder of this Contract. Buyer shall have the right, but not obligation, to inspect and test delivered Products and to reject any or all delivered Products which Buyer reasonably determines to be defective or nonconforming. Failure to inspect or test by Buyer shall not relieve Seller of any responsibilities under this Contract. Products rejected, or supplied in excess of quantities specified in this Contract, may be returned to Seller at Seller's sole expense and, in addition to any other rights that Buyer may have, Buyer may charge Seller all expenses of unpacking, examining, repacking and reshipping such Products. In the event Buyer receives Products whose defects or nonconformities are not apparent on examination, Buyer reserves the right to require replacement, as well as payment of damages. Nothing contained in this Contract shall relieve Seller from the obligation of testing, inspection and quality control.
- WARRANTIES.** Seller expressly warrants that all Products furnished under this Contract shall: (a) conform to all specifications (collectively, "Specifications") that are part of this Contract, including (1) all specifications that are included in the Cover Page or Riders, (2) all specifications that Seller publishes with respect to the Products, and (3) all samples, descriptions, drawings and data supplied by Seller and approved in writing by Buyer; (b) conform to all applicable laws, rules, regulations and industry standards pertaining to the Products; (c) be free from defects in material and workmanship and shall conform to any statements made on Seller's containers, labels, material safety data sheets or advertisements for the Products; (d) be adequately contained and packaged to prevent leakage; (e) be adequately marked and labeled to sufficiently advise those who come into contact with the Products of the safety requirements and hazards associated with Products; (f) be merchantable, and, if Seller knows or has reason to know the particular purpose(s) for which Buyer intends to use the Products, such Products shall be fit for such particular purpose(s); (g) be free and clear of all mortgages, liens, encumbrances, charges, claims, encroachments, restrictions, pledges, security interests and impositions of any kind, and Buyer shall receive good and marketable title to all Products purchased under this Contract; and (h) not infringe any patent, trademark, trade secret or trade name. The foregoing warranties are not exclusive and are in addition to any warranties available at law either expressly or by implication. Buyer's inspection, test, acceptance or use of the Products furnished under this Contract shall not affect Seller's obligations under these warranties, and such warranties shall survive Buyer's inspection, test, acceptance, and use. Seller's warranties shall run to Buyer, its successors, assigns and customers, and users of Products sold by Buyer. Seller agrees to replace or correct promptly any Products not conforming to the foregoing warranties, without expense to Buyer, when notified of such nonconformity by Buyer and asked by Buyer to do so. In the event of failure of Seller to correct defects or replace nonconforming Products promptly after Buyer's request, Buyer may make such corrections or replace such Products and charge Seller for the cost incurred in doing so. Seller recognizes that Buyer's production requirements may require immediate repairs or reworking of defective Products, without notice to the Seller, and, in such event, Seller shall reimburse Buyer for any resulting costs, delays or other damages incurred.
- FACILITY ACCESS AGREEMENT; INDEPENDENT CONTRACTOR.** If this Contract includes work to be performed on Buyer's or a third party's premises (including delivery of Products onto the premises and unloading the Products into tanks or other storage facilities on the premises), Seller shall enter into Buyer's then-current facility access agreement (available at <http://www.pvschemicals.com/forms.asp>) before entering the premises to perform that work. Seller agrees that all such work shall be done by or at the direction of Seller acting solely as an independent contractor (and not as an agent or employee of Buyer) and that the persons doing such work shall not be considered employees of Buyer.
- INDEMNIFICATION.** Seller shall defend, indemnify and hold Buyer harmless against all damages, claims, charges, liens, causes of action or proceedings of whatsoever nature or liabilities and expenses (including all court costs and reasonable attorneys' fees) (collectively, "Claim") on account of any damage to or loss or destruction of any property (including property of Buyer) or injury to or death of any person (including employees of Buyer and of any contractor or subcontractor of Buyer) to the extent arising out of or resulting in any way from: (a) any breach by Seller of this Contract, including any breach of warranty with respect to, or defect in, the Products; (b) any act or omission of Seller, its agents, employees or subcontractors; or (c) any failure to provide warnings reasonably required (or required by law) to make the Products safe for the Products' intended uses. Buyer may, at its election, withhold any moneys payable under this Contract and apply the same to the payment of any charges or expenses arising under this Paragraph 7. No limitations on Buyer's remedy in Seller's documents shall operate to reduce this indemnification; *provided, however*, that the foregoing indemnification obligations shall not apply to the extent the Claim is due to or arises from the gross negligence or willful misconduct of Buyer. This indemnification shall be in addition to the warranty obligations of Seller.

- AMENDMENTS; WAIVERS.** Neither this Contract nor any term or provision of this Contract shall be amended or waived, and no breach of this Contract shall be deemed waived, except by written instrument signed by an authorized representative of the party to be bound by such amendment or waiver. No waiver of any of the provisions of this Contract shall be deemed or shall constitute a waiver of any other provision of this Contract, whether or not similar, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided in writing by an authorized representative of the party to be bound by such waiver.

## 9. TERMINATION OF CONTRACT

- For Convenience of Buyer.** Buyer reserves the right to terminate this Contract or any part of this Contract for its sole convenience in its sole discretion for any or no reason at any time. Immediately following Seller's receipt of notice of such termination, Seller and its suppliers or subcontractors shall, unless otherwise directed by Buyer: (1) immediately stop all work under this Contract; (2) terminate all orders and subcontracts relating to the work terminated under this Contract; (3) transfer title to Buyer of all completed Products; (4) transfer title to Buyer of all work in process and materials produced or acquired for this Contract which cannot be reasonably used by Seller in its other production; and (5) take all action necessary to protect property in which Buyer has or may acquire an interest. Upon termination for convenience, Buyer shall pay to Seller the following amounts without duplication: (i) the Prices for all Products ordered by Buyer and completed by Seller but not previously paid for; and (ii) the actual costs (exclusive of profit) incurred by Seller in accordance with this Contract for all Products ordered by Buyer and not yet completed by Seller nor paid for by Buyer to the extent such costs are reasonable and properly allocable under generally accepted accounting practices to the terminated portion of this Contract—*provided, however*, that in no event shall Buyer's obligation to Seller under this Paragraph 9.a exceed the total Prices specified for all of the Products covered by this Contract. Seller shall not be paid for any work done after receipt of the notice of termination, nor for costs incurred by Seller's suppliers or subcontractors which could have reasonably been avoided.
  - For Cause.** Buyer may also terminate this Contract or any part of this Contract for cause in any of the following circumstances: (1) default by Seller under, or failure by Seller to comply with, this Contract, including late deliveries or deliveries of defective Products or of Products which do not conform to the Specifications; (2) failure to provide Buyer, upon request, with adequate assurances of future performance; (3) Seller's insolvency; (4) Seller's filing of a voluntary petition in bankruptcy; (5) the filing of an involuntary petition to have Seller declared bankrupt (provided the petition is not vacated within 60 days from the date of such filing); (6) the appointment of a receiver or a trustee for Seller (provided such appointment is not vacated within 60 days from the date of such appointment); or (7) the execution by Seller of an assignment for the benefit of creditors. In the event of termination for cause: (i) Buyer shall be liable solely for the payment of the Prices of all Products delivered but not previously paid for; (ii) Buyer shall not be liable to Seller for any other amount; and (iii) Seller shall be liable to Buyer for, and shall hold Buyer harmless from, any and all damages sustained by reason of Seller's default. If it should be determined that Buyer has improperly terminated this Contract for cause, such termination shall be deemed a termination for convenience and shall be governed by Subparagraph 9.a above.
- FORCE MAJEURE.** No liability shall result from delay in performance or non-performance in whole or in part if performance as agreed has been made impracticable by the occurrence of any contingency (a "Force Majeure"), the non-occurrence of which was a basic assumption on which this Contract was made, including acts of God, fire, flood, accident, riot, war, terrorism, sabotage, strike, labor trouble or shortage, embargo, or governmental regulation; *provided* that the affected party notifies the non-affected party of such events as soon as they occur, and gives the affected party's best estimate of the length of delay in performance or non-performance; and *provided further* Product shortages, increases in Seller's costs, and events due to Seller's negligence are not deemed to be Force Majeure events. If any delay caused by Force Majeure exceeds 30 days from the original date of performance, the non-affected party may cancel this Contract without any liability. If Seller's production is only partially restricted or delayed, Seller shall use its best efforts to accommodate the requirements of Buyer, including giving this Contract preference and priority over other orders placed after the date of this Contract.
  - LIABILITY LIMITATION.** In no event shall Buyer be liable for any incidental, special or consequential damages for any cause whatsoever relating to or arising in any way from this Contract even if Buyer has been advised of the possibility of any such damages, including loss of revenue; loss of profits; failure to realize savings; expenses in connection with or by reason of the sale of, or inability to sell, Products; transportation, installation, adjustment or other expenses that may arise in connection with the Products, and any liability of Seller to another party; personal injury or property damage except personal injury or property damage caused solely by Buyer's fault; or any other damages (regardless of their nature) to the extent caused wholly or in part by Seller's fault or failure to fulfill its responsibilities under this Contract. Buyer's liability on any claim of any kind for any loss or damage arising out of or in connection with or resulting from this Contract or from the performance or breach of this Contract shall in no case exceed the Prices allocable to the unit(s) of Products which give rise to the Claim. Buyer shall not be liable for penalties of any description relating to or arising in any way from Buyer's performance or nonperformance under this Contract. Any action resulting from any breach on the part of Buyer as to the Products delivered under this Contract must be commenced within one year after the cause of action has accrued.
  - CONFIDENTIALITY.** Seller shall not advertise, publish or otherwise disclose to others: (a) the existence of this Contract; nor (b) any information contained in or relating to this Contract.
  - ASSIGNMENTS/SUBCONTRACTING.** Seller shall not assign nor subcontract any part of this Contract without the prior written consent of an authorized representative of Buyer, which consent Buyer may withhold in its sole discretion, and any purported assignment by Seller without such consent shall be void. Subject to the foregoing, the provisions of this Contract shall inure to the benefit of, and be binding upon, the parties and their respective successors and assigns, whether or not any such successor or assign shall have become a party to this Contract and agreed to join in this Contract and be bound by the terms and conditions of this Contract.
  - MISCELLANEOUS.** No course of performance or course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this Contract, and Buyer's acceptance of, or acquiescence in, a course of performance rendered by Seller under this Contract shall not be relevant to determine the meaning of this Contract even though Buyer has knowledge of the nature of the performance and an opportunity to object. If any provision of this Contract or the application of any such provision to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Contract and the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected by such invalidity or unenforceability, and each provision of this Contract shall be valid and be enforced to the fullest extent permitted by law. All remedies available to Buyer with respect to any breach of warranty or any other breach of this Contract shall be cumulative, and recourse to one remedy shall not preclude recourse to others. The numbers and captions of Paragraphs in this Contract are inserted only for convenience of reference and are not to be construed as part of this Contract or as in any way affecting it. Unless the context requires otherwise: (a) all words used in this Contract in the singular number shall extend to and include the plural; (b) all words in the plural number shall extend to and include the singular; (c) all words in any gender shall extend to and include all genders; (d) the terms "all" and "each" will each be construed as meaning "all and each;" (e) the connectives "and" and "or" shall each mean "and," "or" and "both 'and' and 'or,'" and (f) the terms "including," "included" and all other variations of the word "include" shall be construed as meaning "including, without limitation." This Contract shall for all purposes be governed by, and enforced and construed in accordance with, the laws of the State shown in Buyer's address on the Cover Page, excluding that State's choice- or conflict-of-law rules, and each party irrevocably and unconditionally submits to the exclusive jurisdiction of the federal and state courts of that State.