

MILES CHEMICAL STANDARD TERMS AND CONDITIONS OF SALE

1. **TERMS.** These Terms and Conditions of Sale are the exclusive contract between Buyer and Seller, there are no terms, understandings, agreements, other than those stated herein. Seller's commencement of work on the Products subject to Buyer's order, shipment of the Products, or performance of all or a portion of the services subject to an order, whichever occurs first, shall constitute an acceptance of Buyer's purchase order and these Terms and Conditions without any additional or different terms. These Terms and Conditions may not be altered amended, nor waived except in writing signed by an officer of the party to be bound thereby. Acceptance of Buyer's purchase order is subject to acceptance of the express Terms and Conditions contained herein. If any provisions of Buyer's purchase order or other writings are different from or are otherwise in conflict with these Terms and Conditions, these Terms and Conditions shall govern and the terms contained in Buyer's purchase order or other writings are expressly rejected by Seller.
2. **PRICE.** Quoted prices are based upon present taxes (other than sales taxes), freight rates, United States Tariff classifications and import duties. Buyer shall pay any increased costs resulting from such changes or from Buyer's selection of means of transportation. Buyer shall reimburse Seller for all taxes or other charges by any national, state or municipal government upon the sale, use, production, or transportation of Product, which Seller is required to pay.
3. **PRICE ADJUSTMENTS.** Seller may adjust Product prices at any time. Buyer may suspend orders immediately upon notice of a price increase. In the event price protection is stated in a written agreement between the parties, Seller may temporarily suspend such Product's price protection in extraordinary market conditions as determined by Seller in its discretion. Seller shall reinstate the Product's price protection upon Seller's determination that the market condition for the Product is no longer extraordinary.
4. **PAYMENT.** Payment terms are net 30 days from date of invoice. Past due balances are subject to a late payment charge of 1 1/2% per month, or the maximum amount permitted by applicable law, whichever is less. Buyer shall pay all charges, costs and legal fees incurred in collecting amounts owed.
5. **CONTAINERS.** Seller retains ownership of all returnable containers. Buyer may use the containers only for the storage of original contents. Buyer shall return the containers to Seller empty and in good condition within 90 days from the date of delivery. Buyer shall pay a deposit on all returnable containers. Seller shall credit the deposit, less handling fee, to Buyer's account if Buyer returns the containers F.O.B. Seller's return point in good condition within 90 days. If not returned within 90 days, Seller may reject the containers and retain the full amount of the deposit.
6. **TITLE AND RISK OF LOSS.** Title and risk of loss for Products transfers to Buyer at Seller's shipping point, unless Products are shipped in Seller's vehicles in which case title and risk of loss transfers to Buyer when the vehicle first enters Buyer's property. Buyer shall unload railroad tank cars within 48 hours (Sundays and holidays excepted).
7. **MEET OR RELEASE.** If during the period covered by these Terms and Conditions, Buyer receives a bona fide offer to purchase Product qualifying as US origin goods under NAFTA of equal quality and quantity on the same terms and conditions as those herein, and Buyer has provided Seller with written evidence satisfactory to Seller of such offer, Seller will either: (i) meet such other offer during the time in which it continues, or (ii) permit Buyer to purchase the Product from such seller during such time.
8. **WARRANTY.** Seller warrants that Seller branded Products conform to Seller's published specifications at the time of delivery. Seller warrants that services provided by Seller will be consistent with Seller's standard specifications or, if none, with Seller's standard practices. Buyer acknowledges that Seller acts as a distributor for Products not branded by Seller (Resale Products) and that matters relating to the quality of the Products are not within Seller's control. Accordingly, SELLER MAKES NO WARRANTIES WHATSOEVER CONCERNING RESALE PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES EXPRESS OR IMPLIED. SELLER EXPRESSLY EXCLUDES WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE AND MERCHANTABILITY.
9. **REMEDIES.** Seller's liability for nonconforming Products is exclusively limited, at Seller's option, to replacement of the defective Products or refund of the purchase price of such Products. Seller's liability for any defective or negligent service is limited to Seller re-performing the service or a refund of an amount not to exceed the amount paid for the service, or, if the services were provided free of charge, to pay an amount not to exceed the amount paid for the Products to which the services related in the 12 months prior to the event of the liability.
10. **LIMITATION ON LIABILITY.** IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, PRODUCT LIABILITY, CONTRIBUTION OR ANY LEGAL THEORY AND IN NO EVENT WILL SELLER BE LIABLE FOR LOST PROFITS, COSTS OR LOSSES NOT ASSOCIATED WITH DIRECT PHYSICAL DAMAGE TO PROPERTY FOR ANY CLAIMS MADE UNDER OR RELATED TO THE SALE OF PRODUCTS OR SERVICES TO BUYER. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.
11. **INDEMNITY.** Buyer agrees to defend, indemnify and hold Seller, its officers, directors, agents, and employees harmless from all claims, demands, actions and causes of action relating to personal injury or property damage to third parties, including attorney's fees and actual costs ("Claims") incurred as a result thereof, to the extent of its negligence or arising after delivery of the Products to Buyer. Seller agrees to defend, indemnify and hold Buyer, its officers, directors, agents, and employees harmless from Claims to the extent of its negligence.
12. **CLAIMS.** Any claim for shortage or non conforming Products must be made in writing to Seller within 30 days after Buyer's receipt of the Product. Any claim for non-delivery of Product must be made within 30 days after the date upon which the Product was to be delivered. As to any claim not reasonably discoverable within such 30 day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim must be in writing and received by Seller within 180 days after Buyer's receipt of the Products. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim. Products may not be returned without Seller's permission and transportation for return will not be paid by Seller unless authorized in advance. Amounts owing to or payable by either party hereunder these Terms and Conditions shall be deemed finally reconciled on the first anniversary of the final delivery under these Terms and Conditions and any outstanding rights of either party to receive overpayments or under payments including rights to unclaimed credits or refunds shall expire on such date.
13. **FORCE MAJEURE.** Seller is not liable for nonperformance or delay in performance caused by circumstances beyond Seller's control ("Force Majeure Event"). A Force Majeure Event includes, without limitation, (a) acts of God, war, riots, fire, explosions, floods, strikes, lockouts, injunctions, accidents, Product short supply, unforeseen shutdown of major sources of supply, breakage of machinery or apparatus, or national emergency, (b) Seller's inability to obtain at prices Seller deems in its discretion to be commercially reasonable, the Product, fuel, power, raw materials, labor, containers or transportation facilities, (c) the occurrence of any unforeseeable contingency making performance impracticable, or (d) compliance in good faith with any applicable governmental statute, regulation, or order. Any delivery so suspended shall be cancelled without liability, but these Terms and Conditions shall otherwise remain unaffected. This section does not apply to payment obligations.
14. **QUANTITY.** Seller is not obligated to deliver in any month more than a proportionate part of the maximum quantity specified, determined by dividing such maximum quantity by the total number of months included in the period of performance. When in the opinion of Seller there is a period of shortage of supply of said products for any reason, Seller may allocate its available supply among any or all of its various customers upon such basis as it shall deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified.
15. **PRODUCT STEWARDSHIP.** Buyer agrees that Products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. Buyer agrees to instruct

its employees with respect to, and to make certain that they know and understand, procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the Products. Buyer further agrees to deliver the most recent edition of Product literature, including MSDSs, to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who can handle, use, store, transport and dispose of Products safely.

16. **TERMINATION.** Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if it has reason to doubt the ability or willingness of Buyer to pay for the Products.

17. **ARBITRATION.** The parties will submit any dispute related to this Agreement to arbitration in , California before one arbitrator under the American Arbitration Association's Commercial Arbitration Rules. A party may seek interim relief from any court having jurisdiction without waiving any remedy under this Agreement. The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify the terms of this Agreement. A party may enter a judgment on an award in any court having jurisdiction. The prevailing party is entitled to an award of reasonable attorney fees. This Agreement is governed by the laws of the state of California.