

# TREXAN CHEMICALS

TREXAN CHEMICALS, INC.  
710 Louis Drive • Warminster, Pa. 18974

## TREXAN CHEMICALS, INC. TERMS & CONDITIONS OF SALE – as per April 08, 2020

### **PRICE AND ADJUSTMENTS**

Seller may change any price, freight term or payment term (collectively "Terms") by giving Buyer at least twenty (20) days' prior notice; provided, however, that Seller may, at any time, institute or remove a temporary voluntary allowance or other similar competitive allowance without any prior notice.

### **TAXES**

Any tax (except income taxes), excise or other governmental charge that now or in the future may be imposed, increased or levied upon the production, value added, sale, transportation, storage, handling, delivery, use or disposal of Product sold hereunder which Seller may be required to pay, shall be paid by Buyer to Seller in addition to the purchase price. Buyer shall provide Seller, on request, with properly completed exemption certificates for any tax from which Buyer claims exemption.

### **CREDIT**

Standard Credit terms are Net 30 days. If, in Seller's discretion, the financial responsibility of Buyer is deficient or becomes impaired, Seller may require advance cash payment or satisfactory security and may withhold Product shipments until receipt of such payment or security. Such action by Seller shall not constitute a change of payment terms hereunder. If amounts due hereunder are placed with an outside agency for collection, or if suit is brought for collection, or if collected through probate, bankruptcy or other judicial proceedings, then Buyer shall pay all costs of collection, including attorney's fees, in addition to all other amounts due.

### **TITLE; RISK OF LOSS**

Title to Product and risk of loss shall pass to Buyer at Seller's facilities upon delivery to a carrier or into Buyer's transport. If Seller is to pay freight, selection of the carrier and routing of shipments is at Seller's direction.

### **LIMITED WARRANTY**

SELLER MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF FITNESS FOR A PARTICULAR USE OR OTHERWISE WITH RESPECT TO PRODUCT, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS, EXCEPT THAT PRODUCT SOLD HEREUNDER SHALL BE OF MERCHANTABLE QUALITY AND SHALL CONFORM TO SELLER'S STANDARD SALES SPECIFICATIONS AS OF THE DATE OF SHIPMENT OR SUCH OTHER SPECIFICATIONS EXPRESSLY MADE A PART OF THESE TERMS AND CONDITION. THERE ARE NO OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTIES.

### **INSPECTION AND LIMITATION OF LIABILITY**

Buyer shall inspect and test Product delivered hereunder for damage, defect or shortage immediately upon receipt at Buyer's plant or such other location as determined by Buyer and provide Seller notice of any such damage, defect or shortage at time of delivery and get written acknowledgment of shortage or damage by delivering carrier. An overrun or underrun of up to ten percent (10%) shall constitute due performance of any order. Any claims for shortages must be supported by certified railroad scale tickets (or similar documents if shipment were not by rail) and Seller shall have an opportunity to have an independent weighing. All claims for any cause whatsoever, whether based in contract, negligence or other tort, strict liability, breach of warranty or otherwise, shall be deemed waived unconditionally and absolutely unless Seller receives written notice of such claim not later than sixty (60) days after Buyer's receipt of Product as to which such claim is made. Defective or nonconforming Product shall be replaced by Seller without additional charge, or in lieu thereof, at Seller's option, Seller may refund the purchase price upon return of such Product at Seller's expense. NOTWITHSTANDING THE ABOVE AND REGARDLESS OF THE CIRCUMSTANCES, SELLER'S TOTAL LIABILITY TO BUYER FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER, WHETHER BASED IN CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, BREACH OR WARRANTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF PRODUCT IN RESPECT TO WHICH SUCH CAUSE AROSE. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR EXEMPLARY DAMAGES. Any cause of action that Buyer may have against Seller and which may arise in connection with the sale of Product hereunder must be commenced within one (1) year of Buyer's receipt of Product in respect to which such cause of action arose.

### **SAFETY, HEALTH AND INDEMNITY**

Seller shall furnish to Buyer Material Safety Data Sheets, including warnings and safety and health information concerning Product and/or the containers therefor. Buyer agrees to disseminate such information so as to give warning of possible hazards to persons who Buyer can reasonably foresee may be exposed to such hazards, including but not limited to Buyer's employees, agents, contractors or customers. Buyer shall instruct its employees, agents, contractors and customers on the safe handling, use, selling, storing, transportation and disposal practices for the Product. IF BUYER FAILS TO DISSEMINATE SUCH WARNINGS AND INFORMATION, BUYER AGREES TO DEFEND AND INDEMNIFY SELLER AGAINST ANY AND ALL LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED WITH SUCH FAILURE, INCLUDING BUT NOT LIMITED TO LIABILITY FOR INJURY, SICKNESS, DEATH AND PROPERTY DAMAGE; PROVIDED, HOWEVER, THAT IF SELLER IN THIS INSTANCE HAS CONTRIBUTED TO SUCH LIABILITY, BUYER'S INDEMNITY TO SELLER SHALL BE REDUCED BY THE PROPORTION IN WHICH SELLER CONTRIBUTED TO SUCH LIABILITY. Seller will provide Buyer with reasonable notice and opportunity to defend in the event any claim or demand is made on Seller as to which such indemnity relates.

### **FAILURE IN PERFORMANCE**

No liability shall result to either party from delay in performance or non-performance in whole or in part cause by circumstances reasonably beyond the control of the party affected, including but not limited to acts of God, terrorist activity, transportation failure, breakdowns, equipment failure, shortage or inability to obtain Product or raw material for Product, or good-faith compliance with any governmental order or request (whether valid or invalid). Regardless, however, of the occurrence or nonoccurrence of any such circumstances, if for any reason supplies of Product, or feedstock for making Product, from any of Seller's existing sources are curtailed or are inadequate to meet Seller's own requirements and/or its obligations to its customers, Seller's obligation to deliver Product during such period shall be reduced to the extent necessary, in Seller's sole judgment, to apportion fairly among Seller's own requirements and its customers (whether under contract or not) such Product as received and as may be available in the ordinary and usual course of Seller's business from any existing sources of supply at the location(s) from which deliveries like those covered hereby are normally shipped. Seller shall not be obligated to purchase or obtain Product, or feedstock to make Product, to replace deliveries omitted or curtailed under this paragraph.

### **CESSATION OR SUSPENSION OF OPERATIONS**

If either party suspends or ceases the operation of any facility that produces or consumes Product because such operation and/or Product fails to comply with or becomes uneconomical by virtue of compliance with any applicable governmental law, regulation or order relating to pollution, ecology, environment matter, or health and safety, each party shall have the right, upon fifteen (15) days' prior written notice, to suspend (in case of suspension of operation) or terminate (in case of cessation of operation) performance hereunder. Neither party shall have any liability to the other with respect to deficiencies in Product deliveries due to any such cause.

### **EXPORT COMPLIANCE**

The sales of Product hereunder, unless otherwise indicated, constitute domestic sales within the United States. If Buyer elects to export Product, Buyer shall constitute the U.S. Principal Party in Interest or Exporter for all purposes under applicable law.

### **AMENDMENTS**

These Terms and Conditions can be amended only by an amendment, expressly stated as such, signed by both parties. No modification shall be effective by the acknowledgment or acceptance of purchase order forms, order confirmations or any other documents containing terms or conditions inconsistent with these terms and conditions.

### **GOVERNING LAW**

The parties' rights and obligations hereunder shall be construed and enforced under the laws of the State of Delaware, U.S.A., without regard to conflict of laws principles. Incoterms 2020 (or any subsequent revision thereof) ("Incoterms") shall also apply; provided, however, that Incoterms shall apply only to the extent specified herein, and provided, further, that in the event of a conflict between Incoterms and the laws of the State of Delaware, U.S.A., the latter shall govern. The parties specifically exclude application of the U.N. Convention on Contracts for the International Sale of Goods.

### **MISCELLANEOUS**

No waiver by either party of any breach of any of the terms and conditions herein contained shall be construed as a waiver of any succeeding breach of the same or other term and condition. Buyer shall not assign any of its rights or obligations with respect to these terms and conditions without Seller's prior written consent; any attempted assignment without such consent shall be void and of no effect.