

BENTONITE PERFORMANCE MINERALS, LLC
("Seller")
Terms and Conditions of Sale

1. **PURCHASE/SALES.** On the terms and subject to the conditions set forth below, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller the products specified on the reverse hereof.
2. **CONFLICTING TERMS.** If this writing differs in any way from the terms and conditions provided in Buyer's order or provided in any other manner, or if this writing is construed as an acceptance or as a confirmation acting as an acceptance, then Seller's acceptance is **EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING.** Further, this writing shall be deemed notice of objection to such terms and conditions of Buyer. If this writing is construed as the offer, acceptance hereof is **EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN.** In any event, Buyer's acceptance of the goods shall manifest Buyer's assent to Seller's terms and conditions.
3. **WARRANTIES AND REMEDIES**
 - a) **Warranty of Title.** Seller warrants to Buyer that it holds and will pass marketable title to goods sold hereunder. The **SOLE AND EXCLUSIVE REMEDY** on which Buyer may rely for a breach of this warranty shall be Seller's cure of the non-conformity or the replacement of the non-conforming goods.
 - b) **Warranty of Quality.** Seller warrants to Buyer that the goods sold hereunder shall conform to the description and specifications set forth in, or appended to, this document or previously provided to Buyer F.O.B. point of sale. The **SOLE AND EXCLUSIVE REMEDY** on which Buyer may rely for a breach of Warranty of Quality shall be replacement of the non-conforming goods (F.O.B. Original Destination). If this remedy is adjudged to have failed of its essential purpose, Seller's total liability for a breach of the Warranty of Quality shall not exceed the price of the non-conforming goods.
 - c) **Exclusions and Conditions.** Seller's obligation with respect to the express warranties and remedies contained herein are conditioned on the following: (I) Buyer's return of the non-conforming goods, at Seller's option, at Buyer's cost and risk of loss to Seller's Plant; (II) Buyer shall not assign its rights under these express warranties and any attempted assignment shall render said warranties, but not any disclaimers and limitations, void and the goods sold hereunder shall be sold **AS IS**; and (III) if the goods sold here under are resold in any form, Buyer shall include the following legend in a similar style and format in a conspicuous place in the resale agreement:

"Warranties with respect to this sale of goods are limited to those that are expressly given hereunder. Manufacturer warranties have not been assigned and are excluded from this sale. **THE MANUFACTURER DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Buyer hereby releases Manufacturer from all liability whether grounded in contract, warranty, tort, negligence, strict liability, or any other theory. Buyer waives its rights to hold Manufacturer liable for consequential, incidental, special, or indirect damages."
 - d) **Disclaimer of Implied Warranties.** Seller makes no warranties with respect to the goods sold hereunder except those expressly contained herein. Seller **DISCLAIMS** all other warranties implied by law, usage of the trade, course of dealing, or course of performance including, but not limited to **IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.** Buyer acknowledges that it alone has determined the intended purpose and suitability of the goods sold hereunder and that any technical or other advice given by Seller is provided solely at Buyer's risk.
4. **LIMITATIONS OF LIABILITY.** The following limitations on Seller's liability are acknowledged by the parties to be fair and reasonable and shall apply to any act or omission hereunder and to any breach by Seller of the contract of which these terms and conditions form a part:
 - a) Seller's total liability for any claim arising from this agreement shall be limited to the contract price.
 - b) **IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER THEORY OF LIABILITY.** Such damages include, but are not limited to, loss of profits, loss of use of goods, damage to property, and claims of third parties.
 - c) **Notice and Time of Claims**
 - i) Every claim from any cause, including, but not limited to, a claim for a remedy under the Warranties contained herein, shall be deemed waived by Buyer, or Buyer's customer in the case of resales, unless delivered in writing to Seller by Buyer within fifteen (15) calendar days of receipt of the goods by Buyer.
 - ii) The parties expressly waive all applicable statutes of limitations and agree that any legal proceeding for any breach of this contract shall be waived unless filed within one (1) year after the accrual of the cause of action therefore.
 - d) **Limitation of Liability for Environmental Uses. NEITHER SELLER NOR ITS SUPPLIER SHALL HAVE ANY LIABILITY TO BUYER OR ITS INSURERS FOR ANY DAMAGE TO PERSONS OR PROPERTY RESULTING FROM ENVIRONMENTAL HAZARDS WHEN THE GOODS SOLD ARE USED IN HAZARDOUS MATERIAL APPLICATIONS.** As used herein, "liability" means liability of any kind at any time, whether in contract, tort (including negligence), warranty, strict liability or otherwise. "Environmental Hazards" shall mean any emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic, or hazardous wastes or substances into the environment (including, without limitations, ambient air, surface water, groundwater, or land). "Hazardous Material" shall mean any substance which is or becomes defined as a "hazardous waste," "hazardous substance," "pollutant" or "contaminant" under any federal, state or local statute, regulation, rule, or ordinance or amendments thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 6901 et seq.) Buyer shall indemnify and hold Seller, its suppliers harmless against claims by Buyer or Buyer's customers or any other third parties, including actions by state or federal agencies, resulting from the use of goods covered hereunder in Hazardous Material applications.
5. **SAFETY WARNING, HANDLING AND BUYER INDEMNITY.**

PRECAUTION

This product contains crystalline silica, which may become airborne without a visible dust cloud. Avoid breathing dust. Avoid creating dusty conditions. Use only with adequate ventilation to keep exposure below recommended exposure limits. Wear a NIOSH-approved respirator or equivalent when using this product. Review the Material Safety Data Sheets (MSDS) for this product, which has been provided to your employer.

DANGER

Breathing crystalline silica can cause lung disease, including silicosis and lung cancer.

SELLER WILL NOT BE LIABLE TO BUYER FOR ANY HARMFUL HEALTH EFFECTS WHICH MAY BE CAUSED BY EXPOSURE TO SILICA CONTAINING MATERIALS SOLD BY SELLER. Buyer warrants that it will adequately warn all of its employees and customers who may come in contact with Seller's silica containing materials of the above described health hazards. Further, Buyer warrants it will fully comply with all applicable health and safety regulations and orders relating to the workplace handling of Seller's goods. Buyer agrees that if the goods sold hereunder are resold by Buyer, Buyer will include in its contract for resale, provisions which include the full substance of those contained in this Article 5, including the foregoing safety warning.

Should Buyer breach any of the duties and warranties set forth within this Article 5, **BUYER AGREES TO FULLY INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS** from and against any and all liability, claims, and suits of any third party including but not limited to employee or insurers of Buyer, in any way, in whole or in part, alleged to have arisen out of exposure to the Seller's silica containing materials which are the subject to these Terms. Further, upon acceptance of

Seller's materials or in the absence of any written notice of defect or nonconformity of such materials as set forth in Article 4, **BUYER AGREES TO FULLY RELEASE, INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS** from and against any and all liabilities, claims, and suits it may possess or that may be asserted against Seller by any third party (including but not limited to contractors, subcontractors or property owners who have purchased, installed or otherwise used products or services of Buyer or have had such products incorporated into their property or products, or insurers of any of such parties or of the Buyer) in any manner arising in whole or in part, out of the production, marketing, distribution, sale, installation, use, exposure to or deficiencies of any products of the Buyer produced using the materials purchased from the Seller.

6. **VARIATIONS.** Weights and quantities shown hereon are estimated. Invoice weights may vary in accordance with permissible variations as agreed upon in writing between Buyer and Seller.
7. **CREDIT.** All sales are subject to the approval of Seller's credit department.
8. **CANCELLATIONS/RESCHEDULING.** No cancellation or rescheduling of this order shall be permitted without Seller's express written consent.
9. **FORCE MAJEURE.** Seller shall not be liable for any delay in delivery, or failure to deliver, due to any cause beyond the Seller's control, including, but not limited to, fires, floods, or other forces of the elements; strikes or other labor disputes; accidents to machinery, acts of sabotage, riots, precedence or priorities granted at the request or for the benefit, directly of the federal or any state government or any subdivision or agency thereof; delay in transportation or lack of transportation facilities, restrictions imposed by federal state, other governmental legislation or rules or regulations thereof; or substantial increases in Seller's cost. For purposes of this document, a substantial increase in Seller's cost shall be deemed to have occurred if Seller's performance hereunder would result in a loss to Seller on this sale, as computed under Seller's normal accounting procedures, in which case Seller may terminate this agreement in whole or in part without liability for any delay in the delivery of, or failure to deliver, the goods hereunder.
10. **RISK OF LOSS.** Buyer assumes all risk of loss to and damage from the goods covered hereby upon delivery thereof to the carrier.
11. **TAXES AND OTHER CHARGES.** Buyer will pay, or reimburse Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods covered hereby or the delivery or use thereof or upon any act done or document of title or instrument used in connection with the transaction, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.
12. **FREIGHT CHARGES.** If the sale hereunder is other than F.O.B. Seller's plant, Seller's acknowledgment is based upon the freight charges in effect when Seller accepts Buyer's order. In the event of an increase or decrease in applicable freight charges before the goods are shipped, such change in freight will be for Buyer's account.
13. **PATENT OR TRADEMARK INFRINGEMENT.** Buyer agrees to indemnify and hold harmless Seller against any expense, loss, or liability for any actual or alleged infringement of any patent, trademark, or copyright arising from or related to the use, sale, or manufacturing by Buyer of any product utilizing goods sold hereunder.
14. **ALLOCATIONS.** In the event of a shortage of the goods, Seller, in its own discretion, may allocate among its customers in such manner, as it shall determine.
15. **DELIVERY DATES.** Delivery dates are estimated only and are subject to change upon notice from Seller.
16. **NON-WAIVER.** The terms and conditions contained herein may not be modified, altered, or waived either orally, by usage of trade, course of performance or course of dealing. Any change or deviation here from shall be by writing, signed by the party to be bound.
17. **DISCLOSURE OF PRICE/COST DATA.** Unless obligated by law, Seller shall not be obligated to disclose its pricing or cost data or formulae.
18. **SEVERABILITY.** A holding that any term or condition hereof is void and unenforceable shall not render void or unenforceable any other term or condition.
19. **JURISDICTION.** All such disputes shall be resolved in a court of competent jurisdiction in the City of Houston, Harris County, State of Texas. Buyer hereby consents to the jurisdiction of the State and Federal Courts sitting in the City of Houston, Harris County, State of Texas, appoints the Secretary of State of Texas as its agent for service of process and agrees to appear in any such proceeding upon notice thereof.
20. **APPLICABLE LAW.** All questions arising hereunder, or in connection with a quotation or any other submitted in connection therewith, shall be interpreted and resolved in accordance with the Uniform Commercial Code of the State of Texas without regard to its conflict of law provisions and excluding the United Nations Convention on the International Sale of Goods.
21. **EXPORT COMPLIANCE.** Some or all of the goods and services (including any software and technical data) to be supplied hereunder are of U.S. origin or are produced from U.S. technology. The parties acknowledge that the laws of the United States regulate the movement between countries of such goods and services, whether it be the initial export from the U.S. or any subsequent movement across an international border. Seller cautions that any change in use, change in country of use or use by a party other than Buyer may alter the status of the goods and services under applicable laws of the United States and the country of use and may restrict or prohibit such change. Buyer agrees that it shall in no case be party to a transaction which would allow such goods or services to be used in connection with the design, production, use or storage of chemical, biological or nuclear weapons or missiles of any kind or would result in a violation of or punishable offense under United States law. Any Seller obligation to supply goods and services to Buyer is subject to its ability to do so under applicable law current from time to time hereafter, including its ability to secure a license from the appropriate agency of government. Any failure of Seller to comply with such an obligation or delay in compliance arising out of or in connection with applicable law or inability to obtain a license shall be deemed a force majeure event and not a breach of contract.
22. **SERVICE CHARGE.** A service charge of 1.5% per month shall be applied to all invoices for which payment is not received by the applicable due date, unless otherwise restricted by law. Unless otherwise expressly provided, all sales hereunder are net twenty (20) days from date of invoice.
23. **COLLECTION COSTS.** If Buyer defaults in making payment, Seller shall be entitled to recover all costs of collection from Buyer, including but not limited to collection fees, attorney fees, and court costs.