

CHS Residual Marketing Standard Terms and Conditions

- 1) **ORDERING BY PARTIAL SHIPMENTS OR BY LOTS.** The Buyer may order the products described on the front side of this Confirmation (the "Product") by partial shipments or by lots at times mutually convenient to the parties. However, the fact that the Buyer has the right to order Product by partial shipments or by lots shall not release the Buyer from its obligations to order and pay for all of the Product.
- 2) **ALLOCATION OF PRODUCT.** If the Seller is at any time in the future unable to deliver all of the Product ordered by the Buyer and the Seller's other customers, for any reason whatsoever, including but not limited to the reasons set out below in Paragraph 6, then the Seller shall have the right, at its option and without liability, to apportion its available supply of Product among any and all purchasers, whether or not said purchasers are then under contracts with the Seller. The Seller shall apportion its available supply of Product in a manner that it believes to be equitable. The Seller shall not be obligated to complete any deliveries to the Buyer that were fully or partially canceled due to an allocation by the Seller pursuant to Paragraph 2.
- 3) **LIMITATION OF THE SELLER'S LIABILITY.** The Seller's liability for damages, whether based upon the Seller's negligence, strict liability, breach of covenant, breach of warranty, or otherwise, and whether relating to Product delivered or the failure of delivery, shall not exceed the purchase price of the particular shipment with respect to which such damages are claimed. The Seller shall not be liable for any damages arising out of the use, quality (including with respect to its hazardous nature), or application of the Product, or for any special, incidental, indirect, punitive, or consequential damages.
- 4) **HAZARDOUS MATERIALS.** Buyer acknowledges that the Product is a hazardous material. Buyer represents that it is sophisticated and knowledgeable in the storage, handling, transportation, and use of the Product, and will comply, and make reasonable efforts to cause its customers to comply, with all safety and health related governmental requirements concerning the Product, including its handling, transportation, storage, and use.
- 5) **BREACH AS TO A PARTICULAR SHIPMENT.** No breach by the Seller with respect to any particular individual shipment of Product under this Confirmation shall entitle the Buyer to cancel the entire contract. Instead, the Buyer shall pursue its remedy for damages with regard to that particular shipment and shall continue to order the additional shipments or lots required by this Confirmation.
- 6) **FORCE MAJEURE.** Neither party shall be in breach of this Confirmation and neither party shall be liable for any delay in delivery or any non-delivery of all or any part of the Product arising from acts of God, wars, revolutions, civil disturbances, labor disputes, fires, explosions, vandalism, sabotage, weather conditions, government rules or regulations, breakdowns of machinery, interruptions or delays in transportation, inability of the Seller to obtain Product or raw materials from its sources of supply, or any other circumstances beyond the reasonable control of either party.
- 7) **LIMITATIONS ON FINANCE CHARGES.** If at any time the finance charges charged to the Buyer shall be determined to be in excess of the maximum finance charges permitted by the applicable laws, then the finance charges shall be reduced to as equal the maximum permissible amount. Under those circumstances, the sole remedy of the Buyer shall be the recovery of finance charges paid in excess of the maximum permissible amount.
- 8) **AGREEMENT TO GRANT SECURITY INTEREST.** To secure its obligation to pay the Seller for the Product it is purchasing from the Seller pursuant to this Confirmation, the Buyer agrees to grant the Seller a first priority purchase money security interest in all of the Product. The Buyer agrees to execute any Security Agreements, Financing Statements, or other documents deemed necessary by the Seller in order for the Seller to perfect its security interest in said Product.
- 9) **FINANCIAL RESPONSIBILITY.** If either party's payments or deliveries to the other party shall be in arrears, or the financial responsibility of either party becomes impaired or unsatisfactory in the reasonable judgment of the other party, advance cash payment or satisfactory security shall be given upon demand; and shipments may be withheld by said other party until such payment or security is received. If such payment or security is not received within ten (10) days from demand therefore, the said other party demanding such payment or security may immediately terminate this Confirmation and/or pursue any and all other legal remedies available.
- 10) **COSTS AND ATTORNEYS' FEES.** The Buyer agrees to reimburse the Seller for all of the costs, including reasonable attorneys' fees, of any actions taken by the Seller to protect or pursue its rights in the event of nonpayment by the Buyer, regardless of whether or not those actions include judicial proceedings.
- 11) **WARRANTY AND WARRANTY DISCLAIMERS.** The Seller warrants that the Product supplied under this Confirmation shall conform to the description of the first page of this Confirmation. THIS WARRANTY IS IN PLACE OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WHICH THE SELLER HEREBY EXPRESSLY DISCLAIMS.
- 12) **ACCEPTANCE OF PRODUCT.** When partial shipments or lots of Product are shipped from the Seller's refinery in vehicles owned or controlled by the Buyer, the Buyer will be deemed to have accepted the Product as conforming to this Confirmation, and will have waived its right to reject the Product, if the Buyer does not reject the Product before it is loaded into said vehicles at the Seller's refinery.

When partial shipments or lots of Product are shipped from the Seller's refinery by common carrier, the Buyer will be deemed to have accepted the Product as conforming to this Confirmation, and will have waived its right to reject the Product, if the Buyer does not reject the Product before it is loaded into storage tanks or vehicles owned or controlled by the Buyer.

- 13) TITLE AND RISK OF LOSS. Upon the Seller's delivery of each partial shipment or lot to the Buyer or to the common carrier, or upon redirection to the Buyer in the case of Product in transit at the time the order for a partial shipment or lot is placed, title to and risk of loss for said Product shall pass to the Buyer, whether or not the Product is conforming. A bill of lading to the Seller or to the Seller's order is intended only to secure payment.
- 14) INDEMNIFICATION OF THE SELLER BY THE BUYER. If any third parties make claims against a party as a result of the actions or omissions of the other party or its agents or its employees, then the other party agrees to indemnify such party, and to hold such party harmless from any liabilities, damages, costs, settlement payments, and/or expenses, including costs of litigation and reasonable attorneys' fees, which such party incurs as a result of any such claims made against such party by third parties.
- 15) INSURANCE. Each party agrees to maintain liability insurance sufficient to satisfy its potential indemnification obligations to the other party pursuant to Paragraph 14. above. Each party further agrees to furnish copies of the policies providing said insurance coverage, as well as evidence of the continuing existence of said insurance coverage, to the other party upon the request of that party.
- 16) ASSIGNMENT. This Confirmation may not be assigned by Buyer without Seller's prior written consent.
- 17) NO WAIVER. No express or implied consent to or waiver of any breach of default under this Confirmation by either party shall constitute a consent to or waiver of any other breach or default in the performance of the same or any other obligations under this Confirmation.
- 18) CUMULATIVE REMEDIES. In the event of a breach of this Confirmation, the party adversely affected by the breach shall be entitled to pursue any and all available legal and/or equitable remedies.
- 19) SEVERABILITY. In the event that any provision of this Confirmation is held to be invalid or unenforceable under any applicable law, that holding shall not affect the validity or enforceability of the remaining provisions of this Confirmation. Further, any provision of this Confirmation held to be invalid or unenforceable shall not be completely invalidated but shall instead be deemed to be amended to the extent necessary to remove the cause of the invalidity or unenforceability.
- 20) ENTIRE AGREEMENT. This Confirmation constitutes the entire agreement between the parties; there are no oral promises, representations or warranties. No alteration or amendment of this Confirmation will be effective unless it is in writing and signed by the Buyer & the Seller.