

CHEMGUARD

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (“Terms and Conditions”) shall govern any current or subsequent sale or agreement by Chemguard to provide goods or services. Placement of an order for goods or services constitutes acceptance by the ordering party (hereinafter referred to as the “Buyer”) of these Terms and Conditions.

1. SCOPE OF TERMS AND CONDITIONS

- (a) These Terms and Conditions shall govern the purchase or acquisition of goods or services, and any contract therefor, by the Buyer from Chemguard. These Terms and Conditions shall apply in addition to any written terms and conditions, agreements, or warranties provided by Chemguard for a specific purchase or acquisition of goods or services. In the event of a conflict, the more specific provision shall control over these Terms and Conditions. These Terms and Conditions shall provide default provisions to be applied in the event a subsequent writing, or portion thereof, is deemed insufficient, invalid or inapplicable.
- (b) Notwithstanding the provisions of Section 1(a) herein, the parties specifically agree and acknowledge any binding language, including without limitation any terms, conditions, covenants, warranties, provisions, schedules, provided by the Buyer (hereinafter referred to as “Buyer Terms”) shall not apply to any transaction or business dealing provided for in these Terms and Conditions. Chemguard shall not be bound or governed by Buyer Terms regardless of the applicability, or lack thereof, of these Terms and Conditions to a transaction. Buyer Terms shall not apply or be binding upon regardless of the means or manner of the presentation of Buyer Terms, including their incorporation in a document that otherwise would establish Chemguard’s acceptance of a sale or Buyer Terms. These Terms and Conditions shall supercede and control over any Buyer Terms that Buyer may intend to concern any transaction provided for herein.
- (c) These Terms and Conditions may be amended or modified by mutual written agreement of the parties only. All third parties are advised that authority for any such modification is vested only in Chemguard’s managers, vice presidents, or presidents.
- (d) The parties expressly agree that parol evidence shall not be considered in interpreting these Terms and Conditions.

2. PRODUCTS

These Terms and Conditions shall govern Chemguard’s provision of goods or services, where applicable and to the fullest extent permitted by law. The term “good” as used herein includes any tangible or intangible property, including but not limited to chemicals (including but not limited to reagents, intermediaries, and bases), materials, equipment, foam, devices, and intellectual property,

information or data related thereto (collectively referred to as “Goods”). The term “services” includes any efforts undertaken by Chemguard for the benefit of the Buyer, or at the Buyer’s request, and specifically includes but is not limited to testing, training, design, research and development, distribution, chemical blending, and analysis (collectively referred to as “Services”).

3. EXCUSE OF PERFORMANCE:

- (a) Delivery of a Good or provision of a Service may be suspended by either party in the event of: Act of God, war, riot, fire, explosion, accident, flood, sabotage; lack of adequate fuel, power, raw materials, labor, container, or transportation facilities; compliance with governmental requests, laws, regulations, orders, or actions; breakage or failure of machinery or apparatus; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of such party; or in the event of labor trouble, strike, lockout, or injunction; which event makes impracticable the manufacture, transportation, acceptance, or use of a shipment of the Good or of a material upon which the manufacture of the Good or provision of the Service is dependent. However, changes in the market environment considered by Buyer in acquiring any good or service (including Goods or Services as described herein) shall not, on their own, be sufficient to excuse performance. Chemguard expressly disclaims and shall not be liable for any losses, damages, costs, expenses, or fees arising out of or related to the circumstances described herein.
- (b) If Chemguard determines that its ability to supply the total demand for a Good, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of a Good or provision of a Service, is hindered, limited, or made impracticable, Chemguard may allocate its available supply of the Good or such material (without obligation to acquire other supplies of any such Good or material) among itself and its purchasers on such basis as Chemguard deems appropriate, without liability for any failure of performance which may result therefrom.
- © Deliveries of Goods or provision of Services suspended or not made by reason of this section shall be canceled without liability, but these Terms and Conditions shall otherwise remain unaffected.

4. BUYER’S CREDIT

Chemguard reserves the right, among other remedies, either to terminate its order or contract with Buyer, or to suspend further provision of Goods or Services under it, in the event Buyer fails to pay for any one shipment or Service when same becomes due. Should Buyer’s financial responsibility become unsatisfactory to Chemguard, cash payments, or security satisfactory to Chemguard may be required by Chemguard for future deliveries or Services, and for the Goods or Services previously provided. Chemguard further reserves the right to demand payment, either in full or in part, in advance of shipment of Goods or beginning performance of any Services whenever,

in Chemguard's sole judgment, Buyer's financial condition does not justify delivery of Goods or performance of Services on a credit basis. Chemguard's rights as described in this Section 4 shall be in addition to, and shall have no affect on, any other rights or remedies Chemguard may have in the event of Buyer's breach of these Terms and Conditions or other applicable agreements with Chemguard.

5. DELIVERY

- (a) Delivery of any Goods or provision of any Services shall be made as soon as is reasonably practicable following Chemguard's acceptance and confirmation of a sales order. Delivery of Goods or provision of Services will be made in accordance with a fixed schedule only upon written agreement executed by both parties clearly articulating that schedule. Chemguard shall not be responsible for any loss, costs, fees, increased expenses, claims, or damages, arising from or related to the timing of Chemguard's delivery or provision of Goods or Services.
- (b) Unless otherwise agreed upon in writing executed by both parties prior to shipment, delivery of Goods shall be made in the manner and means selected by Chemguard. All Goods become Buyer's property upon Chemguard's delivery in good condition to the shipping carrier. Buyer hereby assumes all risks of damages in shipping. Upon tender by the carrier, Buyer should examine all Goods prior to accepting delivery.
- (c) If Buyer discovers errors or defects prior to accepting delivery of Goods, Buyer shall direct carrier to notate damages or mistakes with delivery. Buyer shall then promptly notify Chemguard of the defect or problem with delivery. Buyer must provide notice of any defect no later than ten (10) days following the date carrier tenders delivery to Buyer. Some defects may not be discoverable during Buyer's initial examination. Buyer must notify Chemguard of any such latent defects as soon as reasonably practicable after such defects are or should have been discovered, and in all instances no later than thirty (30) days following the carrier's tender of delivery of the Goods.
- (d) In the case of volume-based, bulk tank car, or tank truck shipments, Chemguard's weights shall govern unless proved to be in error.

6. CANCELLATION AND RETURN

- (a) Buyer may only cancel an ongoing, pending, or future orders by submitting written notice of cancellation to Chemguard specifying the order, or any part thereof, to be cancelled. If Chemguard specifically agreed to delivery of Goods or provision of Services by or on a fixed date, Buyer may only cancel all or part of that order no later than fifteen (15) calendar days prior to the date agreed upon for delivery or Services. Upon cancellation of all or part of an order for Goods or Services, Buyer

will be assessed full charges for all labor applied prior to the date of cancellation; full charges for all resources, materials, chemicals, or products used that cannot be returned to stock; full charges for all materials, chemicals, products, or other goods ordered from third parties that cannot be returned by Chemguard for full value; and a twenty-five percent (25%) restocking charge on the value of any materials, chemicals, products or goods that can be returned to Chemguard's stock. Chemguard reserves the right to terminate any order or agreement without penalty upon Buyer's cancellation of an order or delivery, or any portion thereof.

- (b) Goods delivered to and accepted by Buyer may not be returned to Chemguard without prior written authorization. Upon receipt of a request for return, Chemguard will, in its sole and absolute discretion, elect to accept return of the Goods, repair the Goods, or tender replacement Goods. Authorization of Chemguard's acceptance of any Goods must be made in writing, and such authorization will be contingent on Buyer's return, transportation charges prepaid, of any Goods in a salable condition, as determined by Chemguard at its sole discretion. RETURN GOODS ACCEPTED BY CHEMGUARD SHALL BE CREDITED TO BUYER, LESS A TWENTY-FIVE PERCENT (25%) RESTOCKING CHARGE. CUSTOM DESIGNED OR MODIFIED EQUIPMENT OR CHEMICALS MAY NOT BE RETURNED.
- © Notwithstanding the foregoing Section 6©, Goods purchased from Chemguard's Specialty Chemicals Division (excluding Goods custom designed at Buyer's request) may be returned at any time during the life of the Good, as such duration is described in Chemguard's documentation.

7. PAYMENT

Payment is due for any Goods or Services no later than thirty (30) days from the date Chemguard issues an invoice therefor. Payment must be made in good funds, in U.S. dollars, delivered to and readily available in Houston, Texas, USA. Any amounts unpaid after the due date described herein will be assessed a late payment charge of one and one-half percent (1.5%) per month until payment in full has been received.

8. LIMITED WARRANTY

Subject to Section 9 and unless otherwise expressly provided herein, Chemguard warrants title and that its Goods shall conform to the specifications provided by Chemguard along with the Goods, or, if none are included, to Chemguard's standard specifications. Subject to the preceding sentence, Chemguard MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY SUCH WARRANTY, SPECIFICALLY INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO GOODS, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER MATERIAL OR GOOD. CHEMGUARD MAKES NO

REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY SUCH WARRANTY, SPECIFICALLY INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO GOODS, WHETHER USED ALONE OR IN COMBINATION WITH ANY OTHER MATERIAL OR GOOD, FOR MATERIALS OR GOODS NOT PRODUCED OR DISTRIBUTED BY CHEMGUARD.

Subject to Section 9 and unless otherwise expressly provided herein, with respect to Services, Chemguard DISCLAIMS AND MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY SUCH WARRANTY, SPECIFICALLY INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES AS TO THE SAFETY, ACCURACY, CURRENCY, USE, SPECIFICATIONS, QUALIFICATIONS FOR A PARTICULAR PURPOSE, OR OTHER CHARACTERISTICS, OF DATA, SERVICES, DESIGNS, INTELLECTUAL PROPERTY, OR RESULTS (“SERVICE PRODUCTS”), WITHOUT REGARD TO A BUYER’S SUBSEQUENT USE OF OR RELIANCE ON THOSE SERVICES, SERVICE PRODUCTS, OR THE INTELLECTUAL PROPERTY THEREFROM.

9. LIMITATION OF LIABILITY

- (a) Within thirty (30) days after receipt of each shipment of Goods, or provision of Services or Service Products, Buyer shall examine such Goods, Services, or Service Products for any damage, deviation from specifications, or other defect or shortage, and make any claim thereon. All claims for any cause whatsoever (whether such cause be based on contract, negligence, strict liability, other tort, or otherwise) shall be deemed waived unless made in writing and received by Chemguard within thirty (30) days after Buyer’s receipt of the Goods, Services, or Service Products in respect to which such claim is made, or, if such claim is for nondelivery of such Goods, Services, or Service Products, within thirty (30) days after the date upon which such Goods, Services, or Service Products were to be delivered or provided. Failure of Chemguard to receive written notice of any such claim within applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim irrespective of whether the facts giving rise to such claim shall have then been discovered or of whether processing, further manufacture, other use, or resale of the Goods or Service Products shall have then taken place.
- (b) BUYER’S EXCLUSIVE REMEDY SHALL BE FOR REPAIR OR REPLACEMENT OF GOODS, SERVICES, OR SERVICE PRODUCTS SOLD, AT CHEMGUARD’S SOLE DISCRETION, AND CHEMGUARD’S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, OR OTHERWISE) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF

THE GOODS, SERVICES, OR SERVICE PRODUCTS IN RESPECT TO WHICH SUCH CAUSE ARISES OR, AT CHEMGUARD'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH GOODS, SERVICES, OR SERVICE PRODUCTS, AND IN NO EVENT SHALL CHEMGUARD BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CAUSE. Chemguard shall not be liable for, and Buyer assumes liability for, all personal and property damage connected with the handling, transportation, possession, processing, further manufacture, other use, reliance upon, or resale of the Goods, Services, Service Products, or the intellectual property therefrom, whether the Goods, Services, Service Products, or the intellectual property therefrom, are used alone or in combination with any other material, process, good, or equipment. Transportation charges for the return of Goods or Service Products shall not be paid by Chemguard without prior written authorization.

- © If Chemguard furnished technical or other advice to Buyer, whether or not at Buyer's request, with respect to processing, further manufacture, other use, or resale of the goods, Chemguard shall not be liable for, and Buyer assumes all risk of, such advice and the results thereof.

10. DISPOSAL

Notwithstanding, and without waiving the terms of Sections 6 and 9 herein, Chemguard may, at its sole and absolute discretion, direct Buyer to dispose of any Goods or Service Products about which Buyer makes a claim in writing pursuant to Section 9(a) herein, or which Buyer seeks to return under Section 6(b). In the event of a direction to dispose, Chemguard will credit or refund Buyer the cost of any Goods or Service Products disposed. Chemguard expressly disclaims any and all liability and responsibility for, costs, charges, fees, awards, fines, remedial costs, clean up, damages, or other consequences arising out of or related to Buyer's disposal of any Goods or Service Products. Buyer hereby agrees and acknowledges that Buyer is capable and qualified to dispose of any Goods or Service Products in a means and manner consistent with all laws, duties, and obligations. If Buyer is not capable and qualified as described herein, Buyer shall, at Buyer's expense, utilize or engage services or parties to properly dispose of any Goods or Service Products in a manner consistent with the requirements of this Section. Buyer assumes, in all instances, sole responsibility for any disposal required by Chemguard.

11. LIABILITY AND RESPONSIBILITY

Subject to the provisions of Section 10, Buyer assumes full responsibility for and liability arising out of unloading, discharge, storage, handling, use, and disposal of any product or container therefor, including, without limitation, the use of such product or container alone or in combination with other substances; compliance or noncompliance with any laws or regulations thereto; and damage to or destruction of containers from any cause whatsoever after delivery to Buyer, except to the extent that such is solely and directly caused by a breach of Chemguard's obligations hereunder. BUYER AGREES TO INDEMNIFY AND HOLD CHEMGUARD, ITS AGENTS,

SERVANTS, DIRECTORS, OFFICERS, EMPLOYEES, AND REPRESENTATIVES (COLLECTIVELY "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, EXPENSES, DEMANDS, CLAIMS, DAMAGES, PROCEEDINGS, OR CAUSES OF ACTION, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF, RELATED TO, OR ALLEGING ANY BODILY INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR ECONOMIC DAMAGE ACTUALLY OR ALLEGEDLY CAUSED OR CONTRIBUTED TO BY ANY OF THE INDEMNIFIED PARTIES OR BY THE PRODUCT OR ANY CONTAINER THEREFOR SUBSEQUENT TO SHIPMENT FROM CHEMGUARD'S PLANT, TERMINAL, OR WAREHOUSE, EXCEPT TO THE EXTENT THAT THE SAME IS SOLELY AND DIRECTLY CAUSED BY THE INDEMNIFIED PARTIES' GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IT IS EXPRESSLY AGREED THAT THE FOREGOING INDEMNITY SHALL INCLUDE, WITHOUT LIMITATION, AN INDEMNITY OF THE INDEMNIFIED PARTIES AGAINST ANY CLAIMS ARISING OUT OF OR RELATING TO THE ACTUAL OR ALLEGED NEGLIGENCE OF THE INDEMNIFIED PARTIES, EITHER SOLELY OR IN COMBINATION WITH THE NEGLIGENCE OR OTHER LIABILITY OF BUYER AND/OR OTHERS, EXCEPT AS SPECIFICALLY LIMITED IN THE PRECEDING SENTENCE. BUYER AGREES TO DEFEND ANY SUIT OR ACTION BROUGHT AGAINST AN INDEMNIFIED PARTY BASED ON ANY SUCH INJURY OR DAMAGE AND TO PAY ALL COSTS AND EXPENSES IN CONNECTION THEREWITH OR RESULTING THEREFROM, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, PREJUDGMENT AND POST-JUDGMENT INTEREST, APPEAL BONDS, AND SUPERCEDEAS BONDS.

12. PATENTS

Subject to Sections 8 and 9, and unless otherwise provided herein, Chemguard warrants that the Goods sold, except for those made for Buyer according to Buyer's specifications, do not infringe any valid U.S. patent. This warranty is given upon condition that Buyer promptly notify Chemguard of any claim or suit involving Buyer in which such infringement is alleged and that, if Chemguard is affected, Buyer permit Chemguard to control completely the defense or compromise of any such allegation or infringement. Chemguard does not warrant that the use of the Goods, Service Products, or any material made therefrom, whether the Goods or Service Products are used alone or in combination with any other material, will not infringe a patent. Chemguard reserves the right to terminate Chemguard's warranty under this Section 12 at any time with respect to any undelivered Goods or Service Products, it being agreed that in the event of such termination Buyer may, without penalty, thereafter refuse acceptance of such undelivered Goods or Service Products.

13. TAXES

Chemguard's quoted prices include tax, based on rates or charges set concurrent with the quote. Any increase in tax or governmental charge (excluding any franchise, margin or income tax or other tax or charge based on income), (1) increasing the cost to Chemguard of producing, selling, or delivering Goods or providing Services, or of procuring materials therefor, (2) payable by Chemguard because of the production, sale, delivery or provision of Goods or Services, such as sales

tax, use tax, retailer's occupational tax, gross receipt tax, and value added tax, may, at Chemguard's option, be added to the price herein-specified.

14. ASSIGNMENT

Buyer shall not (by operation of law or otherwise) assign its right or delegate its performance under any contract for sale, or these Terms and Conditions, without Chemguard's prior written consent, and any attempted assignment or delegation without such consent shall be void.

15. SAFE HANDLING

Buyer shall promptly and carefully inspect Goods upon receipt and will maintain appropriate safe handling and use procedures for all Goods or Service Products. Buyer will apprise its employees and customers of the hazards, proper use, and handling requirements of Goods or Service Products, and shall comply with the OSHA Hazard Communications Standard and all other applicable laws, rules, and regulations. Chemguard disclaims any and all responsibility or liability for or arising out of safety or use information, including but not limited to Material Data Safety Sheets, provided with Goods or Service Products, or in connection with Services.

16. NOTICES

Any notice shall be sufficiently given when duly mailed, postage prepaid, addressed to Chemguard or to Buyer at their respective addresses appearing herein, or to such other address for either party as that party may by notice designate.

17. SEVERABILITY

If any provision herein is or becomes invalid or illegal in whole or in part, such provision shall be deemed amended, as nearly as possible to be consistent with the intent expressed in this contract, and if such is impossible, that provision shall fall by itself without invalidating any of the remaining provisions not otherwise invalid or illegal.

18. MISCELLANEOUS

The validity, interpretation, and performance of this contract and any dispute connected herewith shall be governed and construed in accordance with the laws of the state of Texas without regard to conflicts of laws principles, and any suit, action or legal proceeding arising out of or relating to this Agreement may be brought only in a court located in Tarrant County, Texas. Section headings or titles are included for ease of reference and do not constitute any part of the text or affect its meaning or interpretation. This contract constitutes the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. No conditions, usage of trade, course of dealing or performance, understanding, or agreement purporting to modify, vary, explain, or supplement the terms or conditions of this contract shall be binding unless hereafter made in writing and signed by the party

to be bound, and no modification shall be affected by the acknowledgment or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth herein. No waiver by either Chemguard or Buyer with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver or any other breach or default of any other right or remedy, unless such waiver be express in writing signed by the party to be bound.

19. ENTIRETY OF CONTRACT

These Terms and Conditions constitute a complete contract and the entire understanding between the parties relating to the Goods or Services covered hereby, except where modified in writing, amended, or superceded by an appropriate document, as described herein. Chemguard's provision of Goods, Services, or Service Products, is expressly limited to and conditioned upon Buyer's acceptance of these Terms and Conditions, and none of Buyer's inconsistent and/or additional terms and conditions or other documents shall apply. No additional notice of the foregoing need be given by Chemguard to Buyer.

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