

## GENERAL TERMS FOR SALES AGREEMENT OF QEMETICA US SILICA LLC

### 1. GENERAL

1.1. **Agreement.** The term “Agreement” means the legally binding contract between Qemetica US Silica LLC, a Delaware limited liability company (together with its affiliates and subsidiaries, “Seller”), and the buyer, as identified in Seller’s order confirmation, invoice, quotation, or other Seller document (“Buyer”), for the sale of Product, consisting of:

- (a) these General Terms for Sales Agreement (“GTS”); and
- (b) any Seller’s documents to which this GTS are attached, affixed, or incorporated by reference (including as applicable, quotations, order acknowledgements, order confirmations, invoices, specifications, and delivery documents); and
- (c) any separate supply or sale agreement entered into between Buyer and Seller that covers the sale or supply of Product.

1.2. **Order of Precedence.** If there is any conflict or inconsistency among the documents comprising the Agreement, the following order of precedence will apply:

- (a) any separately negotiated written supply or sale agreement signed by both Buyer and Seller; then
- (b) Seller’s order confirmation and invoice; and then
- (c) these GTS.

Any matter not addressed in the documents described in (a) and (b) above will be governed by these GTS, which remain binding and in full force and effect.

1.3. **Modifications Only by Signed Writing.** Seller expressly objects to and rejects any terms additional to or different from the Agreement, including any terms contained in Buyer’s purchase order, acknowledgment, request, or other document or communication (whether before or after Seller’s offer, order confirmation, invoice, or performance). Buyer’s general terms and conditions will not apply and will not form part of the Agreement under any circumstances. No modification or waiver of any provision of the Agreement will be effective unless it is conspicuously set out in a written instrument that expressly states it amends the Agreement and is signed by authorized representatives of both Buyer and Seller. Seller’s issuance or acknowledgment of, or performance under, any purchase order, and any failure or delay by Seller to object to Buyer’s terms, will not constitute acceptance of those terms. Buyer’s acceptance of delivery of Product or commencement of performance will constitute Buyer’s acceptance of the Agreement in its entirety.

### 1.4. Definitions.

- (a) “**Business Day**” means any day other than a Saturday, Sunday, or public holiday in Delaware on which commercial banks are open for business.
- (b) “**Product**” means the product to be sold by the Seller and purchased by the Buyer pursuant to the Agreement.
- (c) “**Hardship**” shall mean any substantial change in the conditions surrounding this Agreement that is a material hardship to either party with respect to this Agreement and was not intended or reasonably anticipated by the affected party when entering into this Agreement.
- (d) “**Written Notice**” means any notice, demand, consent, or other communication under or relating to this Agreement that a Party gives in writing regarding rights, obligations, or required actions. Written Notice will be deemed properly served when delivered to the other Party’s designated contact and address/email stated in this Agreement (as updated by Written Notice) or in the applicable purchase order or order confirmation, by (a) recognized overnight courier, (b) registered mail, or (c) email (including a PDF scan with the signature page or electronically signed copy).

## 2. WARRANTY AND LIMITATION OF REMEDY.

2.1. Acceptance. Buyer shall inspect the Product delivered from Seller immediately upon delivery to Buyer as provided under this Agreement. All claims relating to quality, quantity, weight, condition and loss of or damage to the Product contained in any delivery will be irrevocably waived by Buyer unless made in writing to Seller, with reasonable supporting detail, within fifteen (15) days after the earliest of: (1) tender of delivery to, and refusal to accept delivery by, Buyer; (2) acceptance of delivery by Buyer; or (3) the dates specified for delivery. Buyer's failure to inspect or to provide timely written notice of any claim shall constitute unconditional acceptance of the Product as conforming in all respects.

2.2. Any technical information or assistance that Seller gives Buyer is provided at Buyer's sole risk and does not constitute a warranty, specification, or representation of any kind. Except as stated in Section "Patents", Seller warrants only its title to the Product and that the quality of the Product shall conform to Seller's published specification, if any, at the time of shipment. THESE ARE THE ONLY REPRESENTATIONS OR WARRANTIES SELLER MAKES AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, UNDER STATUTE OR ARISING OTHERWISE IN LAW FROM A COURSE OF DEALING OR USAGE OF TRADE, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR USE, OR NON-INFRINGEMENT, ARE DISCLAIMED BY SELLER. IN THE EVENT ANY PRODUCT FAILS TO CONFORM TO THE WARRANTIES IN THIS SECTION, SELLER'S EXCLUSIVE OBLIGATION AND BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, REPLACEMENT OF THE NONCONFORMING PRODUCT AT SELLER'S EXPENSE, OR A REFUND OF THE PURCHASE PRICE ATTRIBUTABLE TO THE SPECIFIC DELIVERY AS TO WHICH A CLAIM IS MADE AND TRANSPORTATION COSTS FOR SUCH SPECIFIC DELIVERY, PROVIDED THAT BUYER RETURNS THE NONCONFORMING PRODUCT TO SELLER AT SELLER'S REQUEST. EXCEPT AS PROVIDED IN THE IMMEDIATELY PRECEDING SENTENCE, IN NO EVENT WILL SELLER BE LIABLE UNDER ANY THEORY OF RECOVERY (WHETHER BASED ON CONTRACT, NEGLIGENCE OF ANY KIND, STRICT LIABILITY, TORT, OR OTHERWISE) FOR ANY PUNITIVE, DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OF REVENUE, BUSINESS INTERRUPTION, OR LOSS OF USE) IN ANY WAY RELATED TO, ARISING FROM, OR RESULTING FROM THE DELIVERY HEREUNDER OF OR ANY USE MADE OF THE PRODUCT, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

2.3. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, SELLER'S TOTAL AGGREGATE LIABILITY TO BUYER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, TORT, OR ANY OTHER THEORY, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SHALL NOT EXCEED 150% OF THE TOTAL AMOUNT ACTUALLY PAID BY BUYER TO SELLER FOR PRODUCT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATION SHALL APPLY REGARDLESS OF WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE.

2.4. Recommendation of Seller for use of the Product is based upon tests believed to be reliable, but Seller makes no warranty of the results to be obtained. Buyer assumes all responsibility, risk, and liability arising from:

- (a) the transportation, unloading, discharge, storage, handling and use of the Product, including use thereof alone or in combination with other substances;
- (b) the improper functioning or failure of unloading, discharge, transportation or storage systems or equipment used by Buyer, whether furnished or recommended by Seller or not; and
- (c) the failure to comply with all applicable federal, state and municipal laws, rules, and regulations governing unloading, discharge, storage, handling and use of the Product.

2.5. Buyer assumes the risk of all damage, loss, costs and expense, and agrees to indemnify, hold harmless and defend Seller, its officers, directors, agents, and employees, from and against any and all claims, suits, damages, costs, expenses, fines, liabilities, or causes of action whatsoever, including without limitation for the death of or injury to persons or damage or destruction of property, and including reasonable attorneys' fees and costs of litigation, on account of, relating to, or arising out of the use, possession, transportation, storage, or disposal of the Product or any product made therefrom (whether by Buyer, any distributor, end-user, or governmental authority), sounding in any legal theory whatsoever, and from any failure by Buyer to adhere to Export Controls or Compliance Requirements as set forth below.

**3. TITLE & DELIVERY.** Except as may be otherwise expressly agreed to by Seller in writing, title to and ownership of the Product shall transfer and pass to Buyer upon delivery of the Product by Seller to the first carrier (including any transportation equipment owned or controlled by Seller) for shipment to Buyer. Risk of loss of the Product and terms of carriage and related obligations of Seller and Buyer shall be as per and as defined in the transportation trade terms (e.g. Incoterms) as set forth in a separate Sales Agreement or if there is no Seller-signed Sales Agreement then as set forth in Seller's transmittal acceptance of Buyer's order or other mutual written agreement between the Parties. No reconsignment of transportation equipment owned, furnished or controlled by Seller shall be made and same shall be immediately returned to Seller after Product have been removed therefrom in as good condition as received, reasonable wear and tear excepted. Demurrage or extra detention charges on such equipment of Seller are for Buyer's account in accordance with Seller's then standard policies with respect to allowed Free Time and detention charges.

**4. DEFAULT.** Each delivery under this Agreement is a separate transaction, without reference to any other shipment. If either Party is in default with respect to any of the terms or conditions of this Agreement, including, without limitation, Buyer's failure to pay any invoice in accordance with the terms of this Agreement, the non-defaulting Party may, at its option, immediately suspend further performance (including shipment of Product) until the default is remedied, and, without prejudice to any other legal remedy, may terminate this Agreement if the default is not remedied within fifteen (15) Business Days (five (5) Business Days for nonpayment of invoices) after Written Notice is provided to the Party in default, specifying the thing or matter in default. Suspension of performance by Seller under this Section will not give rise to any liability of Seller to Buyer.

**5. CREDIT.** Seller's duty to sell and deliver the goods to Buyer, and Buyer's right to purchase the Product from Seller hereunder, shall at all times remain subject to the continuing approval of Buyer's credit worthiness by Seller. No representation or guarantee is made of any particular credit arrangement under this Agreement. Without limiting any other rights or remedies, if Seller determines in good faith that (a) Buyer's creditworthiness has deteriorated, (b) Seller has a reasonable basis to doubt Buyer's ability or willingness to pay any invoice when due, or (c) Buyer fails to pay any undisputed amount when due, then Seller may, upon Written Notice to Buyer, require that any current or future sales of Product be made on a prepayment, cash-on-delivery (COD), standby letter of credit, or other secured or collateralized basis acceptable to Seller. Until Buyer satisfies Seller's required assurance, Seller may suspend performance (including shipment) without liability and without waiving any other rights.

**6. FORCE MAJEURE.**

6.1. Seller's failure or inability to make, or Buyer's failure or inability to take, any delivery or deliveries when due, or the failure or inability of either Party to timely perform any other obligation required of it under this Agreement, other than the payment of money, if caused by Force Majeure, as hereinafter defined, shall not constitute a default of this Agreement or subject the Party affected by Force Majeure to any liability to the other; provided that the Party so affected:

- (a) notifies the other Party in writing within five (5) Business Days of becoming aware of the Force Majeure event, stating its expected duration and the anticipated effect on its ability to perform; and
- (b) uses commercially reasonable efforts (but not the expenditure of unreasonable amounts) to mitigate the effects of the Force Majeure and resume performance as soon as practicable.

6.2. The Party shall promptly notify the other Party when the Force Majeure circumstance no longer affects its ability to perform its obligations hereunder. The quantity of Product to be delivered shall be reduced by that quantity not delivered as a result of the Force Majeure circumstance, unless both Parties agree that the total quantity to be delivered under this Agreement should remain unchanged. For so long as Seller's ability to perform is affected by the Force Majeure circumstances: (i) Seller may, at its option, elect to allocate its total production of the Product among its various requirements for the Product (e.g., manufacturing and sales) in a manner the Seller considers practicable and which, in the opinion of Seller, is fair and reasonable; and, (ii) Buyer may obtain the quantities of Product which Seller is unable to deliver from another source without any obligation to Seller. During the time that Seller is unable to make deliveries or otherwise perform, it shall not be obligated to procure, or to use its best efforts to procure, any quantity of the Product to be sold to Buyer under this Agreement from any alternate producer or supplier.

6.3. As used herein, the term "Force Majeure" means any act of God, nature or the public enemy, accident, explosion, fire, flood, drought, earthquake, perils of sea, strikes, lockouts, labor disputes, riots, sabotage, embargo, global pandemics, epidemics, war (whether or not declared and whether or not the United States is a participant), terrorism, cyberattack, federal, state or municipal legal restriction or limitation or compliance therewith, government action or inaction (including denial or delay of permits or licenses), failure or delay of transportation, shortage of, or inability to obtain, raw materials, supplies, equipment, fuel, gas, power, labor, or other operational necessity (including, without limitation, the inability to produce the Product due to a co-product circumstance), interruption or curtailment of power supply, supply chain disruption, or any other circumstance of a similar or different nature which is beyond the reasonable control of the affected Party.

6.4. A Party is not required to resolve labor disputes or disputes with suppliers of raw materials, supplies, equipment, fuel or power, or seek alternate sources thereof except in accordance with such Party's business judgment as to its best interest. Further and for avoidance of doubt, Seller shall not be required to repair and/or rebuild its production facilities for the Product or facilities related thereto that may be materially damaged or destroyed. In the event a Force Majeure circumstance affects either Party's performance under this Agreement for at least ninety (90) consecutive days, the Party who is able to perform may terminate this Agreement upon Written Notice to the affected Party.

## **7. HARDSHIP.**

7.1. If, during the term of this Agreement, either Party experiences a Hardship the affected Party may initiate a renegotiation of the applicable base price(s) by providing Written Notice to the other stating the grounds upon which the base price(s) adjustment is requested ("Hardship Notice").

7.2. Upon service of a Hardship Notice, the Parties will promptly negotiate in good faith any appropriate price revision. The Party issuing the Hardship Notice must provide reasonable supporting documentation, including impacted costs, relevant dates, and the requested adjustment. Pending agreement, Seller may implement an interim surcharge or cost pass-through reflecting Seller's demonstrated increased costs attributable to the Hardship on at least ten (10) days' prior Written Notice to Buyer, and Buyer shall pay such interim surcharge pending final resolution, subject to true-up upon final agreement. If the Parties do not agree within thirty (30) days after the Hardship Notice, the issuing Party may terminate

this Agreement by Written Notice given within the next thirty (30) days, effective thirty (30) days after that termination notice.

- 7.3. Notwithstanding the foregoing, Seller may, in lieu of termination, continue to supply Product only at Seller's then - current price (including any interim adjustment) and on Seller's standard commercial terms. Any termination under this Section will not relieve Buyer of its obligations to pay for all Product delivered and all amounts accrued through the effective date of termination, and Buyer will purchase (and Seller will supply) all accepted purchase orders and any committed volumes scheduled for delivery during the notice period.
- 7.4. Hardship will include, for Seller, any material increase in Seller's costs to produce, procure, pack, store, handle, or deliver the Product, including increases in the costs of raw materials, energy, labor, transportation, insurance costs, and any material disruption in Seller's supply chain or availability of inputs. For example, where the enactment or requirement of any governmental law or regulation and/or judicial or administrative order requires Seller or Buyer to invest capital with respect to the production or use of the subject Product and without revision to the base price structure, there would be no corresponding economic benefit generated by the investment to substantially offset the financial impact on that party.

## 8. PATENTS.

- 8.1. Seller warrants that the Product shall be delivered free of the rightful claim of any third person for infringement of any U.S. patent covering the manufacture of the Product. Seller does not warrant against infringement by, and assumes no responsibility by reason of, the use of the Product in combination with other materials or apparatus or in the operation of any process or apparatus. Buyer acknowledges and agrees that it is solely responsible for conducting its own due diligence to determine whether Buyer's intended use of the Product may need to be considered in light of patents of third parties. Buyer acknowledges and agrees that it is solely responsible for determining the existence of any such third party patents and their potential relevance to any application for which Buyer intends to use Product; and further acknowledges and agrees that Buyer is solely responsible for obtaining and paying for any license that may be required. Buyer acknowledges that no license, right or interest to any patents of third parties is granted to Buyer under this Agreement. Furthermore, purchase of the Product does not grant immunity to Buyer under any of Seller's patents relating to the use of the Product in combination with other materials or apparatus or in the operation of any process or apparatus.
- 8.2. In the event of the commencement of any suit or proceeding against Buyer for infringement covered by the above warranty of Seller, Seller will indemnify, hold harmless and defend Buyer therefrom, provided Buyer: (a) notifies Seller promptly, in writing, of the commencement of such suit or proceeding; (b) allows Seller sole control of the defense and settlement of such suit or proceeding in Buyer's name; (c) renders to Seller, at Seller's cost, all reasonable assistance and cooperation for the defense or settlement thereof; (d) does not make any admission of liability or settle or compromise any such suit or proceeding without the prior written consent of Seller; and (e) takes all reasonable steps to mitigate any damages or losses.
- 8.3. Except as expressly set forth in the preceding section, Buyer will indemnify, hold harmless and defend Seller from and against any claim, suit, damage, cost, expense, fine, liability or cause of action whatsoever, including reasonable attorney's fees, on account of, relating to, or arising out of any claimed infringement of the rights of any third party due to the use of the Product by Buyer, or any toll producer of Buyer, or the use, distribution or sale of any product made there from.
9. **TAXES.** Any tax, fee, levy, duty, surcharge, assessment, or other governmental charge of any kind, on the production, manufacture, sale, delivery, and/or shipment of the Product sold under this Agreement (other than taxes based upon Seller's net income), or entering into the costs thereof, whether imposed

by federal, state, municipal, or foreign authorities, imposed or becoming effective on or after the date of this Agreement, will be added to the price then in effect hereunder and will be paid to Seller by Buyer. Buyer shall provide Seller with any applicable exemption certificates or other documentation related to such charges reasonably requested by Seller.

## 10. COMPLIANCE.

- 10.1. The Parties acknowledge that they, as well as the Product and technology (“Items”) sold or otherwise transferred under this Agreement, may be subject to U.S. and other export controls, embargoes, sanctions and similar laws, regulations and requirements (“Export Controls”), as well as Seller’s export policies, controls, and procedures as communicated to Buyer in writing by Seller during the course of their business relationship hereunder (“Compliance Requirements”). Buyer agrees to: (i) comply with Export Controls; (ii) comply with Buyer’s obligations under Compliance Requirements; and, (iii) provide Seller with all information and documentation deemed necessary by Seller for Seller to comply with all Export Controls and Compliance Requirements as they relate to this business transaction.
- 10.2. Buyer is to report to Seller’s Chief Compliance Officer (“CCO”) any suspected or actual violations of any Export Controls and/or Compliance Requirements that involve Items or employees of Seller or its subsidiaries, to the extent such reporting is legally permitted in Buyer’s country. Buyer may also report any suspected or actual violations of Compliance Requirements or of Qemetica Code of Conduct (“Code”), especially the portion of the Code related to compliance regulations.
- 10.3. Any such reports may be submitted without threat of retaliation, by direct email to Seller’s CCO at: [compliance@qemetica.com](mailto:compliance@qemetica.com)
- 10.4. Notwithstanding anything to the contrary set forth in this Agreement, should Buyer fail to comply with (i) Export Controls or (ii) Compliance Requirements, Seller reserves the right to take appropriate action, including immediately terminating this Agreement and its business relationship with Buyer without liability therefor to Buyer.

## 11. SELLER’S RIGHT TO SETOFF.

- 11.1. Notwithstanding any notice or other provision to the contrary contained in this Agreement, in the event of Buyer’s failure to timely pay any invoice to Seller in accordance with the payment terms contained herein or in any other agreement between Buyer and Seller, Seller, without notice or demand, may, but shall not be required to, immediately set off
- (a) any and all accrued but unpaid obligations owing from Seller to Buyer against;
  - (b) any obligation owing from Buyer to Seller, which obligation of Buyer is due but unpaid or unperformed.
- 11.2. Any such setoff will be deemed to have occurred on the date Written Notice of such setoff is provided by Seller to Buyer. If Buyer subsequently pays all or a portion of any balances reduced by such setoff, Seller agrees that it promptly will issue an appropriate credit memo to Buyer for any overpayment which results. In the event that Buyer files or has filed against it a petition for relief under title 11 of the United States Code (the “Bankruptcy Code”), Seller, in its sole and exclusive discretion, shall have the right to institute an administrative freeze on the payment of any sums due and owing from Seller to Buyer under any agreement between the parties, including, without limitation, customer rebates, refunds or any monies under customer programs or incentives coming due and owing by Seller to Buyer under the terms of this Agreement or any other agreement and Buyer hereby consents to relief from the automatic stay being granted to Seller under Bankruptcy Code Section 362(d), on the filing of any appropriate motion, to effect setoff of any sums due and owing from Seller to Buyer against any sums due and owing from Buyer to Seller.

## 12. BANKRUPTCY EVENT.

- 12.1. **Executory Contract.** Buyer and Seller each hereby agree that there are ongoing material obligations owed by each to the other under this Agreement, other than the right to payment, such that the Agreement is an “executory contract” within the contemplation of Section 365 of the Bankruptcy Code.
- 12.2. **Conditions Precedent To Deliveries in Event of Bankruptcy.** In the event that Buyer files or has filed against it a petition for relief under the Bankruptcy Code, Seller, in its sole discretion, shall have the right to stop any shipments of the Product or any other goods then in transit to Buyer, and thereby exercise an immediate right of possession thereto.
- 12.3. **Change in Payment Terms in Event of Bankruptcy.** In the event that Buyer files or has filed against it a petition for relief under title 11 of the United States Code (the “Bankruptcy Code”), Seller shall have the right to change the payment terms of any further shipments to “cash in advance,” or “cash on delivery,” as Seller may determine to be appropriate in its sole and exclusive discretion.

**13. ASSIGNMENT.** This Agreement is not assignable by either Party, in whole or in part, without the prior written consent of the other (which consent shall not be untimely or unreasonably withheld); provided, however, that Seller may assign this Agreement, in whole or in part, to any affiliate or subsidiary of Qemetica US Silica LLC, or to any successor in connection with a merger, acquisition, or sale of all or substantially all of Seller's assets, without Buyer's consent upon Written Notice to Buyer. Any attempted assignment by Buyer without such consent, whether by operation of law or otherwise, shall be void. If the non-assigning Party does not respond within fifteen (15) Business Days to a Written Notice from the assigning Party requesting written consent to the assignment, the non-assigning Party will be deemed to have consented to the assignment. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the successors and assigns of the respective Parties hereto, including without limitation, any purchaser of Buyer's or Seller's respective businesses or facilities as to which this Agreement relates.

## 14. DISPUTE RESOLUTION.

- 14.1. Except for claims to enforce intellectual property rights or confidentiality obligations, any dispute arising out of or relating to this Agreement will first be escalated, upon Written Notice by either Party, to the Parties' senior executives with authority to settle the dispute, who will meet (in person or remotely) within twenty (20) days and attempt in good faith to resolve it. These discussions will be confidential and treated as compromise and settlement negotiations under applicable rules of evidence.
- 14.2. If the dispute is not resolved within forty-five (45) days after the escalation notice, the Parties will attempt non-binding mediation under the CPR mediation rules (or other mutually agreed rules) using a neutral mediator selected by the Parties (or, failing agreement, from the CPR Panels of Distinguished Neutrals). Mediation will conclude within thirty (30) days after the mediator is selected (unless the Parties agree otherwise). Each Party will bear its own fees and costs and the Parties will share the mediator's fees equally. All mediation proceedings are non-binding and confidential.
- 14.3. After the foregoing procedures are exhausted, either Party may litigate the dispute exclusively in the state or federal courts located in Delaware, and each Party irrevocably submits to the jurisdiction of those courts.

**15. WAIVER.** The failure of either Party to enforce at any time any of the provisions of this Agreement shall not constitute a waiver of that or any other provision of this Agreement, nor later affect the validity of this Agreement or any provision of this Agreement or the right of such Party to later enforce each and every provision of this Agreement. No waiver of any provision or breach of this Agreement will constitute a waiver of any other provision or breach. Any waiver must be in writing and signed by the waiving Party to be effective.

**16. SEVERABILITY.** If any term or provision of this Agreement is held invalid, illegal, or unenforceable, the remaining provisions will remain in full force and effect. The Parties will in good faith reform the affected provision to the maximum extent permitted by law to best reflect the Parties' original intent and allow the transactions contemplated by this Agreement to proceed; if the Parties cannot agree within reasonable time, a court may reform the provision accordingly.

**17. GOVERNING LAW.** This Agreement and the relations of the Parties under this Agreement shall be governed by the local laws of Delaware (without giving effect to the conflict of law principles thereof), and in the previous regard Seller and Buyer mutually agree that the United Nations Conventions on Contracts for the International Sale of Product does not apply to the Agreement or the sale by Seller to Buyer of the Product.

**18. ENTIRE AGREEMENT.** This Agreement, including all of the documents referred to in the Agreement, constitutes the entire agreement of the Parties with regard to the subject matter hereof and supersedes and cancels all prior and contemporaneous communications, commitments, representations, warranties, and/or contracts between the Parties relating to the subject matter hereof, whether oral or written. No modification of this Agreement shall be of any force or effect unless reduced to a writing which specifically references this Agreement and is signed by authorized representatives of both Parties, and no modification shall be effected by any purchase order forms, acknowledgment forms, shipping documents, or other documents containing additional or different terms or conditions to those set forth in this Agreement. This Agreement may be executed in one or more counterparts (including by electronic signature or PDF), each of which shall be deemed an original, and all of which together shall constitute one and the same instrument.

**19. CONFIDENTIALITY.**

19.1. In the course of performing under this Agreement, Seller may disclose to Buyer certain confidential or proprietary information, including without limitation pricing, specifications, formulations, processes, technical data, business plans, customer lists, and trade secrets, whether disclosed orally, in writing, or by any other means ("Confidential Information").

19.2. Buyer shall: (a) hold all Confidential Information in strict confidence and not disclose it to any third party without Seller's prior written consent; (b) use Confidential Information solely for the purpose of performing its obligations or exercising its rights under this Agreement; and (c) protect Confidential Information using at least the same degree of care it uses to protect its own confidential information, but in no event less than reasonable care.

19.3. The obligations of this Section shall not apply to information that Buyer can demonstrate:

- (a) was publicly available at the time of disclosure or becomes publicly available through no fault of Buyer;
- (b) was already known to Buyer without restriction prior to disclosure by Seller;
- (c) was independently developed by Buyer without use of or reference to Confidential Information; or
- (d) is required to be disclosed by applicable law, regulation, or court order, provided that Buyer gives Seller prompt Written Notice of such requirement and cooperates with Seller in seeking a protective order or other appropriate remedy.

19.4. Upon termination or expiration of this Agreement, Buyer shall promptly return or destroy all Confidential Information in its possession or control, and shall certify such return or destruction in writing upon Seller's request. The obligations of confidentiality set forth in this Section shall survive termination or expiration of this Agreement for a period of five (5) years.

- 20. INTELLECTUAL PROPERTY OWNERSHIP.** Nothing in this Agreement is intended to transfer or grant to Buyer any right, title, or interest in or to any intellectual property of Seller, including without limitation patents, trademarks, trade names, copyrights, trade secrets, know-how, formulations, processes, designs, specifications, or other proprietary rights, whether or not embodied in or related to the Product. All intellectual property rights in and to the Product, including any specifications, technical information, or data provided by Seller to Buyer, shall remain the sole and exclusive property of Seller. Buyer shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive the composition, formulation, or manufacturing process of the Product without Seller's prior written consent.
- 21. SURVIVAL.** The following provisions will survive the termination or expiration of this Agreement for any reason and continue in full force and effect in accordance with their respective terms: Section 2 (Warranty and Limitation of Remedy), Section 8 (Patents), Section 9 (Taxes) (with respect to amounts accrued prior to termination), Section 10 (Compliance), Section 11 (Seller's Right to Setoff), Section 14 (Dispute Resolution), Section 15 (Waiver), Section 16 (Severability), Section 17 (Governing Law), Section 18 (Entire Agreement), Section 19 (Confidentiality), Section 20 (Intellectual Property Ownership), Section 22 (No Third-Party Beneficiaries), and this Section, together with any other provision that by its nature or express terms would be reasonably expected to survive.
- 22. NO THIRD-PARTY BENEFICIARIES.** This Agreement is entered into solely for the benefit of Seller and Buyer and their respective permitted successors and assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any other party any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.