

# Terms and Conditions of Sale

## Nelson Brothers Specialty Chemicals, LLC

**1. Terms of Sale.** These Terms and Conditions of Sale and all terms and conditions set forth on any purchase order issued by Customer and accepted by Nelson Brothers Specialty Chemicals, LLC or any of its affiliated companies including but not limited to Nelson Brothers, Inc. (any such company referred to herein as “NB”), related to Customer’s purchase of Products from NB (“Purchase Order”) represent the entire agreement between Customer and NB for the purchase of Products (this “Contract”). In the event of any inconsistency between the terms of this Contract and the terms of any Purchase Order, the terms of this Contract shall control. Any additional or different terms proposed by Customer on any invoice or other document proposed by Customer are specifically rejected, unless expressly agreed to in a writing signed by NB. No amendment, addition, or modification of any provision of this Contract is binding unless it is in writing, signed by the party to be bound and is specifically described as an amendment or modification of this Contract. NB may terminate its relationship with Customer at any time and for any reason.

**2. Prices.** After the expiration of any quoted price to Customer, NB reserves the right to change the prices for Products.

**3. Payment Terms.** Payments are due no later than thirty (30) days from Customer’s receipt of NB’s invoice. Payments not received when due shall incur service charges at the rate of 1.5% of the unpaid amount per month (18% per annum) until paid. NB reserves the right, among other remedies, to limit or cancel the credit of Customer, suspend further deliveries or performance, or terminate this Contract if Customer fails to pay for any Products when due.

**4. Limited Warranty.** NB warrants title and that the Products shall conform to NB’s published or agreed specifications in effect on the effective date of the Purchase Order; provided that any deviation from the specifications caused by the actions of Customer or any third party are expressly excluded from this warranty. EXCEPT AS EXPRESSLY PROVIDED OTHERWISE IN THIS CONTRACT, THE PRODUCTS ARE DELIVERED AS IS, NB EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A

PARTICULAR PURPOSE, WHETHER THE PRODUCTS ARE USED ALONE OR IN COMBINATION WITH ANY OTHER GOODS OR MATERIALS. NB warrants that any services provided to Customer shall satisfy the standard of care normally provided in the performance of similar work under similar circumstances.

**5. Inspection; Acceptance.** Customer shall promptly examine the Products following receipt at the delivery point specified in the Purchase Order (the “Delivery Point”) for any damage, defect or shortage. Customer shall provide to NB all claims for breach of warranty, damage, defect, or shortage in writing within 30 days after receipt of the Products. Customer’s exclusive remedy under Sections 4 and 5 shall be, at NB’s option, replacement of the Products, or payment of an amount not to exceed the price of the Products made the subject of the claim.

**6. Product Returns.** No special-order items or nonstandard stock items may be returned. Other returns of Product shall not be accepted unless Customer obtains prior written approval and transportation instructions from NB. All Products returned to NB must be in full containers, boxes, or cases, unopened and in the same condition as when delivered. Products may be returned for exchange or credit to Customer’s account only. NB shall give no cash refunds with respect to any Products returned. Returned Products accepted for exchange or credit are subject to a restocking charge of 30% of the prices of such Products. Customer shall also pay all transportation charges to return the Products.

**7. Delivery.** Delivery dates are estimates only and are non-binding. No Purchase Order should request a delivery date that is less than 21 days from the date of the Purchase Order. Title to and risk of loss of the Products shall pass to Customer upon delivery at the Products’ designated Delivery Point. NB’s weights and volumes at Delivery Points shall govern. Demurrage and detention charges shall be for Customer’s account.

**8. Force Majeure; Allocation.** Notwithstanding anything to the contrary in this Contract, NB may suspend its performance under this Contract if performance is prevented or delayed by: acts of God; acts of civil or military authorities; war; riot; fire; explosion; flood; sabotage or acts of terrorism; lack of adequate fuel, power, raw materials, labor, containers or transportation

facilities; difficulty in obtaining raw materials from NB's usual sources of supply; implementation of or changes to governmental laws, regulations, or orders; breakage or failure of machinery or apparatus; strikes; labor disputes; acts or omissions of Customer, its employees, officers or agents; the declaration of a force majeure by a key supplier or subcontractor of NB; or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of NB which makes impractical, financially or otherwise, the manufacture, transportation, or shipment of the Products or of a material or other resource upon which the manufacture or transportation of the Products depends (a "FM Event"). During an FM event, NB may allocate its available supply of the Products or such material (without obligation to acquire other supplies of any such Product(s) or material) among itself and its customers on such basis as NB determines to be equitable without liability for any failure of performance which may result therefrom.

Notwithstanding any obligation between the Parties, in no event shall NB be required to provide the Products below its fully allocated plant gate cost or acquisition cost plus freight to destination. In the event the Parties are unable to reach agreement on alternative pricing during the time period affected by any FM Event, this Contract may either be suspended during the time period affected by such condition(s) or NB may terminate any supply arrangement with Customer.

**9. Limitation of Liability; Indemnification.** (A)

NOTWITHSTANDING ANY WARRANTY OR OTHER PROVISION OF THIS CONTRACT, IN NO EVENT SHALL NB BE LIABLE FOR INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST PROFITS, REVENUES OR OPPORTUNITIES, DEPRECIATION OR DELAY, EVEN IF SUCH DAMAGES COULD BE CONTEMPLATED BY THE PARTIES; (B) UNDER NO CIRCUMSTANCES SHALL NB'S LIABILITY EXCEED THE LESSER OF (i) THE AGGREGATE GROSS SALES MADE PURSUANT TO THIS CONTRACT FOR THE 12 MONTHS IMMEDIATELY PRIOR TO THE INCIDENT GIVING RISE TO SUCH LIABILITY, OR (ii) \$500,000; (C) NB DISCLAIMS ALL OTHER LIABILITY TO CUSTOMER OR TO ANY OTHER PERSON OR ENTITY WHETHER BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY; (D) EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY ACTION AGAINST NB MUST BE BROUGHT WITHIN 12 MONTHS AFTER THE DATE SUCH CAUSE OF ACTION ACCRUED; (E) CUSTOMER AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS NB, TO THE FULLEST EXTENT ALLOWED BY LAW, FROM AND AGAINST ANY CLAIMS, LIABILITIES OR DAMAGES ARISING OUT OF OR RELATING IN ANY WAY TO CUSTOMER'S USE

OF THE PRODUCTS, INCLUDING CLAIMS ALLEGING NEGLIGENCE, WANTONNESS OR OTHER MISCONDUCT AGAINST NB; AND (F) EACH PROVISION IN THIS CONTRACT THAT PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTY, INDEMNIFICATION OR EXCLUSION OF DAMAGES IS SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND IS TO BE ENFORCED AS SUCH.

**10. Confidentiality.** All non-public, confidential or proprietary information of NB, including, but not limited to, information pertaining to specifications, formula, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, business plans, discounts, rebates, intellectual property, patents, copyrights, trade secrets, know-how, processes, other commercial topics and other technical topics, disclosed by NB to Customer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential," in connection with this Contract is confidential, solely for the use of performing this Contract and may not be disclosed or copied unless authorized by NB in writing. Upon NB's request, Customer shall promptly return all documents and other materials received from NB. NB shall be entitled to injunctive relief for any violation of this Section. This Section shall not apply to information that is: (a) in the public domain; (b) known to the Customer at the time of disclosure; or (c) rightfully obtained by the Customer on a non-confidential basis from a third party. The obligations created by this section "Confidentiality" shall survive for as long as the Confidential Information remains a trade secret pursuant to Alabama or Federal Law.

**11. Intellectual Property.** Customer acknowledges and agrees that Nelson Brothers, Inc. is the sole and exclusive owner of the IP associated with or attached to the Products or manufacturing processes related thereto and that Nelson Brothers Specialty Chemicals, LLC holds a license to use the IP to produce and sell the Products. Customer agrees that nothing in this Contract grants Customer any right, title or interest in or to any IP associated with the Products and agrees not to claim any right, title or interest to such IP or means of manufacturing or processing the Products by virtue of any rights granted to Customer by this Contract. As used herein, "IP" means any intellectual or industrial property right anywhere in the world including any patent, patent application, Product formulation or concentration, manufacturing process, know how, specifications, formula, samples, copyrights, trade secrets, know-how, processes, copyright (including copyright in manuals, databases, promotional materials, and other materials), trademark, registered design and

other design rights, and any other rights to technical or other information of NB. Customer shall not and shall not attempt to reverse engineer the Products or determine product specifications or raw materials contained therein.

**12. Assignment.** Neither party may assign its rights or obligations under this Contract without the prior written consent of the other party, which consent shall not be unreasonably withheld, provided, however, that NB may assign its rights, powers, duties or obligations under this Contract to: (i) its parent company or any present or future subsidiary (whether direct or indirect) of NB or such parent company, or (ii) a third party in connection with a sale of all or a significant portion of NB's stock or assets.

**13. Notices.** All notices required or permitted to be given hereunder shall be in writing and shall be deemed given upon delivery, only if (i) delivered by nationally or internationally recognized courier service to 500 Old Baltimore Rd, Parrish, AL 35580; and (ii) copied by email to Dave Pristic (Vice President) – [dave.pristic@nelbro.com](mailto:dave.pristic@nelbro.com); and to Ralph Hymer (Chief Operating Officer of Nelson Brothers, Inc.) – [rhymr@nelbro.com](mailto:rhymr@nelbro.com).

**14. Governing Law.** The validity, interpretation and performance of this Contract and any dispute connected herewith shall be governed by and construed in accordance with the laws of the State of Alabama without regard to its conflicts of law provisions. Jurisdiction and venue of any legal proceeding shall be in the United States District Court for the Northern District of Alabama to the exclusion of any other forum and the Parties consent to such jurisdiction and venue. The United Nations Convention on Contracts for the International Sale of Goods of 1980 shall not apply. If either party brings any action or proceeding against the other party relating to this Contract, the prevailing party shall be entitled to its costs and expenses of suit, including reasonable legal costs.

**15. Entire Agreement.** This Contract constitutes the exclusive and complete understanding of the parties and is an agreed upon allocation of risks between them. No amendment, addition or modification of any provision of this Contract, including the acceptance of purchase orders or shipping instructions containing different or additional terms or conditions, is binding unless it is in writing, signed by the party to be bound and is specifically described as an amendment or modification of this Contract.

**16. Miscellaneous.** There are no third-party beneficiaries to the terms of this Contract. The terms of the Contract that by their nature are reasonably intended to survive the Contract shall survive the termination of this Contract. No waiver by a Party of any one or more breach of this Contract will operate or be construed as a waiver of any future breach of this Contract whether of a like or different character. If any provision of the Contract is held by a court of competent jurisdiction to be unenforceable, the remaining provisions of the Contract shall remain in full force and effect. Nothing in this Contract shall be interpreted against a party because that such party drafted or prepared any part of this Contract. Electronic signatures to this Contract or any Purchase Order or acceptance of same shall be accepted as originals.

**17. Export Controls and Related Regulations.** Customer represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List. Customer shall comply with all applicable U.S. economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC; the Export Administration Regulations administered by BIS; and the International Traffic in Arms Regulations administered by DDTC. NB may terminate this Contract and discontinue any ongoing supply to or business with Customer immediately, without notice and without liability, upon NB becoming aware that Customer is named on any restricted party list.

**[End of Terms and Conditions of Sale]**