

## TERMS AND CONDITIONS OF SALE

1. **TERMS AND CONDITIONS:** The terms and conditions set forth herein shall supersede any terms and conditions of customer/buyer's order which are additional to and/or inconsistent or contradictory with these terms and conditions. Any modification, change or addition to these terms must be in writing and signed by a duly authorized corporate officer of seller.
  
2. **LIMITED WARRANTY:** Vexcon warrants for a period of one (1) year from the date of manufacture that the goods supplied hereunder shall be of its standard quality and free of defects, and conforms to (a) Vexcon's published specifications in force on the date of acceptance by Vexcon of the order and (b) the sample which has been made available for testing by buyer prior to sale. Any claim under this warranty must be made in writing to Vexcon Chemicals within sixty (60) days after such non-conformity is first discovered. As the **EXCLUSIVE REMEDY** for any breach of this Limited Warranty, Vexcon at its option shall replace nonconforming goods or refund the purchase price. Since methods of use and application are beyond Vexcon's control, this Limited Warranty **IS IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE CONCERNING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS LIMITED WARRANTY IS ALSO IN LIEU OF ANY OTHER POSSIBLE LIABILITIES OF VEXCON, WHETHER ALLEGED TO ARISE BY AGREEMENT OR BY OPERATION OF LAW, RESPECTING THE SALE, APPLICATION, USE OR FUNCTION OF VEXCON'S PRODUCTS, INCLUDING BUT NOT LIMITED TO CLAIMS OF NEGLIGENCE, GROSS NEGLIGENCE, MISUSE, STORAGE DAMAGE, MISAPPLICATION, ACCIDENT, STRICT LIABILITY OR ANY OTHER TORT.** No person is authorized by Vexcon to assume for it any other liability of any kind in connection with the sale or use of products manufactured and sold by it, and there are no oral agreements or warranties collateral to or affecting any sale or use. All of the foregoing arises under the substantive law of Pennsylvania without regard to principles of conflicts of laws.
  
3. **LIMITATION OF LIABILITY:** IN ALL EVENTS VEXCONS LIABILITY SHALL BE LIMITED TO THE PURCHASE PRICE OF PURCHASED PRODUCTS. IN NO EVENT SHALL VEXCON BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE, REAL OR PERSONAL, ATTRIBUTED TO ITS PRODUCTS, NOR FOR ANY EXCAVATION, REMOVAL, REAPPLICATION, DOWN TIMES, CLEANUP, LOSS OF USE, LOSS OF OPPORTUNITY, LOSS OF MARKET VALUE, LOSS OF RENTAL VALUE OR FOR ANY LOSS OF PROFITS OR OTHER SPECIAL, INCIDENTAL, RESULTING, CONSEQUENTIAL OR EXEMPLARY DAMAGES.
  
4. **SELLER'S LIABILITY:** Seller shall have no liability for loss of profits or for consequential damages, resulting from the sales, resale or use of the materials sold hereunder (whether singly or in combination with other substances) whether or not claimed to be due to seller's negligence or the breach of seller's warranty set forth above. In any event, the maximum liability, if any, of seller resulting from or related to the failure of materials to meet specifications, short count or weight, defects, delays, failure to ship, loss of or damage to materials or any other cause whatsoever, whether similar or dissimilar to the foregoing and regardless of whether or not the result of seller's negligence, shall be at seller's sole election, to replace the product or refund the purchase price actually paid, provided that seller's obligation for refund or replacement shall be conditioned upon buyer giving seller written notice of any claim within thirty (30) days of receipt of the material and returning upon seller's written request, material for which refund or replacement is sought in as good condition as received by buyer. Failure to give such notice or make such return shall relieve seller of any liability. Buyer specifically agrees that the foregoing shall be buyer's sole remedy. **IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE MATERIAL ACTUALLY PAID AND BUYER AGREES TO SUCH LIMITATION.**

5. **DELIVERY:** Purchaser agrees to inspect all materials as it is unloaded, and if transit damage has occurred, Purchaser will substantiate the claim with the carrier on the freight receipt. Unless so noted, any materials offloaded will be considered as delivered in good condition. All shipments are F.O.B. Philadelphia, PA, the Vexcon Chemicals shipping point, unless otherwise expressly agreed in writing. Purchaser assumes all risk and liability for loss of damage resulting from the shipment, handling, use or application of the goods and their containers.
  - a. Times of delivery are only estimates and not guaranteed. Vexcon will use its commercially reasonable efforts to fulfill each order on the confirmed delivery date and to avoid or limit delays.
  - b. The Purchaser is obligated to take possession of the ordered products on the confirmed delivery dates. Should the Purchaser for any reason, except for delivery of defective products, not take possession of the products at the time of delivery;
    - i. The products shall be deemed to have been delivered
    - ii. The risk in the products shall pass to the Purchaser and
    - iii. Vexcon is entitled to store the products at the sole expense and risk of the Purchaser. Such protective measure does not suspend the payment obligation of the Purchaser.
  
6. **PURCHASE PRICE AND PAYMENT:** All orders are subject to approval of purchaser's credit and final acceptance by Vexcon Chemicals. Customer shall pay the full price for purchased products, together with any transportation charges, taxes and other charges, within 30 days after the date of invoice. Special quotations are subject to the same terms and conditions of sale in addition to additional terms as specified on the quotation, see Section 7 for additional terms and conditions. Pricing and specifications are subject to change without notice. All orders accepted by us are subject to prices in effect at the time of order. Typographical and clerical errors subject to correction in all cases. Vexcon Chemicals reserves the right to require payment in full before shipment, or in the case of products made to special order, before the manufacture thereof. Custom Colors and other made to order products can not be canceled once accepted by Vexcon and will ship without delay. Vexcon may modify or terminate any credit terms and/or limits previously granted at any time and without notice. Past due balances are subject to a 1 ½% per month service charge or the maximum allowable legal amount, which ever is lower. All payments shall be made without set-off, deduction or counter claim. Customers with open balances or open credit terms who pay by credit card will be subject to a convenience fee of 4%. In the event of default or litigation customer/buyer agrees to pay all costs of collection incurred by Vexcon including attorney fees.
  
7. **PURCHASE PRICE QUOTATIONS AND FREIGHT TERMS:**

The following additional terms and conditions will apply to all quotations:  
Quantities in excess or below (>10%) of quantities referenced in the quotation will be re-priced at time of order. Please contact your Vexcon Representative for cost escalators after the "Cancel Date". Single purchase order required prior to "Cancel Date" for total estimated material noted in the quote. All purchase order quantities must ship before "Cancel Date". Orders shipped after the "Cancel Date" will require re-pricing. Where quantities allow, truck load releases only unless agreed to in writing by an authorized Vexcon representation.

The following additional terms and conditions will apply to all freight:

  - a. All prices are F.O.B. "Collect" Vexcon Chemicals, Philadelphia PA or shipping point. There are no pre-pay and add shipments. If you have a contract with the carrier being used for your shipment your discount will override Vexcon's discount or any freight cost provided by Vexcon.
  - b. Vexcon makes no guarantee as to the availability of trucking or the current freight cost which may differ from originally quoted.
  - c. Freight rates provided at time of quotation: Vexcon makes no guarantee as to actual rate/cost which can differ at time of shipment.
    - i. Collect shipments: customer is responsible for rates at time of shipment. Please contact Customer Service prior to shipment to get current rate(s).
    - ii. Pre-paid shipments: if the freight cost has changed from time of quotation; Vexcon will add the additional freight cost to customers order.
  
8. **TAXES:** In the absence of proper exemption certificates forwarded to Seller by Buyer, Seller shall collect from Buyer all applicable sales or use taxes or other proper taxes or governmental charges now imposed by Federal, State or Local Authorities upon the production, sale and/or shipment of material or hereafter becoming effective prior to delivery of material.

9. **CONTINGENCIES:** In the event Seller is precluded from filing the order hereby acknowledge, whether in whole or in part, as a result of war, acts of terrorism, fire, flood, strike, labor trouble, change in ownership, breakage of equipment, accident, riot, act of governmental authority, acts of god or any other cause whatsoever, whether similar or dissimilar to the foregoing, which is beyond the reasonable control of Seller and/or which interferes with the production, supply or transportation of the material purchased hereby, or in the event of Seller's inability to obtain on terms deemed by Seller to be practicable any raw material (including energy source) used in connection therewith, in any such event Seller shall have no liability for damages, whether direct, indirect or consequential or otherwise resulting from or related to the failure to fill such order either in whole or in part. Furthermore, Seller may, during any period of shortage due to any of said causes, allocate its supply of raw material among its various uses thereof (e.g., manufacturing and sales) in such manner as Seller deems practicable and allocate its supply of product (s) affected thereby among its various customers therefore (whether or not contract customers) in any manner which, in the opinion of Seller, is fair and reasonable.
10. **TITLE AND RISK OF LOSS:** Title and risk of loss for all products sold by Vexcon Chemicals will pass to Purchaser upon delivery to the carrier at the Vexcon Chemicals shipping location.
  - a. Vexcon Chemicals shall not be liable for any discharge, spill or other incident, including but not limited to expenses for any clean-up costs, involving any materials transported hereunder.
11. **RESPONSIBILITY:** Vexcon Chemicals assumes no obligation or liability for any technical or other advice given about the goods or the results to be obtained from them, whether alone or in combination with other materials. Purchaser is not entitled to rely on Vexcon Chemicals and must independently make its own evaluation of any advice given and the suitability, use, qualities and proper application of the goods ordered. Purchaser agrees to familiarize itself with and keep informed of any hazards to persons and/or property involved in handling and use of and applications for the goods, their proper labeling, storage and packaging and the containers in which the goods are shipped. Purchasers shall advise and warn its employees, customers, independent contractors and others who handle and use or can be expected to handle and use the goods of their hazards and proper use and storage.
12. **IDEMNIFICATION:** Buyer/Customer agrees to defend and indemnify Seller against and hold Seller harmless from any and all claims of whatsoever nature including, but not limited to, injuries to Buyer's employees or to third parties (including death) or for damages to the property of Buyer or to third parties caused by, arising directly or indirectly from, or occurring in (a) any handling of said materials, including but not limited to unloading railroad cars, tank cars, trucks, tank truck barges, or in handling containers of materials sold, and (b) any use of said materials.
13. **CREDIT:** If at any time in Seller's sole judgment, Buyer's financial condition shall be impaired or become unsatisfactory to Seller, in either such event, Seller reserves the right to require advance or COD payments before making shipment hereunder. Minimum order of \$500.00 required for credit terms. Vexcon may modify or terminate any credit terms and/or limits previously granted at any time and without notice. Past due accounts are subject to a 1 ½% per month service charge or the maximum allowable legal amount, which ever is lower.
14. **PATENT AND TRADE INFRINGEMENT:** Purchaser assumes liability for patent and copyright infringement when goods are made to purchaser's specifications.
15. **SHORTAGE AND DAMAGED GOODS:** Customer shall inspect products received against shipping documents upon receipt of the shipment at destination and notify Vexcon in writing of any shortages or damage within 72 hours after delivery. In addition, Note: If shipment is received in a damaged condition or short in number of packages, the customer must have the carrier note this fact on delivery receipt. Failure of customer to follow these requirements shall relieve Vexcon of any responsibility for such matters. All claims for loss or damage in transit must be made by Customer against the carrier. Errors in billings must be reported to customer service in writing to Vexcon Chemicals within five (5) days from receipt of shipment to secure adjustment.
16. **COST OF COLLECTION:** In the event of default or litigation Customer/Buyer agrees to pay all costs of collection incurred by Vexcon including attorney fees.

17. **RETURN POLICY:** For any sale material that a Customer purchased directly from Vexcon Chemicals and wishes to return for credit, the Customer must first contact Vexcon Chemicals. All requests must be made within 45 days of shipment. It must be mutually agreed that the material can be returned and a minimum 25% restocking fee will be charged. Credit will be issued against the Customers account when Vexcon Chemicals receives the approved return, in the original packaging and in resalable condition. Custom products, colors and acrylic coatings are non-returnable. Vexcon Chemicals will not accept the return of merchandise without prior written authorization. Customer may initiate a return by contacting their Customer Service Representative to obtain a return material authorization (RMA) number. The Customer must prepay all freight charges from the Customer to Vexcon Chemicals. In the case of an exchange Customer will be responsible for out bound freight charges. Returns submitted without an RMA will not be accepted. The RMA will expire 30 days from date of issue. Review RMA for any additional terms and conditions. Only cash or credit card sales will receive a like kind refund net of 25% restocking fee. Under no circumstances will cash refunds be given for credit sales. Credit sales will receive company credit memo net of 25% restocking fee.
18. **ORDERING INFORMATION:**
- a. Drums will not ship on pallets unless requested. There is an \$8.00 per pallet charge.
  - b. An order acknowledgement will be sent confirming product, packaging, quantity and price. This will serve as our confirmation and your acknowledgement of order. Any changes must be timely communicated but not more than 24 hours after receipt of order acknowledgement. Barring any changes or errors, order will be considered correct and final. Any changes subsequent to final acceptance could result in delays and/or additional charges.
  - c. Products sold in less than case quantity are subjected to \$2.00/gallon up-charge.
  - d. Repair products will be available in less than pallet quantity for a \$2.00/bag up-charge.
  - e. Purchase order is required on all orders.
  - f. Correct product name and price must appear on purchase order. For special quoted pricing, reference Vexcon quote number.
  - g. Please reference a specific ship date if one is required.
  - h. Special quotes: are subjected to the same terms and condition of sales in addition to additional terms as specified on the quotation.
  - i. Minimum order requirements: \$250.00 on all orders to be shipped from Vexcon. \$125.00 for all customer pick-ups. Below minimum orders require a 10% processing charge with a minimum charge of \$10.00.
  - j. See Standard and Custom Color Ordering information for available standard colors, custom color pricing, other charges and conditions of sale. Custom Color and other made to order products cannot be canceled once accepted by Vexcon and will ship without delay.
  - k. Under certain conditions, surcharges may be applied to our products without notice.
  - l. Products shipped Via UPS, Fed Ex or similar services will be subjected to a the following handling charges:
    - i. Small packages - \$15.00/ea.
    - ii. Large packages - \$25.00/ea.
    - iii. Hazardous shipments are subjected to a \$10.00/ea. Charge in addition to packaging charges.
19. **MISCELLANEOUS:** This contract contains the full and entire agreement between Buyer/Customer and Vexcon Chemicals. The Contract may not be amended or altered in any manner unless such alteration or amendment is in writing and signed by an authorized representative of Vexcon Chemicals. This agreement, and the parties actions under this agreement which is to be construed and enforced in accordance with the laws of the Commonwealth of Pennsylvania without regard to principles of conflicts of laws.
- a. In the event that any one or more of the provisions of the Agreement, shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed in the manner which reflects as closely as possible the provision which has become ineffective.
  - b. Failure or delay by Vexcon Chemicals in enforcing or partially enforcing any provision of the Agreement will not be construed as a waiver of any of its rights under the Agreement. Any and all claims by Purchaser will be deemed waiver unless made in writing to Vexcon Chemicals within 10 days of when Purchaser learns of reasonably should have learned about the claim and in any event not later than 30days after shipment.
  - c. Any waiver by Vexcon Chemicals or any breach of, or any default under, any provision of the Agreement by the Purchaser will not be deemed to be a waiver of any subsequent breach or default.
  - d. The Purchaser may not assign any of its rights or obligations without the prior written consent of Vexcon Chemicals. Vexcon Chemicals may assign any of its obligations under this Agreement to any of its affiliates.