

## GENERAL TERMS AND CONDITIONS OF SALE ("Terms and Conditions")

### 1. GENERAL:

Unless otherwise agreed in writing, these Terms and Conditions, together with the relevant Sales Agreement, price lists, price schedules, invoices, and/or other schedule(s) attached or otherwise available on the website at [www.nutrien.com](http://www.nutrien.com) to the Sales Agreement ("Schedules") (collectively, "Individual Contract Documents"), as the case may be, constitute the entire agreement between the seller identified in the Sales Agreement to which these Terms and Conditions are attached, including any of its Affiliates, as defined herein (collectively, "Seller") and the buyer identified in the Sales Agreement to which these Terms and Conditions are attached ("Buyer") (Seller and Buyer each a "Party" and collectively, "Parties") for the purchase and sale of product ("Product") identified in the Sales Agreement to which these Terms and Conditions are attached and there are no understandings, commitments, representations or warranties of any kind, express or implied, written or oral, not expressly set forth in the Individual Contract Documents or these Terms and Conditions (together, this "Agreement"). Upon the earlier of Seller's acknowledgement or statement of intent to furnish any Product or acceptance of delivery of the Product from Seller, Buyer shall be deemed to be bound by and to have accepted this Agreement.

### 2. QUALITY:

(a) Seller shall sell the Product to Buyer free and clear of all encumbrances and in accordance with the product specifications identified in the Sales Agreement ("Specifications"). No claim related to the Product or this Agreement may be asserted by Buyer unless Buyer gives written notice to Seller within three (3) business days of the transfer of title of the Product to Buyer following which all claims by Buyer shall be deemed to be waived. Should Buyer at any time (i) commingle or blend the Product with other product(s), or (ii) process, use or modify the Product, Buyer shall, in either case, be deemed to have accepted the Product and waived all claims under this Agreement.

(b) If Buyer properly notifies Seller that the Product does not meet the Specifications ("Off-Specification Product") and provides evidence that the Product is Off-Specification Product, then Buyer will, at Seller's election, keep the Product and pay a mutually agreed reduced price or Seller will replace the Off-Specification Product with Product that meets the Specifications or credit Buyer's account with the amounts paid for the Off-Specification Product, as Seller may elect. If Seller does not agree with Buyer that the Product is Off-Specification Product, the Parties shall resolve the dispute in accordance with Section 19 hereof.

(c) The warranties set out in the first sentence of Section 2(a) are Seller's exclusive warranties, and SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY, SUITABILITY, OR FITNESS OF THE PRODUCT FOR ANY PARTICULAR PURPOSE. ANY IMPLIED WARRANTIES ARE EXPRESSLY DISCLAIMED AND EXCLUDED.

### 3. FORCE MAJEURE:

(a) Neither Party shall incur any liability to the other by reason of failure or delay in fulfilling its obligations (except with respect to payment for Product) where such failure or delay is beyond the reasonable control of the Party affected ("Affected Party"), has a material impact on the Affected Party and is caused by or results from acts of God, floods, fires, explosions, strike, lockouts, cessation, slowdown or stoppage of labour, sabotage, riots, war, enemy action, compliance with Laws, as defined herein, Specified Health Event, as defined herein, inability to obtain electricity or other type of necessary energy, raw materials or labor, failure of equipment, storage, loading facilities, interruption of transportation or pipelines not due to the acts or omissions of the Affected Party, failure of third party machinery due to accident or breakage, governmental restriction or prohibition of exports or imports, governmental blockade or hostility, governmental seizure or expropriation, the inability or failure by Seller's production facility to produce or deliver, either wholly or partially, the Product, or the inability

or failure by a supplier of the Product to Seller, to produce or deliver, either wholly or partially, the Product, or the closure of international trade routes, or any reduction of demand for one product produced in a co-product Seller's Facility as defined hereinafter resulting in a limited supply of the Product, or any other cause, whether of the same type or nature to the foregoing or not, beyond the reasonable control of the Affected Party and that would have a material impact on the Affected Party to perform its obligations, whether or not the contingency is of the same type or nature as those enumerated above (collectively, "Force Majeure").

(a) The Affected Party shall promptly provide notice to the other Party ("Notice") of the Force Majeure event ("Force Majeure Event") explaining in detail the full particulars of the Force Majeure Event and the expected duration thereof. The Affected Party may elect to suspend performance of all or any portion of its obligations to the other Party for such time as may be reasonably necessary under the circumstances and shall use its commercially reasonable efforts to remedy the Force Majeure Event. At the end of a Force Majeure Event, either Party may at its option choose to terminate any orders that have not been delivered to the Buyer ("Terminated Orders"). Thereafter, neither Party shall have any further obligations with respect to the Terminated Orders and any minimum quantity purchase or sale contractual commitments in this Agreement, if applicable, shall be reduced by the amount of the Terminated Orders. If Seller chooses to terminate an order at the end of a Force Majeure Event, Buyer shall issue a new order in accordance with the terms hereof. In the event a Force Majeure Event extends for more than ninety (90) calendar days and the Force Majeure Event caused material harm to either Party, either Party may terminate this Agreement upon written notice to the other Party.

#### **4. DELIVERY/COLLECTION – TITLE AND RISK:**

Unless mutually agreed otherwise in the Sales Agreement in writing, all Product sold hereunder will be delivered by Seller FCA (Incoterms® 2020 or its subsequent modifications as published by the International Chamber of Commerce) and for all Product sold hereunder, title, ownership and risk of loss shall pass to Buyer at the time the Product crosses the threshold of the carrier's vehicle, railcar, vessel, or other mode of transport during loading at Seller's designated facility at Seller's plant, storage facility or terminal (in each case "Seller's Facility"), as applicable. Thereafter Buyer shall bear and assume all risk of the Product and shall indemnify Seller and its Affiliates for all claims and liabilities. For collection of the Product, Buyer shall comply with the standard policies, rules and procedures applicable to the relevant Seller's Facility. Buyer shall return all pallets, containers, vehicles and other receptacles intended to be returned without delay, and in clean and good condition. Buyer shall unload Seller's equipment, as applicable, as soon as reasonably practicable and Buyer shall pay Seller's usual detention charges for each unit of Seller's equipment held at destination overstated free time. No reconsignment or other transfer whatsoever of Seller's equipment shall be made except with Seller's prior written consent.

#### **5. SHIPMENTS:**

(a) Where this Agreement covers more than one (1) shipment of the Product, Buyer shall give Seller at least ten (10) calendar days' notice of shipping dates, accompanied by shipping instructions, with respect to each delivery required hereunder. Seller shall make reasonable efforts to ship in accordance with Buyer's requested dates and instructions, taking into account Seller's production and shipment schedules and inventory stocks. Seller shall not be liable for failure to meet Buyer's requested shipping dates and instructions, except as may be expressly agreed by Seller in writing. Seller shall not be required to deliver in any month more than the monthly quantity specified in this Agreement, or, if no monthly quantity is specified, more than a pro rata amount of the entire quantity of said Products sold hereunder during one (1) calendar year. In the event that Buyer fails to take said specified or pro rata quantity in any month, Seller may, at its option, cancel such quantity or include same in subsequent deliveries hereunder.

(b) Seller's ability to supply the Product is dependent on continued availability of necessary raw materials from its usual and anticipated suppliers and continued availability of energy supplies. If raw materials or energy supplies are not readily available in sufficient quantities to permit Seller to meet its

total commitments for the Product, then Seller may allocate pro rata among its customers and its own requirements the Product (as available) in a manner that is reasonable in Seller's determination.

## **6. PRODUCT WEIGHTS:**

Seller's weights FCA Seller's Facility, as specified in the invoice, shall govern, unless proven in error. Product weight shall be rounded to the nearest three (3) decimal places.

## **7. REMEDIES AND TERMINATION FOR DEFAULT:**

(a) If Buyer defaults in the payment of any amount for a period of ten (10) calendar days beyond the due date of such payment, Seller shall, in its sole discretion, be entitled to (i) stop any Product in transit and defer any further deliveries or require cash in advance of any delivery until Seller has been satisfied of Buyer's ability to pay or creditworthiness, as the case may be; (ii) charge a reasonable rate of interest on any amounts owing; and/or (iii) terminate this Agreement between Seller and Buyer with immediate effect.

(b) Seller may terminate this Agreement upon ten (10) calendar days' prior written notice to Buyer if Buyer breaches any material term, condition, representation or warranty hereof; provided that if, during the above ten (10) calendar day notice period, Buyer cures its default, such termination will not be effective; and provided further, that Seller may, in its sole discretion, extend the period within which Buyer may cure its default.

(c) Either Seller or Buyer may terminate this Agreement upon ten (10) calendar days' prior written notice to the other Party in the event of the occurrence of any of the following events of default: (i) if the defaulting Party shall be or become insolvent or if, at Seller's sole discretion, the normal conduct of business (or such defaulting Party's credit) shall become substantially impaired by Buyer's credit problems; (ii) if the defaulting Party shall call any meeting of creditors or if a receiver or trustee shall be appointed for it or its assets; or (iii) if any petition, proceeding or action under any bankruptcy proceeding shall be filed or instituted by the defaulting Party or against it and, in the event such proceeding is filed against the defaulting Party, such proceeding is not dismissed within thirty (30) calendar days; provided that during the above ten (10) calendar day notice period, the defaulting Party cures its default, such termination will not be effective; and provided further, that the Party giving notice of such default may, in its sole discretion, extend the period within which the defaulting Party may cure its default. In the event of Seller's termination of this Agreement as set forth in Section 7(a), Section 7(b) or Section 7(c), Seller shall have all rights and remedies available to it at law or in equity against Buyer.

(d) Buyer acknowledges and agrees that Seller's right and remedies specifically include, but are not limited to, its rights under the Uniform Commercial Code Sections 2-609 and 2-702, as adopted under Illinois law.

(e) If Seller enforces any of its rights and remedies hereunder or under Law including for failure of Buyer to pay any invoice or indebtedness due to Seller when due or Buyer's breach of the Agreement, including the Terms and Conditions, Seller is entitled to collect from Buyer all of Seller's reasonable attorneys' fees, which shall be an additional obligation of Buyer to Seller.

(f) In the event Buyer shall fail to pay any amount for a period of ten (10) calendar days beyond the due date of such payment, or pay any obligation or indebtedness owed to Seller when due, then all obligations of Buyer owed to Seller shall become immediately due and payable, and Seller shall be entitled to immediate payment of such obligations and to enforce all of its rights and remedies hereunder and under Law with respect to all such obligations.

## **8. PRODUCT SAFETY:**

Buyer acknowledges that Seller has made Safety Data Sheets, including warnings and safety and health information concerning the Product and/or the containers for such Product sold hereunder available to

Buyer. Buyer agrees to promptly and properly disseminate such information so as to give warning of possible hazards, if any, to persons who Buyer can reasonably foresee may be exposed to such hazards, including Buyer's employees, agents, contractors or customers.

#### **9. ASSUMPTION OF RISK:**

BUYER REPRESENTS THAT IT IS FAMILIAR WITH THE CHARACTERISTICS, QUALITIES AND USES OF THE PRODUCT IT IS PURCHASING FROM SELLER AND THAT BUYER IS NOT RELYING ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH THE PRODUCT SUITABLE FOR ANY PARTICULAR PURPOSE OR USE. BUYER ASSUMES ALL RISK AND LIABILITY WHATSOEVER ASSOCIATED WITH THE PRODUCT, WHETHER SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES, AND FOR ANY AND ALL LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY OF BUYER OR OTHERS ARISING OUT OF THE USE, HANDLING, POSSESSION, OWNERSHIP, STORAGE, TRANSPORTATION, DISPOSAL, RESALE OR OTHER USE OF THE PRODUCT.

#### **10. TECHNICAL ASSISTANCE:**

Upon request, Seller may provide technical assistance to Buyer. This assistance, if provided, is intended to aid employees of Buyer with skill and knowledge of the handling and processing of industrial chemicals. Seller offers such assistance in good faith BUT WITHOUT ANY WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE AS TO THE ACCURACY, COMPLETENESS OR SUFFICIENCY THEREOF. SELLER EXPRESSLY DISCLAIMS WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR USE. BUYER ASSUMES ALL RISKS AND LIABILITY FOR ANY LOSS, DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF SUCH ASSISTANCE.

#### **11. INDEMNIFICATION:**

To the maximum extent allowed by Law, Buyer shall indemnify, hold harmless and defend Seller and its Affiliates and the successors and permitted assigns, former and current shareholders, directors, officers, employees, servants, managers, members, partners, representatives and agents of each of them (collectively, "Seller Indemnified Parties") from and against all Damages as defined herein which Seller may suffer or incur arising out of, related to or in any way connected with (i) any act, omission, negligence or willful misconduct of Buyer, its Affiliates, and their respective employees, subcontractors, agents, representatives or any other person under the control of or acting on behalf of Buyer (collectively, "Buyer Group"); (ii) the presence of any of Buyer Group at Seller's locations; (iii) Buyer Group's use, handling, possession, ownership, storage, transportation, disposal, sale or other use of the Product; (iv) Buyer's breach of or failure to perform or satisfy any of the representations and warranties, covenants or obligations under this Agreement; or (v) Buyer Group's violation or alleged violation of any Law. Buyer acknowledges that its liability and indemnity obligations under this Section 11 shall be without regard to the fault, negligence or strict liability of Seller Indemnified Parties, whether Seller Indemnified Parties' fault, negligence or strict liability is a joint, concurrent or partial cause excepting only the gross negligence or willful misconduct of a member of Seller Indemnified Parties.

#### **12. LIMITATION OF LIABILITY:**

(a) Notwithstanding any other provision contained herein, Seller Indemnified Parties' maximum liability to Buyer Group, and Buyer Group's sole and exclusive remedy, in respect of any claim of any kind for any loss or damage arising out of or in connection with or resulting from the purchase of the Product by Buyer from Seller or from the performance or breach of this Agreement by Seller shall be limited to the purchase price for the particular shipment of the Product with respect to which such matter arises or such claim relates.

(b) Notwithstanding any other provision of this Agreement, Seller Indemnified Parties shall not be liable to Buyer Group for any indirect, incidental or consequential damages that may be suffered or incurred by Buyer Group, including costs or claims arising from third party contracts, down time, lost production time, lost profits, lost earnings or business interruption. The limitations on, and releases

from, liability expressed herein shall apply regardless of how caused and under any theory of liability, including, negligence (in whole or in part), strict liability, breach of contract, default or otherwise, of Seller Indemnified Parties whose liability is limited, and shall survive completion of the termination of this Agreement for any reason.

(c) Any action by Buyer or any of its Affiliates for breach of this Agreement must be commenced within three (3) months from the date of delivery of the Product with respect to which such matter arises or such claim relates.

(d) For purposes of this Agreement, the term

- i. "Affiliate" means with respect to any Person, any Person that directly or indirectly controls, is controlled by or is under common control with such Person.
- ii. "Damages" means losses (including lost revenue, lost profit and diminution in value), Liabilities, claims, damages, deficiencies, Judgments, settlements, interest, taxes, fines, penalties, costs and expenses incurred or suffered (and, if applicable, reasonable attorneys' fees and costs and expenses of investigation, defense and collection associated therewith) but shall exclude any special, exemplary or punitive damages, except to the extent paid or payable to a third party.
- iii. "Governmental Entity" means any supranational, national, federal, provincial, state or local, domestic or foreign judicial, legislative, executive, administrative or regulatory agency or other governmental authority (or any department, agency, instrumentality, or political subdivision thereof) or body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, arbitral (public or private) or taxing authority or power of any nature.
- iv. "Judgment" means any judgment, decision, ruling, award, order, writ, injunction, stipulation or decree of a Governmental Entity or legally binding agreement with a Governmental Entity.
- v. "Law" or "Laws" means any federal, state, foreign or local statute, law (including common law), act, ordinance, rule, code, regulation, Judgment or other binding directive issued by any Governmental Entity.
- vi. "Liability" or "Liabilities" means any debt, liability, commitment, duty or obligation (including accounts payable and accrued liabilities) of any kind or nature, whether pecuniary or not, asserted or unasserted, accrued or unaccrued (and whether or not required to be accrued on a balance sheet under GAAP), absolute or contingent, matured or unmatured, liquidated or unliquidated, determined or determinable, incurred or consequential, known or unknown and whether due or to become due and regardless of when or by whom asserted, including those arising under any Law or Proceeding and those arising under any contract or otherwise, including any tax liability or tort liability.
- vii. "Person" means any individual, sole proprietorship, partnership, corporation, limited liability company, joint venture, unincorporated society or association, trust or other legal entity or Governmental Entity.
- viii. "Proceeding" means any and all claims (including any cross claims or counterclaims), causes of action, lawsuits, suits, charges, grievances, complaints, litigation, demands, summons, subpoenas, arbitration, proceedings (including any legal, civil, criminal, administrative, judicial, regulatory, investigative or appellate proceeding), hearings, inquiries, investigations, enforcement actions, audits and disputes, whenever or however arising.
- ix. "Specified Health Event" means the declaration by a nationally or internationally recognized health entity of a pandemic, epidemic or disease outbreak.

### **13. CONFIDENTIALITY:**

The Parties agree that the contents hereof, all trade secrets, offers, prices, payment terms and other information exchanged are confidential and, except as required by Law, all information shall be kept strictly confidential and shall not be disclosed to any other person or company without the prior written consent of the other Party. Each Party shall ensure that its directors, employees, agents and other intermediaries are bound by and will honor a similar duty of confidentiality.

**14. PRICE:**

Invoice price shall be governed by time of shipment (bill of lading date), unless otherwise specified in this Agreement.

**15. TAXES:**

**Any tax, assessment, duty, excise fee, or other governmental charge (collectively "Governmental Assessments") upon the sale and/or shipment of the Product sold hereunder (including if applicable any anti-dumping, countervailing, or other special duties) imposed by any governmental authority shall be added to the price herein provided and shall be paid by Buyer. For purposes of this Section 15, Governmental Assessment shall not include income taxes payable by Seller. Buyer will indemnify, release and hold Seller and its Affiliates harmless from and against any and all liability for Governmental Assessments that are Buyer's responsibility under this Agreement. If Buyer or the transactions hereunder are exempt from any Governmental Assessments, Buyer will timely provide Seller such certificates of exemption and or other information as Seller may reasonably request and Buyer agrees that until it does so, Seller will not be required to recognize any such exemption. The Parties agree to cooperate with one another and provide such information to each as is reasonably requested and necessary to facilitate the filing of any returns for the Governmental Assessments described herein.**

**16. COMPLIANCE WITH LAWS:**

Buyer shall comply with the relevant Laws which are applicable to the operation of Buyer's businesses and the purchase of the Product as set forth herein. Buyer shall at its sole cost and expense comply fully with all Laws related to product labeling and packaging, occupational safety, hazardous products and hazardous materials and health and protection of the environment, as well as Laws prohibiting commercial bribery, payments to government officials, money laundering and other similar anti-corruption Laws, and with Laws governing import and export restrictions, customs, duties and taxes that are or may in the future be applicable.

**17. GOVERNING LAW:**

The validity, interpretation, construction and performance of this Agreement, and the rights of the Parties, shall be governed by the Laws in force in (i) the State of Illinois, United States of America if Seller is a resident of the United States of America when this Agreement is entered into ("American Seller"); or (ii) the Province of Alberta, Canada, if Seller is a resident of Canada when this Agreement is entered into ("Canadian Seller"). If Seller is an American Seller, the Parties hereby submit to the exclusive jurisdiction of the federal courts located in the State of Illinois or, if such courts do not accept jurisdiction, then the state courts located in the State of Illinois. If Seller is a Canadian Seller, the Parties hereby submit to the exclusive jurisdiction of the courts of Alberta.

**18. WAIVER OF JURY TRIAL:**

Each Party, knowingly, voluntarily, and intentionally, waives its right to trial by jury in any proceeding arising out of or related to matters set forth herein whether arising in tort, contract or otherwise.

**19. DISPUTE RESOLUTION:**

Except for claims by Seller against Buyer for nonpayment of moneys due, prior to initiation by any Party of any legal or other action or proceeding against any other Party, the Parties shall attempt in good faith to resolve any controversy or claim arising from or relating to this Agreement promptly by negotiations between representatives of the respective Parties. The disputing Party shall give the other Party written notice of the dispute. Within twenty (20) calendar days after receipt of such notice, the

receiving Party shall submit a written response to the other Party. The notice and response shall include a statement of each Party's position and arguments supporting its position. The representatives shall meet at a mutually acceptable time and place within thirty (30) calendar days after the date of the disputing Party's notice and thereafter as often as they reasonably deem necessary to exchange relevant information and to attempt to resolve the dispute. If the matter has not been resolved through negotiation within sixty (60) calendar days after the date of the disputing Party's notice, then either Party may take such action or inaction as it deems appropriate. Alternatively, if either Party will not meet with the other Party within thirty (30) calendar days after the date of the disputing Party's notice, then either Party may take such action or inaction as it deems appropriate without waiting for the expiration of the sixty (60) calendar day resolution period. Notwithstanding the above, at any time, either Party may seek injunctive or equitable relief to protect against irreparable harm. All deadlines specified in this Section 19 may be extended by mutual agreement of the Parties.

## **20. PAYMENT AND CREDIT TERMS:**

(a) Payment of sums due shall be made upon terms set forth in the invoice. If Buyer in good faith disputes any portion of an invoice, Buyer shall pay the undisputed portion of the invoice and submit written notice to Seller regarding the disputed amount, which notice shall include documentation supporting the alleged billing error (each such notice, a "Fee Dispute Notice"). A Fee Dispute Notice must be submitted to Seller within thirty (30) calendar days from the date of the relevant invoice. Buyer waives the right to dispute any invoice from Seller not disputed within such thirty (30) calendar days period.

(b) In the event Buyer shall fail to pay any amount for a period of ten (10) calendar days beyond the due date of such payment, or Buyer fails to pay any obligation or indebtedness owed to Seller when due, then all obligations of Buyer owed to Seller shall become immediately due and payable, and Seller shall be entitled to immediate payment of such obligations and to enforce all of its rights and remedies hereunder under Law with respect to all such obligations.

(c) Buyer shall provide its two (2) most recently audited financial statements (which shall include balance sheet, income statement, statement of cash flows, and all notes to the financial statements) immediately upon request of Seller and each year thereafter. If Seller, in its sole judgment, concludes that Buyer is in unsound financial condition, or if Buyer is in default with respect to any of the terms and conditions of this Agreement beyond any applicable cure period, including the terms of Buyer's credit application, Seller shall forthwith have the right, in addition to its right to collect from Buyer all of Seller's attorney's fees, to decline to make deliveries hereunder or to demand cash payment until such time as said credit has been reestablished or default cured to Seller's satisfaction or, without prejudice to any other legal remedy available to Seller, to decline further performance hereof. If Buyer places an order for future delivery at a set price ("Forward Sale(s)"), this Agreement will confirm Buyer's binding order and any required down payment. Buyer's Forward Sale down payment is non-refundable, confirms acceptance, and binds Buyer to accept delivery and make payment in full.

## **21. INVENTORY CLAIM:**

In the event Seller produces Products for Buyer based on the Parties estimates of future deliveries or based on Seller's reasonable estimates of future deliveries to Buyer based on the Parties' prior course of dealing, and whether or not there is a purchase order relating to such Products, Buyer shall be obligated to accept delivery and pay Seller for such Products pursuant to Seller's invoices.

## **22. PERSONAL INFORMATION:**

By providing personal information to Seller, Buyer is consenting, to the extent that such consent is required by Law, to the collection, use and disclosure of this information by Seller to enable Seller to establish, maintain and manage a relationship with Buyer.

## **23. NOTICE:**

Any notice permitted or required by this Agreement must be in writing and, unless otherwise stated, may be given in person or by courier, or by electronic mail to the recipient at the address set forth on the first page of this Agreement. Any such notice is deemed to be given: (a) if delivered in person, at the time of delivery; (b) if sent by courier, upon receipt, as evidenced by a delivery notice from the courier; and (c) an electronic mail message is deemed to be: (i) dispatched or sent when it enters an information system outside the control of the sender; and (ii) received at the time when it enters an information system designated by the addressee. When an electronic message is sent to an information system other than that designated by the addressee, the electronic message is deemed to be received at the time when the addressee becomes aware of the message.

## **24. ASSIGNMENT:**

Subject to the following sentence, Buyer may not assign this Agreement except to a Creditworthy Person without the prior written consent of Seller. Prior to assigning this Agreement to a Creditworthy Person, Buyer must provide thirty (30) calendar days written notice of such assignment to Seller and if Seller reasonably objects to such assignment within such thirty (30) calendar days period, Buyer shall not consummate such assignment. "Creditworthy Person" means a person (i) that is not a competitor of Seller, and (ii) with a net worth of at least \$ 500,000,000 as evidenced by audited financial statements of the Creditworthy Entity that are (a) prepared in accordance with GAAP ; (b) audited in accordance with United States generally accepted auditing standards; (c) dated as of a date not earlier than twelve (12) months before the effective date of the assumption; and (d) delivered to Seller on or before the date of the assumption.

## **25. MISCELLANEOUS:**

(a) This Agreement constitutes the full and complete agreement between the Parties hereto related to the subject matter hereof and supersedes all prior or contemporaneous understandings, statements, or agreements between the Parties on such subject matter. Buyer acknowledges and agrees that no employee, officer, agent or any other representative of Seller has the authority to make any representations, statements or promises in addition to or in any way different than those contained herein, and that it is not agreeing to this Agreement in reliance upon any representation, statement or promise of Seller except as expressly stated herein. No changes, amendments, or clarifications of any of this Agreement shall be valid or effective unless in writing and signed by an authorized representative of Seller.

(b) All purchase orders issued by Buyer to Seller are subject to this Agreement as if such provisions were fully set forth in such purchase orders. No other terms and conditions, whether on the reverse side of the purchase orders, or otherwise presented, shall have any application, unless this Agreement is specifically amended in writing by Seller and Buyer.

(c) The provisions of this Agreement are severable, and if any one or more provisions contained herein may be found to be judicially unenforceable, in whole or part, the remaining provisions shall nevertheless be binding and enforceable.

(d) Each remedy available to Seller shall be cumulative and in addition to any other remedy provided to Seller by Law. The failure of Seller to insist on strict performance of any provision herein, or to take advantage of any right hereunder, shall not be construed as a waiver of such provision or right.

(e) This Agreement, and all the terms and provisions hereof, shall enure to the benefit of and be binding upon the Parties hereto, and their respective administrators, successors and permitted assigns.

(f) This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy and all of which, when taken together, will be deemed to constitute one and the

same agreement or document, and will be effective when counterparts have been signed by each Party and delivered to the other Party. A manual signature on the signature page of the Sales Agreement or other documents to be delivered pursuant to this Agreement, an image of which shall have been transmitted electronically, will constitute an original signature for all purposes. The delivery of copies of the signature page of the Sales Agreement or other document to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery for all purposes.

(g) Seller shall have the right to apply any monies due from Buyer under any agreement between the Seller or any of its Affiliates and Buyer toward the payment of any sums which Buyer may now or hereafter owe to Seller or Seller's Affiliates under this Agreement or any agreement. In addition, in the event that Buyer defaults in payment due to Seller, Seller shall have the right, in addition to its right to collect from Buyer all of Seller's attorney's fees, to withhold any unpaid sums due by Seller or any of its Affiliates to Buyer under any agreement with Buyer and to apply such sums to the amount owing by Buyer to Seller or any of Seller's Affiliates.

(h) The provisions of this Agreement which by their nature are intended to survive the termination, cancellation, completion or expiration of this Agreement, including any indemnities or expressed limitations of or releases from liability, shall continue as valid and enforceable obligations of the Parties notwithstanding any such termination, cancellation, completion or expiration.

(i) Whenever the words "include", "includes", "including" or "such as" are used in this Agreement, they shall be deemed to be followed by the words "without limitation".