



## PURCHASE ORDER TERMS & CONDITIONS

- 1. ACCEPTANCE:** This Agreement is made between the Vendor named on the face of this order ("you") and Axxess Chemicals, LLC ("us"). This purchase order must be accepted in writing by you by signing this purchase order or sending a written acknowledgement in detail and returning it to us. If for any reason you should fail to accept in writing, any conduct by you which recognizes the existence of a Contract pertaining to the subject matter hereof shall constitute acceptance by you of this purchase order and all of its terms and conditions. Any terms proposed in your acceptance of our offer which add to, vary from, or conflict with the terms herein are hereby objected to. Any such proposed terms shall be void and the terms herein shall constitute the complete and exclusive statement of the terms and conditions between us and may hereafter be modified only by a written instrument executed by both of our authorized representatives. If this purchase order has been issued by us in response to an offer and if any of the terms herein add to, vary from or conflict with any terms of your offer, then the issuance of this purchase order by us shall constitute an acceptance of your offer subject to the express conditions that you assent to the additional, different and conflicting terms herein and acknowledge that this purchase order constitutes the entire agreement between us with respect to the subject matter hereof and the subject matter of your offer. You shall be deemed to have so assented and acknowledged unless you notify us to the contrary in writing within ten (10) working days of receipt of this Purchase Order.
- 2. TERMINATION:** We reserve the right to terminate this order in whole or in part for our convenience upon written notice to you, in which event you shall be entitled to reasonable termination charge consisting of a percentage of the order price reflecting the percentage of the work performed prior to termination plus actual direct costs resulting from our termination.
- 3. CONFIDENTIALITY:** All specifications, documents, artwork, or drawings delivered to you for Axxess Chemicals, LLC. remain our property. The information is delivered solely for the purpose of your performance of this order and on the express condition that neither they nor the information contained therein shall be disclosed to others nor used for any purpose other than in connection with this order without our prior express written consent. We reserve the right to request that you return all such information to us upon our written request. Your obligations under this paragraph shall survive the cancellation, termination or other completion of this order.
- 4. WARRANTY:** You expressly warrant that all goods and services supplied to us by you as a result of this order shall conform to the specifications, drawings or other description upon which this order is based, shall be fit and sufficient for the purpose intended, merchantable of good material and workmanship and free from defects. Inspection, test acceptance or use of the goods by us shall not affect your obligations under this warranty, and such warranty shall survive inspection, test acceptance and use. You agree to replace or correct promptly defects of any goods or services not conforming to the foregoing warranty without expense to us, when notified of such nonconformity by us. In the event of your failure to correct defects in or replace nonconforming goods or services promptly, we may, after reasonable notice to you, make such corrections or effect cover at your expense.
- 5. PRICE:** This order must not be filled at a higher price than shown on the order. Any change must be authorized on a revised purchase order written by us. If no price is shown, you must notify our Buyer who issued the order or the price and his/her acceptance must be obtained in writing before filling the order.
- 6. FORCE MAJEURE:** Neither of us shall be liable for a delay in the performance of our obligations resulting from this order when the delay is due to causes beyond our control, such as but not limited to war, strikes or lockouts, embargo, national emergency, insurrection or not, acts of the public enemy, fire, flood or other natural disaster, provided that each of us has taken reasonable measures to notify the other, in writing, of the delay. Failure of subcontractors and inability to obtain materials or labor shall not be considered as a force majeure delay.
- 7. PATENTS:** Unless the goods ordered hereunder are to be manufactured according to a special design furnished by us, you shall at your own expense defend us from any claim of infringement of any letter patent, trademark, copyright or other intellectual property right by reason of manufacture or use of the goods furnished hereunder. You agree to protect and indemnify us fully against any liability, cost, recovery or other expense including attorney fees in or resulting from any such claim provided that we give you timely notice of such claim.
- 8. CHANGES:** We reserve the right to make changes in drawings, designs, specifications, scope of work to be performed, time and place of delivery and method of transportation. If such change is to be made, it will be evidenced in writing by us in the form of a revised purchase order. If such change has an effect on the price, warranty, delivery date or patent indemnification provisions of this order, an equitable written acknowledgment of the effect on the changed provisions shall be indicated on the revised purchase order. You may not make any change in drawings, design specifications, scope of work to be performed, time and place of delivery and method of transportation without a revised purchase order acknowledging the change. Any such change orders accepted by you shall be incorporated in and amend the order.
- 9. INSPECTION/TESTING/REJECTION:** Payment by us for the goods or services delivered hereunder shall not constitute our acceptance. We retain the right to inspect the goods or work performed and to reject any or all of the goods or work performed which are in our judgment defective. Goods rejected by us and goods supplied in excess of quantities called for herein may be returned to you at your expense and in addition to our other rights, we may charge you all expenses of unpacking, examining, repacking, and reshipping such goods. In the event we receive goods whose defects or nonconformity is not apparent on examination, resulting in deterioration of our finished product, we reserve the right to require the replacement, as well as payment of any resulting damages.
- 10. AXCESS CHEMICALS, LLC PROPERTY** Any material parts furnished by us intended for use by you in your execution of your duties as required by this order should be considered as being held by you on consignment. All such material or parts not used by you in connection with this order shall be returned to us at our expense unless you are otherwise directed in writing. If not accounted for or returned to us, missing materials or parts shall be paid for by you. All such materials or parts will be kept insured by you at your expense in an amount equal to the replacement cost with a loss payable to us.
- 11. REMEDIES:** Our remedies shall be cumulative and our remedies include any remedies allowed by law. Waiver of any breach by us shall not constitute our waiver of any other breach of the same or any other provision. Acceptance of any items or payments therefor shall not waive any breach.
- 12. DELIVERY/RELEASES:** Time is of the essence. You agree to comply with the specific delivery schedule without any delay and without anticipating our requirements. Any delays in shipment shall be reported to us immediately as they become known to you. We reserve the right to cancel this order and effect cover if you cannot comply with the delivery date(s) indicated on this order. If delivery dates are not specified on this order, you shall procure materials, fabricate, assemble and ship goods only as authorized by shipment releases issued to you by us. We may return overshipments to you at your expense for all packing, handling, sorting and transportation. We may from time to time and with reasonable notice suspend shipping schedules specified in the purchase order or such shipment releases.
- 13. ASSIGNMENTS/SETOFFS/SUBCONTRACTING:** This order, the work required to be done hereunder and any payments to be made hereunder may not be assigned, transferred, or subcontracted without our prior approval. No invoices may be rendered by others than the named firm shown as "Vendor" on the reverse without our written permission. All claims for monies due or to become due from us shall be subject to deduction by us for any setoff or counterclaim arising out of this or any other purchase orders with you whether such setoff or counterclaim arises before or after such assignment or subcontract by you.
- 14. PREMIUM TRANSPORTATION:** If in order to comply with our required delivery date it becomes necessary for you to ship by a more expensive mode than specified on the face of this order, any premium transportation cost resulting therefrom shall be paid by you unless you can establish to our satisfaction that the necessity for the change in routing is occasioned by force majeure events.
- 15. PACKING LIST:** A packing list must be enclosed in all shipments showing the purchase order number and exact quantity and description of the goods shipped.
- 16. INVOICES:** Unless otherwise specified, you should post all invoices only to **AXCESS CHEMICALS LLC, 57 South Main Street, Suite 369, Neptune, New Jersey 07753**. These invoices shall be in duplicate and shall include purchase order number and release number where applicable, item number, description of items, sizes, quantities, unit prices and extended totals. All taxes shall be stated separately. Bills of lading or express receipts shall accompany invoices itemizing prepaid amounts and freight expenses. Cash discount periods shall commence upon the date of your invoice and payment shall be considered made for the purposes of discount calculation upon mailing of our check. Failure to comply with the above may result in delayed payment or returned invoices.
- 17. EXPORT IMPORT:** Any export credits belong to us, and you shall furnish all documents required for international shipments, and upon request, all documents, required by us to obtain export credits and customs, drawbacks. You shall include a priced invoice with the master packing slip for international shipments. Upon our request, you shall furnish certificates that identify the country of origin of the materials used in the supplies hereof and the value added thereto in each country.
- 18. COMPLIANCE WITH TOXIC SUBSTANCES CONTROL ACT:** You warrant that each and every chemical substance constituting or contained in the goods sold or otherwise transferred to us as a result of this purchase order is on the list of chemical substances compiled and published by the administrator of the Environmental Protection Agency pursuant to the Toxic Substances Control Act and is otherwise in compliance with that Act.
- 19. HAZARDOUS MATERIALS:** Any materials required by this order that are deemed hazardous will be packaged, marked and shipped by you to comply with all present federal, state and local regulations.
- 20. FAIR LABOR STANDARDS ACT:** You shall furnish a statement on each invoice that the goods ordered hereunder were produced in accordance with the provisions of the Fair Labor Standards Act including Section 12.
- 21. COMPLIANCE WITH EXECUTIVE ORDER:** Unless otherwise exempt by rules, regulations, or orders of the Department of Labor, Office of Federal Contract Compliance Programs, and other Federal Government Agencies, Executive Order 11246, Section 503 of the Rehabilitation Act of 1974 as amended and the Vietnam Era Veterans Readjustment Assistance Act of 1974 and other regulations (contained in 41 Code of Federal Regulations and relating to equal employment) are hereby made a part of the terms and conditions of this order.
- 22. GOVERNING LAW / SUBMISSION TO JURISDICTION:** This agreement shall be construed in accordance with the laws governing contracts made and to be performed in the State of New Jersey, U.S.A. You hereby consent to the jurisdiction of any local, state, or federal court located within the State of New Jersey and waive any objection which you may have based on improper venue of *Forum Non Conveniens* to the conduct of any proceeding in any such court.
- 23. ENTIRE AGREEMENT:** Except when issued to carry out a contract signed by both of us, this purchase order constitutes the entire agreement of sale and purchase of the goods or services ordered hereunder.