



## STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions (“Terms and Conditions”) are made between the purchaser of products from AgroChem Inc. (“Customer”) and AgroChem Inc. (“AgroChem,” and together with the Customer, hereinafter referred to individually as a “Party” and collectively as the “Parties”) and supplement Customer’s purchase orders (“Order,” and together with these Terms and Conditions, the “Contract”). The Terms and Conditions apply to all Orders regardless of the terms of any invoice, order or other business form.

- 1. Definitions.** All capitalized terms used but not defined herein shall have the meaning set forth in the Purchase Order.
- 2. Product Knowledge.** Customer shall read and comply with all product labels and material safety data sheets for each product purchased by Customer from AgroChem (“Product”).
- 3. Price.** All Product prices shall be set by AgroChem in its sole discretion. All freight charges shall be pre-paid by AgroChem, and shall be charged to Customer, unless different terms apply. All insurance and taxes applicable to the sale of Products shall be the sole responsibility of and be paid by Customer in addition to the Product price.
- 4. Purchase Orders.** Customer shall order the Products from AgroChem at a reasonable time in advance of the time for shipment. Customer shall identify the quantity of the Products being ordered, the shipping instructions and the date for delivery. All purchase orders shall be subject to acceptance by AgroChem in its sole discretion. AgroChem shall use its best efforts to accommodate any requested by Customer in delivery schedules for the Products following Customer placing an order.
- 5. Delivery & Shipping Terms.** AgroChem shall direct all shipments of materials to be delivered at the location set forth on Customer’s Order. Shipments shall be pre-paid by AgroChem and charged to Customer, unless different terms apply. Products shall be shipped F.O.B. AgroChem’s location, in appropriate shipping containers. Title to the Products and risk of loss will pass to Customer when placed on board the shipping carrier at AgroChem’s location. AgroChem’s fulfillment of Customer’s requirements for orders shall be subject to delays caused by transportation conditions, labor or material or supply shortages, seasonal supply, availability of Product, strikes, riots, fires, wars, government intervention and/or other causes beyond AgroChem’s control.
- 6. Acceptance.** Customer shall be entitled to reject any portion or all of any shipment of a Product that in any material respects does not conform to the specifications for the Product or the quantities set forth in the Order or otherwise fails to comply with the representations and warranties for the Product set forth herein; provided, however, that Customer notifies AgroChem within fifteen (15) days after receipt of such shipment of such non-conformity. If no such notice is provided by Customer within the stated time, then Customer shall be deemed to have accepted the shipment. Any rejection notice by Customer shall be accompanied by a reasonably detailed statement of its reasons for rejection and a report of any pertinent analysis performed by Customer on the allegedly non-conforming Product, together with the methods and procedures used. AgroChem shall notify Customer promptly, but in any event within fifteen (15) days of receipt of rejection, whether it accepts Customer’s assertions of non-conformity. AgroChem, at its sole discretion, shall either replace the non-conforming Products or reimburse Customer the price paid for the non-conforming Products, if AgroChem determines that the rejected Products are non-conforming.
- 7. Payment.** Customer shall pay AgroChem for Products net thirty (30) days after Product ship date. Customer may, at AgroChem’s discretion, be assessed interest on any balance remaining after the due date at 1.5% per month.
- 8. Product Returns.** Customer may return for credit Products that are in original packaging, in a resalable condition, based on the Product’s shelf life, as set forth on the Product label. Products with a one (1) year shelf life may be returned within thirty (30) days of purchase and Products with a two (2) year or greater shelf life may be returned within sixty (60) days of purchase. The credit shall be equal to ninety percent (90%) of the net purchase price paid to AgroChem by Customer. “Net purchase price” shall mean the invoice price of the Products sold, less all discounts, allowances, purchase/sales or other similar taxes, freight, insurance and all duties. AgroChem shall not provide credit for Products that are returned beyond the time periods stated above, but will assist, at AgroChem’s discretion, in the responsible disposition of such Products. In no case will AgroChem accept for return any Products which have been opened or damaged (unless opened or damaged by AgroChem, or AgroChem’s agents, employees and representatives).
- 9. Intellectual Property.** No rights are granted to Customer or any other third party to use, own or license any of AgroChem’s intellectual property in connection with the purchase of the Products. All such rights shall remain with AgroChem.
- 10. Confidential Information.** All Confidential Information, as defined below, received by Customer shall be held by Customer and/or its agents in strict confidence. Nothing in this Contract shall be construed as a grant by AgroChem to Customer of rights in the Confidential Information. Neither Customer nor its agents shall reverse engineer, disassemble or decompile or analyze, restructure and/or copy or in any way recreate in whole or in part any Product prototypes, software or other tangible objects which embody AgroChem’s Confidential Information and which are provided to Customer hereunder. The Parties agree that in the event of the breach of this confidentiality provision, AgroChem will not be able to secure adequate relief by an action at law; therefore, AgroChem shall have the right to specifically enforce this confidentiality provision and to enjoin any violation or threatened violation thereof by Customer, and/or its agents, without the necessity of posting a bond or undertaking, success on the merits or proving actual damages. However, all remedies provided for in the Agreement shall be cumulative, and shall not be exclusive of one another or any other remedies available in law or in equity. “**Confidential Information**” shall mean any trade secret or any confidential or proprietary information of AgroChem, has developed or acquired, or is developing or acquiring, any interest, including but not limited to, preclinical and clinical data, all discoveries, inventions,

improvements and ideas relating to any process, research, formulae, methodology, sample, prototype, machine, device, manufacture, test, composition of matter, software, plan or design whether patentable or not, or relating to the Products, Product specifications and/or AgroChem's conduct of business which was or is disclosed to Customer, exclusive of data or information: (i) which has been published or otherwise becomes a matter of public knowledge by any means other than Customer's default in the observance or performance of any term or provisions contained in this Contract or its part to be observed or performed, or (ii) which was known by Customer at the time of such disclosure, as evidenced by Customer's written business records predating such disclosure and maintained in the ordinary course of business, or (iii) which is, at any time, disclosed to Customer by any person or entity not a party hereto who has the right to disclose the same.

**11. Product Warranty.** AgroChem represents and warrants to Customer that the Products furnished to Customer: (i) shall conform to AgroChem's specification for such Products as published by AgroChem and (ii) shall be free from defects in material and workmanship. **EXCEPT AS EXPRESSLY PROVIDED IN THE CONTRACT THERE ARE NO OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, MADE OR GIVEN BY AGROCHEM HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE. AGROCHEM'S LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS ON WHICH SUCH LIABILITY IS BASED.** Subject to the foregoing warranty, AgroChem disclaims to Customer and any third parties any liability whatsoever for any special, indirect or consequential damages, including, but not limited to, loss of profits, cover, lost time, down time and/or transportation costs.

**12. Indemnification.** Customer hereby releases, and agrees to defend, indemnify and hold harmless, AgroChem, its officers, directors, employees, agents, attorneys and affiliates (the "AgroChem Indemnified Persons"), from and against, and will reimburse the AgroChem Indemnified Persons for, any actual or threatened claims, suits, demands, actions, costs, liabilities, losses and expenses of any kind whatsoever, including attorney fees, whether or not involving a third-party claim, including without limitation, property damage and injury, including with regard to death, disability or illness, to Customer, its employees, owners, agents, representatives, livestock or other animals, arising out of, connected with, or resulting from or in connection with (i) the sale or use of the Products by Customer or its agents, officers, directors, employees, sales force, members, managers, owners (each, a "Customer Party"), (ii) a Customer Party's negligent act, misfeasance or nonfeasance; or (iii) any breach by a Customer Party of any provision contained in this Contract.

**13. Amendments.** This Contract may not be amended, modified or supplemented, unless in writing and signed by the Parties.

**14. Waiver.** No delay or omission by a Party hereto in exercising any right shall operate as a waiver of such right or any other right, unless in writing and signed by the Party against whom the same is sought to be enforced. No waiver by any Party of any breach hereunder shall be deemed a waiver of any other or subsequent breach.

**15. Governing Law.** The Contract shall be governed by the laws of the State of New York without reference to principles of conflicts of laws.

**16. Dispute Resolution.** If a claim or dispute between the Parties arises out of the Contract or its performance, the Parties agree to endeavor in good faith to resolve it equitably through negotiation, or if that fails, through non-binding mediation under the procedural rules of the American Arbitration Association, before having recourse to the courts. However, prior to or during negotiation or mediation, either Party may initiate litigation that would otherwise become barred by an applicable statute of limitations. The foregoing provisions of this Section 16 shall not apply to any action brought by a Party seeking to enjoin a breach or anticipated breach of the Contract under Section 10 (Confidential Information) hereof.

**17. Venue.** The Parties irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Contract which may be brought in a court shall be brought in a court of record in the State of New York, Saratoga County, or in the United States District Court for the Northern District of New York (assuming such court otherwise has subject matter jurisdiction), (ii) consent to the personal jurisdiction of each such court in any such suit, action or proceeding, and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts and any claim that any such suit, action or proceeding has been brought in an inconvenient forum.

**18. Severability.** If any provision of the Contract, or portion thereof, shall be found to be invalid, illegal or otherwise unenforceable, the same shall not affect the other provisions of the Contract, or portions thereof, and such invalid, illegal or unenforceable provision, or portion thereof, shall be deemed modified as necessary in the court's opinion to render such provision, or portion thereof, enforceable and the rights and obligations of the Parties with respect thereto effective, preserving to the fullest permissible extent the Parties' intent of the Contract.

**19. Notices.** All notices to be given hereunder shall be in writing and sent to the Parties by personal delivery, nationally-recognized overnight courier, certified mail, return receipt requested or e-mail (with confirmation), which shall be addressed to each Party's address as set forth on the Order or to such other address as such Party shall give notice of to the other Party. Each notice shall be delivered in the manner described above and shall be deemed sufficiently given, served, sent, received or delivered for all purposes at such time as it is delivered to the addressee.

**20. Counterparts.** The Contract may be executed in counterparts, each of which will be deemed an original, but together will constitute one and the same instrument. The Contract may also be executed by PDF signature and the Parties may rely on any such signatures.

**21. Representation of Authority.** Each Party, and the signatories hereto, hereby represent and warrant to each other that (i) they have full right, power and authority to enter into the Contract and (ii) the signatories hereto have the full right, power and authority to act for and on behalf of each Party.

**22. Entire Agreement.** The Contract is the entire agreement between the Parties regarding the subject matter hereof.