

American Refining Group, Inc. Terms & Conditions of Sale

1. **ACCEPTANCE.** Seller's acceptance of Buyer's order is expressly conditional on Buyer's consent to the terms and conditions set forth herein, notwithstanding the provisions contained in any purchase order, acknowledgement, acceptance or other document; provided, however, that any conflicting provision of a separate written agreement or amendment to this document signed by an authorized representative of Seller will control.

2. **PRICE REVISION.** The price for the Goods is Seller's list or contract price for the same which is in effect at time of shipment. Unless stipulated otherwise in writing Seller may change its prices at any time prior to shipment without notifying Buyer.

3. **BUYER'S CREDIT** Seller reserves the right, among other remedies, either to terminate this contract or to suspend further deliveries under it if Buyer fails to pay for any one shipment when payment becomes due. Should Buyer's financial condition become unsatisfactory to Seller, Seller may require cash payments or security satisfactory to Seller for future deliveries and for the Goods theretofore delivered.

4. **BULK WEIGHTS AND VOLUMES: CONTAINERS.** In the case of tank car and tank truck shipments, Seller's weights and volumes shall govern unless proved to be in error. For orders shipped in bulk quantity, Seller shall complete the order, unless otherwise instructed by Buyer, in a quantity that represents the maximum legal load quantity for the shipping method requested i.e. truck, railcar, barge, tote, or bulk container. Where Seller's returnable containers are used in shipment, title to such containers shall remain in Seller, and a deposit in the amount required by Seller must be made at the time payment is tendered for the Goods. Such containers must be kept in good condition, must not be used for any material other than the Goods shipped therein and must be returned within sixty (60) days from date of shipment. Upon Buyer returning such containers in good condition, Seller shall refund the deposit.

5. **DELIVERY** Unless it is agreed otherwise explicitly in writing by Seller, all deliveries are F.O.B. the place of shipment. Identification of the Goods to the contract shall occur, and title shall pass, upon receipt of the Goods by the carrier, or Buyer's vehicle. Seller reserves the right to deliver the Goods in installments within a reasonable time period. Where the Buyer is responsible for the cost of freight, upon Buyer's request Seller may, at its sole discretion, arrange for and coordinate Buyer paid carrier pickups. Seller will select carriers whom it judges to be reliable and to have the proper equipment, and who service Seller's area. It may not be possible for Seller to select the lowest cost carrier given Buyer's delivery requirements and day to day availability of drivers and equipment. By undertaking to select carriers on behalf of Buyer as aforesaid Seller expressly does not assume any responsibility for or liability with respect to such shipments or any errors or omissions of the carrier, nor will such undertaking shift the risk of loss to Seller, but rather such shipments will continue for all purposes to be considered FOB the place of shipment.

6. **RETURNS & CANCELLATION.** Orders for custom blends and Buyer specified formulations may not be cancelled if Seller has commenced production or loading of the Goods, or committed for the purchase of components specific to such Goods. If any order is cancelled within twenty four hours before its scheduled shipment time, Buyer shall pay the amount of any cancellation charges which Seller must pay to the carrier as the result of such cancellation. Seller must authorize any return of Goods. Buyer shall pay the costs of returning any Goods without Seller's authority.

7. **LIMITED WARRANTY** (a) Subject to Section 9, Seller warrants title to the Goods and that, when they are put into the possession of the carrier or Buyer's vehicle, the Goods will conform to Seller's standard specifications or to Buyer's explicit specifications, if any, which have been accepted by Seller and are included in Buyer's order documents. Except as provided in the preceding sentence and unless otherwise expressly provided in a writing signed by an authorized representative of Seller, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE GOODS, whether used alone or in combination with any other material. Seller's sales representatives are not authorized to amend the terms and conditions of the foregoing limited warranty. (b) If Seller furnished technical or other advice to Buyer, whether or not at Buyer's request, with respect to processing, further manufacture, other use or resale of the Goods,

Seller shall not be liable for, and Buyer assumes all risk of, such advice and the results thereof.

8. **CLAIMS.** Within thirty (30) days after receipt of each shipment of the Goods, Buyer shall examine such Goods for any damage, defect or shortage. All claims for any cause whatsoever (whether such cause be based on contract, negligence, strict liability, tort or otherwise) shall be deemed waived unless made in writing and received by Seller within sixty (60) days after Buyer's receipt of the Goods in respect to which such claim is made or, if such claim is for non-delivery of such Goods, within sixty (60) days after the date upon which such Goods were to be delivered, provided that as to any such cause not reasonably discoverable within such sixty (60) day period (including that discoverable only in processing, further manufacture, other use or resale) any claim shall be made in writing and received by Seller within one hundred eighty (180) days after Buyer's receipt of the Goods in respect to which such claim is made, or within thirty (30) days after Buyer learns of the facts giving rise to such claim, whichever shall first occur. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim irrespective of whether the facts giving rise to such claim shall have then been discovered or of whether processing, further manufacture, other use or resale of the Goods shall have then taken place. In the event of a claim, Seller may, at its option, inspect the Goods at Buyer's facilities to determine that the Goods do not conform.

9. **LIMITATION OF LIABILITY. BUYER'S EXCLUSIVE REMEDY SHALL BE FOR DAMAGES, AND SELLER'S TOTAL LIABILITY FOR ANY AND ALL LOSSES AND DAMAGES ARISING OUT OF ANY CAUSE WHATSOEVER (WHETHER SUCH CAUSE BE BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR TORT OR OTHERWISE) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE GOODS IN RESPECT TO WHICH SUCH CAUSE ARISES OR, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH GOODS, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CASE.** Seller shall not be liable for, and Buyer assumes liability for, all personal injury and property damage (including, but not limited to, environmental contamination) beyond Seller's facilities connected with the handling, transportation, possession, processing, further manufacture, other use or resale of the Goods, whether the Goods are used alone or in combination with any other material.

10. **PATENTS.** Subject to Section 9, Seller warrants that the Goods sold pursuant to this contract, except for those made for Buyer according to Buyer's specifications, do not infringe any valid United States patent. This warranty is given upon the condition that Buyer promptly notify Seller of any claim or suit involving Buyer in which such infringement is alleged and that, if Seller is affected, Buyer permit Seller to control completely the defense or compromise of any such allegation of infringement. Seller does not warrant that the use of the Goods or any material made therefrom, whether the Goods are used alone or in combination with any other material, will not infringe a patent. Seller reserves the right to terminate Seller's warranty under this Section 10 at any time with respect to any undelivered Goods by written notice to Buyer, it being agreed that in the event of such termination Buyer may, without penalty, thereafter refuse acceptance of such undelivered Goods.

11. **FREIGHT, DEMURRAGE AND TAXES.** Any increase in freight rates paid by Seller on shipments covered by these Terms and Conditions and hereafter becoming effective and any tax or governmental charge or increase in same (excluding any franchise or income tax or other tax or charge based on Seller's income): (a) increasing the cost to Seller of producing, selling or delivering the Goods or of procuring materials used therein, or (b) payable by Seller because of the production, sale or delivery of the Goods, such as Sales Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, Value Added Tax, may, at Seller's option, be added to the price herein specified. Where Seller agrees to pay freight, Seller reserves the right to route shipments and to select carriers. Buyer will promptly unload and release transportation equipment furnished or arranged for by Seller. If Buyer fails to unload and release to carrier any railroad car furnished or arranged by Seller within seven (7) days, Buyer will pay any detention charges assessed by Seller in accordance with Seller's policy in effect at the time in addition to any demurrage or other charges assessed by the rail carrier. If Buyer fails to

unload any truck within the unloading time then allowed by the carrier, Buyer will pay any demurrage charged by the carrier. All orders have an assigned shipment date. Any carrier or Buyer vehicle that arrives for loading before or after that date does so bearing any risk for delays within our plant. Seller will not be responsible for detention charges arising from early or late pick up. For loads required to travel hot, the carrier and Buyer assume responsibility for heat loss during transit. Buyer is responsible for the prompt unloading of time sensitive hot Goods. Seller shall not be responsible for damage to carrier equipment and /or detention charges that result from hot Goods not being promptly unloaded by Buyer, or that result from unavoidable delays while product is in transit.

12. **EXCUSE OF PERFORMANCE.** (a) Deliveries may be suspended by Seller in the event of Act of God, act of terror, war, riot, fire, explosion, accident, flood, sabotage; pandemic, inclement weather, lack of adequate fuel, power, raw materials, labor, containers or transportation facilities; compliance with governmental requests, laws, regulations, orders or actions; breakage or failure of machinery or apparatus; national defense requirements or any other event, whether or not of the class or kind enumerated herein, beyond the reasonable control of Seller, or in the event of labor trouble, strike, lockout or injunction (provided that Seller shall not be required to settle a labor dispute against its own best judgment); which event makes impracticable the manufacture, transportation, acceptance or use of a shipment of the Goods or of a material upon which the manufacture of the Goods is dependent. (b) If Seller determines that its ability to supply the total demand for the Goods, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of the Goods, is hindered, limited or made impracticable, Seller may allocate its available supply of the Goods or such material (without obligation to acquire other supplies of any such Goods or material) among itself and its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom. (c) Seller may, without liability, suspend or cancel a delivery for any reason stated in this section. In case of any such cancellation or suspension this contract shall remain unaffected in all other respects.

13. **ASSIGNMENT.** Neither party may (by operation of law or otherwise) assign its rights or delegate its performance hereunder without the prior written consent of the other party, and any attempted assignment or delegation without such consent shall be void; provided, that either party hereto may assign this agreement to a successor by merger or consolidation of such party, or to a purchaser of all or substantially all of the assets of the business unit of such party.

14. **MISCELLANEOUS.** The validity, interpretation and performance of these Terms and Conditions and any dispute connected herewith shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any action to enforce a provision hereof shall be brought exclusively in a state or federal court located in the Commonwealth of Pennsylvania having jurisdiction over such action. These Terms and conditions constitute the full understanding of the parties, a complete allocation of risks between them and a complete and exclusive statement of the terms and conditions of their agreement. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain or supplement these Terms and Conditions shall be binding unless hereinafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgement or acceptance of purchase order or shipping instruction forms containing terms or conditions at variance with or in addition to those set forth herein. No waiver by either Seller or Buyer with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any right or remedy, unless such waiver be expressed in writing signed by the party to be bound.

15. **PRODUCT HAZARD WARNINGS.** Buyer warrants that Buyer is familiar with the properties of Goods purchased under this agreement and of the methods for safely unloading, using, handling, and storing such Goods. Buyer agrees to inform Buyer's employees, contractors, shippers, consignees and buyers of the key properties and hazards of Goods purchased under this agreement. Buyer acknowledges receipt of Seller's current safety information for such Goods including the current Material Safety Data Sheet.