



**PLANTPRODUCTS**

## TERMS AND CONDITIONS

- 1. APPLICABLE CONDITIONS:** All terms and conditions contained in this Quotation and set forth herein shall constitute the complete and exclusive agreement of the parties concerning the sale of goods covered in this Quotation and any subsequent Purchase Order and Invoice relating thereto. No other terms or conditions whatsoever shall be binding unless contained in a formal written agreement signed by Seller and Buyer. In the event the parties have previously entered into a formal written agreement concerning the sale of goods covered by this Quotation, the terms and conditions of said formal written agreement shall control and shall constitute the complete and exclusive agreement of the parties.
- 2. MODIFICATION:** Neither party shall claim any modification, limitation, or release from any of the terms or conditions contained herein except by written agreement to that effect signed by Seller and Buyer. No modification of, addition to, or deletion from the terms and conditions contained herein shall be affected by the acknowledgement or acceptance by Seller of any Purchase Order, Acknowledgement, Confirmation, Release, or other form submitted by Buyer containing other or different terms and conditions. Buyer's acceptance of delivery of the goods covered by this Quotation in any subsequent Purchase Order and Invoice shall constitute Buyer's assent to the terms and conditions contained herein, regardless of any statement to the contrary contained in any Purchase Order, Acknowledgement, Confirmation, Release, or other form submitted by Buyer.
- 3. WEIGHTS:** Seller's weights shall govern, and no adjustment shall be made except in the case of proven error greater than 2%.
- 4. PAYMENT AND SECURITY:** Payment shall be as provided on the face hereof. If payment is not made as provided herein, or if Buyer's credit worthiness becomes unsatisfactory to Seller, Seller may, at its option: (1) elect to withhold future deliveries of goods to Buyer until such breach has been cured or Buyer's credit worthiness has been established to Seller's satisfaction; (2) require payment in advance as to future deliveries; or (3) demand return from Buyer of any goods sold by Seller to Buyer for which payment has not been made. If deliveries of goods are to be made in installments, the purchase price of each installment shall, at Seller's option, be recoverable as a separate sale. Any amount due from Buyer to Seller for goods sold by Seller to Buyer that is not paid when due shall bear interest at the higher of 1.5% per month or the maximum rate permitted by law from the date due until such amount, including all accumulated interest, is paid. Buyer shall reimburse Seller for any and all costs and expenses (including all legal expenses on a substantial indemnity basis) incurred by Seller to collect any amount due from Buyer to Seller that is not paid when due. The remedies contained in this paragraph are cumulative and shall be in addition to any other remedies available to Seller under applicable law.
- 5. TRANSPORTATION CHARGES AND TAXES:** Unless otherwise provided on the face hereof, in addition to the price stated on the face of this Quotation or in any subsequent Purchase Order or Invoice, Buyer shall pay or shall promptly reimburse Seller for all transportation or freight costs and for all sales, use, or excise taxes, assessments, or other charges attributable to the sale, use, shipment, transportation, or delivery of the goods.
- 6. TITLE AND RISK OF LOSS:** Title to all goods shall remain with Seller until the purchase price and all other amounts due hereunder have been paid and the Buyer hereby grants a purchase money security interest ("PMSI") in the goods to secure payment for the goods. Notwithstanding the foregoing, risk of loss of the goods shall pass to Buyer upon tender of the goods by Seller to the carrier at Seller's shipping point.
- 7. CONTAINERS:** All containers designated by Seller as being Seller's property shall at all times remain the property of Seller and shall be returned by Buyer to Seller at Buyer's expense, freight prepaid, to Seller's shipping point no later than sixty (60) days from the date the goods are placed with the carrier for shipment to Buyer. Buyer shall not use Seller's returnable containers for any purpose other than the reasonable storage of the goods originally delivered therein. Buyer assumes all responsibility for and all liability arising out of damage to or destruction of Seller's returnable containers from the time of Seller's tender to carrier at Seller's shipping point to the time of their return to Seller's shipping point, reasonable wear excepted.
- 8. INDEMNITY:** Buyer shall indemnify, defend and hold Seller and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from any and all fines, penalties, suits, actions, claims, liabilities, judgments, costs, and expenses (including all legal expenses on a substantial indemnity basis) resulting or arising from (i) Buyer's negligence; (ii) Buyer's use, sale, handling, storage, or disposal of the goods or any product or waste derived therefrom; (iii) Buyer's discharge or release of the goods or any product or waste derived therefrom into water, onto land or into the air; (iv) Buyer's exposing any person (including Buyer's employees) to the goods or any product or waste derived therefrom, including failure to warn of such exposure; or (v) the transportation of the goods to Buyer after tender of the goods by Seller to the carrier at Seller's shipping point. The foregoing shall apply, but shall not be limited to, injury to person (including death) or damage or harm to property or the environment. Buyer shall not be obligated to indemnify Seller for any fine, penalty, suit, action, claim, liability, judgment, cost, or expense attributable to Seller's negligence or willful misconduct.
- 9. WARRANTIES:** All recommendations or statements about the goods by Seller, including statements concerning substances present or not present in the goods, are based upon Seller's research and experience and are believed to be reliable, but such recommendations or statements shall not constitute a warranty. Buyer must determine for itself, by preliminary tests or otherwise, the suitability of the goods for Buyer's purpose. Seller warrants only that the goods shall conform to the description on the face hereof, that Seller will convey good title thereto, and that such goods shall be delivered free from any lawful security interest or encumbrance unknown to Buyer. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED HEREIN. SELLER MAKES NO WARRANTY THAT THE GOODS ARE MECHANICAL OR FIT FOR ANY PARTICULAR PURPOSE.
- 10. PATENTS:** Seller warrants that the goods, except as specifically made for Buyer according to Buyer's design, do not infringe any Canadian or United States patent. Buyer agrees that it shall promptly notify Seller of any claim or suit alleging patent infringement, shall permit Seller to control the defense or compromise of such claim or suit, and shall provide Seller with all necessary information, authority and assistance. SELLER DOES NOT WARRANT THAT BUYER'S PARTICULAR USE OF THE GOODS EITHER ALONE OR IN COMBINATION WITH OTHER MATERIALS OR THAT ANY PRODUCT OBTAINED THEREFROM WILL NOT INFRINGE A PATENT.
- 11. LIMITATIONS OF SELLER'S LIABILITY:** Seller shall not be liable for loss of profits, loss of production, or other special, incidental or consequential damages, regardless of negligence. Seller's liability and Buyer's exclusive remedy for any cause of action arising out of the sale, use or non-delivery of the goods is expressly limited at Buyer's option to replacement of non-conforming goods at f.o.b. Seller's shipping point or payment not to exceed the purchase price of the goods for which damages are claimed.
- 12. INSPECTION AND NOTICE OF CLAIM:** Buyer shall inspect the goods within 24 hours of delivery and shall provide Seller with written notice (or oral notice followed by written confirmation) of any or all claims with respect to the goods. Buyer's failure to give notice of a claim within eight (8) days from the date of delivery shall constitute a waiver by Buyer of such claim(s).
- 13. FORCE MAJEURE:** Neither party shall be liable in any respect for failure or delay in the shipment or acceptance of the goods if hindered or prevented, directly or indirectly, by war, national emergency, inadequate transportation facilities, Seller's inability to obtain raw materials, energy or other items necessary for the manufacture of the goods on terms satisfactory to Seller, fire, flood, windstorm or other act of God, strike, lockout or other labour dispute, order or act of any government, whether foreign, national or local, whether valid or invalid, or any other cause of like or different kind beyond the reasonable control of such party. Strikes, lockouts, or other labour disputes involving employees of either party shall be deemed to be beyond the reasonable control of such party. Any quantity of goods so affected shall be deducted from the total quantity purchased by Buyer. Seller, during any period of shortage due to any of the above causes, may allocate its available supply of goods among itself and its customers on whatever basis it deems desirable.
- 14. WAIVER:** Delay or failure by Seller to exercise any right under these Terms & Conditions or applicable law shall not constitute a waiver of that or any other right or subsequent right.
- 15. COMPLIANCE WITH EXPORT LAWS AND RIGHT TO DRAWBACKS:** Buyer represents that the goods will not be diverted, transshipped, or re-exported to any country whatsoever, except in accordance with all applicable Canadian laws and regulations. In the event a right to any drawback(s) exist, the party who paid or is obligated to pay the tariff, tax or fee subject to the drawback(s), shall be entitled to the right thereto and the other party shall supply and execute all documents as necessary to assist in the exercise of such right.
- 16. ADDITIONAL PROVISIONS:** These Terms & Conditions and any dispute arising in respect of the matters contemplated hereby shall be interpreted and governed by the laws of the Province of Ontario. Any and all disputes under or relating to the goods sold hereunder shall be settled by binding arbitration under the Arbitration Act (Ontario). The arbitration shall be held in the Province of Ontario. Buyer shall not assign this Quotation, or any subsequent Purchase Order, or any rights or obligations in respect to the transactions to which this Quotation applies without the consent of Seller. Subject to the preceding sentence, the rights and obligations of Buyer and Seller under this Quotation shall bind and inure to the benefit of Buyer and Seller and their respective successors, heirs, representatives, and assigns.
- 17. CHOICE OF LANGUAGE:** The parties hereto confirm that it is their wish that these Terms & Conditions and any subsequent Purchase Order and Invoice, as well as all other documents relating hereto, be drawn up in English only. Les parties aux présentes confirment leur volonté que cette convention ainsi que tous les documents s'y rattachant, soient rédigés en anglais seulement.