

# **AMERICAN CARBONYL, LLC**

## **STANDARD SALES TERMS AND CONDITIONS**

The terms and conditions set forth below apply to any and all sales by American Carbonyl, LLC (“Seller”) of any product(s) (“Product”) to any purchaser (“Buyer”), and any and all purchases of any Product by Buyer from Seller, except to the extent that Seller has expressly agreed in writing, specifically identifying the provision or provisions to be modified, to the contrary. Any contrary terms set forth in any purchase order, confirmation, correspondence, or other writing or communication, specifically including, without limitation, any of Buyer’s standard terms and conditions, are rejected in their entirety. Buyer’s ordering of any Product, receipt or acceptance of any Product, and payment for any Product shall each be deemed Buyer’s full and unconditional acknowledgement and acceptance of all of these terms and conditions. Any agreement between Seller and Buyer with respect to the sale and purchase of Product, as well as any purchase order or other request for Product placed by Buyer and accepted by Seller, shall be considered the “Agreement” for the purposes of these terms and conditions.

1. **ORDERING.** If specific delivery dates are not set forth in this Agreement, Buyer shall submit orders to Seller for Product. Such orders shall comply with the terms of this Agreement and Seller’s standard terms and procedures for ordering. Unless otherwise specified in this Agreement, lead times for orders shall be Seller’s standard lead times for the Product. Lead times will be for Seller’s single standard production batch size for the Product.

2. **QUANTITY/VOLUME REQUIREMENTS AND LIMITS – STATED QUANTITIES.** If the Quantity/Volume section of this Agreement requires that Buyer purchase and receive a specified quantity of Product which is stated as an annual quantity, Buyer shall purchase such Product in approximately equal monthly quantities throughout the year. If the Quantity/Volume section of this Agreement requires that Seller supply and deliver a specified quantity of Product which is stated as an annual quantity, in no event shall Seller be required to deliver in any month more than ten percent (10%) of the stated annual quantity.

3. **QUANTITY/VOLUME REQUIREMENTS AND LIMITS – REQUIREMENTS.** If the Quantity/Volume section of this Agreement requires that Seller supply and deliver a quantity of Product based on Buyer’s requirements, such provision shall state an estimate of Buyer’s requirements and, if such estimate is an annual estimate, Buyer shall purchase such Product in approximately equal monthly quantities throughout the year. If the Quantity/Volume section of this Agreement requires that Seller supply and deliver a quantity of Product based on Buyer’s requirements, in no event shall Seller be required to deliver in any month more than (i) if Buyer’s estimated requirements are stated on an annual basis, ten percent (10%) of the stated amount of Buyer’s estimated annual requirements, or (ii) if Buyer’s estimated requirements are stated on a monthly basis, one hundred ten percent (110%) of Buyer’s estimated monthly requirements. If Buyer does not estimate its requirements in this Agreement, Seller shall be entitled to rely on the estimates provided by Buyer prior to the execution of this Agreement, including any estimates set forth in correspondence between the parties, in determining Seller’s obligations as set forth in the preceding sentence. Seller shall have the right to audit Buyer’s books and records to determine Buyer’s compliance with any obligation to purchase a specified percentage of its requirements.

4. **SPECIFICATIONS.** If no specifications are attached to this Agreement, Seller’s standard specifications for the Product shall be the agreed specifications. Seller reserves the right to make changes to the specifications for the Product from time to time and Seller will give Buyer thirty (30) days notice prior to any such change.

5. QUANTITY AND QUALITY TESTING: Seller's weight and/or other measurements of Product shall be conclusively binding, unless proved to be in error. Seller's laboratory analysis and methods shall determine whether Product specifications have been met and are conclusively binding, unless Buyer proves to Seller's reasonable satisfaction that Seller's analysis report is erroneous. No Product quantity claims will be made unless the difference is more than one-half of one percent (0.5%) of the invoiced quantity. All measurements and/or tests shall be made in accordance with the latest standards or guidelines published by the ASTM or other applicable industry standard methods.

6. CHANGES. This Agreement may not be changed by Buyer, including, without limitation, altering quantities or delaying shipment or performance, without the prior written consent of Seller. Any such change will be upon terms and conditions approved by Seller in writing and will be further subject to the provisions below. Any costs incurred by Seller to meet Buyer's request for a change will be Buyer's responsibility. If Seller consents to the change of an order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller, at the earlier of the date the invoice for the subject Product is due or within thirty (30) days of such agreed change, all costs and expenses incurred by Seller as a result of such change. Seller in its sole discretion may elect to reduce or waive any of the foregoing fees, charges, or costs.

7. CANCELLATIONS. This Agreement may not be cancelled by Buyer without the prior written consent of Seller. Any such cancellation will be upon terms and conditions approved by Seller in writing and will be further subject to the provisions below. Any costs incurred by Seller to meet Buyer's request for cancellation will be Buyer's responsibility. If Seller consents to the cancellation of an order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller, within thirty (30) days of such agreed cancellation, all costs and expenses incurred by Seller in connection with Buyer's order and a restocking or cancellation fee of fifteen percent (15%) of the amount of the original Agreement. Seller in its sole discretion may elect to reduce or waive any of the foregoing fees, charges, or costs.

8. SHORT LEAD TIME ORDERS OR RUSH ORDERS. Orders requested to be delivered to Buyer in less than Seller's Standard Product Lead Times will be subject to an expediting fee of \$1,000. Seller in its sole discretion may elect to waive the expediting fee.

9. CONTAINERS. DETENTION AND DEMURRAGE. If shipment requires use of returnable containers or tote bins, title to such containers and tote bins shall remain in Seller and a deposit in an amount required by Seller shall be made at the time the shipment is ordered. Such containers and tote bins shall be returned in good condition within thirty (30) days from the date of shipment at Buyer's expense. Upon such return, Seller shall refund the deposit. Except as otherwise provided herein, any demurrage or detention fees charged by Seller on delivery railcars, vehicles, machines or equipment shall be paid by Buyer.

10. PAYMENT, DEFAULT, BUYER'S CREDIT. Buyer shall pay Seller for Product within the time period set forth on in this Agreement by check, wire or electronic funds transfer (or as otherwise specified in this Agreement) in immediately available funds in U.S. dollars and otherwise in accordance with Seller's invoice instructions. All past due amounts shall bear interest at the lesser of one and one-half percent (1.5%) per month or the maximum amount allowed by applicable law. In the event of default in payment, Buyer shall pay Seller's costs of collection, including, without limitation, reasonable attorneys' fees. Seller reserves the right, among other remedies, either to terminate this Agreement or to suspend further deliveries under it in the event Buyer fails to pay for any one shipment when same becomes due. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments, or security satisfactory to Seller may be required by Seller for future deliveries and for the Product theretofore delivered.

11. EXCUSE OF PERFORMANCE. (a) Deliveries may be suspended by either party in the event of: Act of God, war, riot, fire, explosion, accident, flood, sabotage; lack of adequate fuel, power, raw

materials, labor, container, 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 such party; or in the event of labor trouble, strike, lockout, or injunction (provided that neither party shall 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 Product or of a material upon which the manufacture of the Product is dependent.

(b) If Seller determines that its ability to supply the total demand for the Product, or obtain any or a sufficient quantity of any material used directly or indirectly in the manufacture of the Product, is hindered, limited, or made impracticable, Seller may allocate its available supply of the Product or such material (without obligation to acquire other supplies of any such Product or material) among itself and its purchasers on such basis as Seller deems appropriate, without liability for any failure of performance which may result therefrom.

(c) Deliveries suspended or not made by reason of this section shall be canceled without liability, but this Agreement shall otherwise remain unaffected.

12. LIMITED WARRANTY. Unless otherwise expressly provided herein, Seller warrants title and that the Product shall conform to Seller's standard specifications or to the attached specifications. Subject to the preceding sentence, SELLER MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS ANY SUCH WARRANTY, SPECIFICALLY INCLUDING, WITHOUT LIMITATION, ANY EXPRESS OR IMPLIED WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER MATTER WITH RESPECT TO THE PRODUCT, whether used alone or in combination with any other material.

13. LIMITATIONS OF LIABILITY. (a) Within thirty (30) days after receipt of each shipment of the Product, Buyer shall examine such Product for any damage, deviation from specifications, or other defect or shortage. All claims for any cause whatsoever (whether such cause be based on contract, negligence, strict liability, other tort, or otherwise, and regardless of whether such claim is for a latent defect) shall be deemed waived unless made in writing and received by Seller within thirty (30) days after Buyer's receipt of the Product in respect to which such claim is made or, if such claim is for non-delivery of such Product, within thirty (30) days after the date upon which such Product was to be delivered. Failure of Seller to receive written notice of any such claim within 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 Product shall have then taken place. Transportation charges for the return of the Product shall not be paid unless authorized in advance by Seller.

(b) 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 ON CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT, OR OTHERWISE) SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCT IN RESPECT TO WHICH SUCH CAUSE ARISES OR, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT OF SUCH PRODUCT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES RESULTING FROM ANY SUCH CAUSE.

(c) SELLER SHALL NOT BE LIABLE FOR, AND BUYER ASSUMES LIABILITY FOR, ALL PERSONAL AND PROPERTY DAMAGE CONNECTED WITH THE HANDLING, TRANSPORTATION, POSSESSION, PROCESSING, FURTHER MANUFACTURE, OTHER

USE, OR RESALE OF THE PRODUCT, WHETHER THE PRODUCT ARE USED ALONE OR IN COMBINATION WITH ANY OTHER MATERIAL.

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

(e) IN NO EVENT WILL SELLER EVER BE LIABLE TO BUYER FOR LOSS OF ANTICIPATED PROFITS OR LOST BUSINESS OPPORTUNITY, OR FOR ANY INDIRECT, INCIDENTAL CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

14. LIABILITY AND RESPONSIBILITY. Except to the extent that such is solely and directly caused by Seller's gross negligence or willful misconduct, Buyer assumes full responsibility for and liability arising out of unloading, discharge, storage, handling, use, and disposal of any product or container therefor, including, without limitation, the use of such product or container alone or in combination with other substances; compliance or noncompliance with any laws or regulations thereto; and injury and damage from any cause whatsoever after shipment from Seller's plant. BUYER AGREES TO INDEMNIFY AND HOLD SELLER, ITS AGENTS, SERVANTS, DIRECTORS, OFFICERS, EMPLOYEES, AND REPRESENTATIVES (COLLECTIVELY "INDEMNIFIED PARTIES") HARMLESS FROM AND AGAINST ANY AND ALL LOSSES, EXPENSES, DEMANDS, CLAIMS, DAMAGES, PROCEEDINGS, OR CAUSES OF ACTION, WHETHER AT LAW OR IN EQUITY, ARISING OUT OF OR ALLEGING ANY BODILY INJURY (INCLUDING DEATH), PROPERTY DAMAGE, OR ECONOMIC DAMAGE ACTUALLY OR ALLEGEDLY CAUSED OR CONTRIBUTED TO BY ANY OF THE INDEMNIFIED PARTIES OR BY THE PRODUCT OR ANY CONTAINER THEREFOR SUBSEQUENT TO SHIPMENT FROM SELLER'S PLANT, TERMINAL, OR WAREHOUSE, EXCEPT TO THE EXTENT THAT THE SAME IS SOLELY AND DIRECTLY CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SELLER. IT IS EXPRESSLY AGREED THAT THE FOREGOING INDEMNITY SHALL INCLUDE, WITHOUT LIMITATION, AN INDEMNITY OF THE INDEMNIFIED PARTIES AGAINST ANY CLAIMS ARISING OUT OF OR RELATING TO THE ACTUAL OR ALLEGED NEGLIGENCE OF AN INDEMNIFIED PARTY, EITHER SOLELY OR IN COMBINATION WITH THE NEGLIGENCE OR OTHER LIABILITY OF BUYER AND/OR OTHERS, EXCEPT AS SPECIFICALLY LIMITED IN THE PRECEDING SENTENCE. BUYER AGREES TO DEFEND ANY SUIT OR ACTION BROUGHT AGAINST AN INDEMNIFIED PARTY BASED ON ANY SUCH INJURY OR DAMAGE AND TO PAY ALL COSTS AND EXPENSES IN CONNECTION THEREWITH OR RESULTING THEREFROM, INCLUDING, BUT NOT LIMITED TO, ATTORNEY'S FEES, PREJUDGMENT AND POST-JUDGMENT INTEREST, APPEAL BONDS, AND SUPERSEDEAS BONDS.

15. COMPLIANCE WITH LAWS. Each party agrees to comply with all applicable laws, ordinances, and regulations, from whatever authority they may emanate, provided they are not in conflict with U.S. law. Moreover, each party agrees to comply with all applicable U.S. laws and export control regulations, including but not limited to EPA, OSHA, Commerce Department, State Department, and Treasury Department regulations. Furthermore, Buyer shall comply with all applicable export control and trade embargo laws, rules and regulations (including but not limited to the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, the regulations administered by the Department of the Treasury's Office of Foreign Assets Control and the U.S. Foreign Trade Statistics Regulations), and shall not resell, export, re-export, distribute, transfer or dispose of the Product, directly or indirectly, without first obtaining all necessary written consents, permits, authorizations, and licenses and completing such formalities as may be required by

any such laws, rules and regulations. Failure by Buyer to comply with such laws, rules and regulations shall constitute a material breach of this Agreement. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Product. In the event this Agreement, or any procedure or action herein imposed upon either party hereto, shall at any time be in conflict with any legal requirements imposed by any such authorities, and if substantial change is required to restore compliance, then either party shall have the right to terminate this Agreement by notice to the other party. Seller shall be relieved of any obligation to make additional deliveries hereunder on the date of such termination, but such termination shall not relieve Buyer of its obligations herein to settle any unpaid balances due hereunder.

16. **TAXES.** Any increase in tax or governmental charge or increase in same (excluding any franchise or income tax or other tax or charge based on income) (a) increasing the cost to Seller of producing, selling, or delivering the Product or of procuring materials used therein or (b) payable by Seller because of the production, sale, or delivery of the Product, such as sales tax, use tax, retailer's occupational tax, gross receipt tax, and value added tax, may, at Seller's option, be added to the price specified in the agreement.

17. **ASSIGNMENT.** Buyer shall not (by operation of law or otherwise) assign its right or delegate its performance hereunder without the prior written consent of Seller, and any attempted assignment or delegation by Buyer without such consent shall be void.

18. **NO THIRD PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns. Nothing herein expressed or implied shall give or be construed to give to any person, other than the parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder.

19. **SAFE HANDLING.** Buyer hereby acknowledges receipt of Seller's material safety data sheet. Buyer shall promptly and carefully inspect Product upon receipt and will maintain appropriate safe handling and use procedures. Buyer will apprise its employees and customers of the hazards, proper use, and handling requirements of Product and shall comply with the OSHA Hazard Communications Standard and all other applicable laws, rules, and regulations.

20. **NOTICES.** Any notice shall be sufficiently given when duly mailed, postage prepaid, addressed to Seller or to Buyer at their respective addresses appearing herein, or to such other address for either party as that party may by notice designate.

21. **SEVERABILITY.** If any provision herein is or becomes invalid or illegal in whole or in part, such provision shall be deemed amended, as nearly as possible to be consistent with the intent expressed in this Agreement, and if such is impossible, that provision shall fall by itself without invalidating any of the remaining provisions not otherwise invalid or illegal.

22. **CHOICE OF LAW.** The validity, interpretation, and performance of this Agreement and any dispute connected herewith shall be governed and construed in accordance with the laws of the State of Texas, USA.

23. **DISPUTES.** Buyer and Seller irrevocably submit to the exclusive jurisdiction of the Federal courts of the United States of America located in the Southern District of Texas, Houston Division, or the State District Courts of Texas located in Harris County, Texas, solely in respect of the interpretation and enforcement of the provisions of this Agreement, and in respect of the transactions contemplated hereby, and hereby waive and agree not to assert, as a defense in any action, suit, or proceeding for the interpretation or enforcement hereof or of any such document, that it is not subject thereto or that such action, suit, or proceeding may not be brought or is not maintainable in said courts or that the venue thereof may not be appropriate or that this Agreement or any such document may not be enforced in or by such courts, and the parties hereto irrevocably agree that all claims with

respect to such action or proceeding shall be heard and determined in such a court. Buyer and Seller consent to and grant any such court jurisdiction over the person of such parties and over the subject matter of any such dispute. EACH PARTY TO THIS AGREEMENT WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY ACTION, SUIT, OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT.

24. **BANKRUPTCY.** Buyer and Seller agree that this Agreement constitutes a “Forward Contract” and that each party is a “Forward Contract Merchant” for purposes of Section 556 of the U.S. Bankruptcy Code. In the event of insolvency of Buyer, Seller hereby makes a demand for reclamation of Product delivered to Buyer but not yet paid for by Buyer in accordance with Section 2-702 of the Uniform Commercial Code and Section 546(c)(1) of the United States Bankruptcy Code. In the event of insolvency of Buyer, Buyer agrees to promptly notify Seller of such insolvency and Buyer hereby waives any defenses to Seller’s right of reclamation of such Product, and Buyer shall promptly return possession to Seller of such Product at Buyer’s expense.

25. **PRIOR AND SUBSEQUENT TRANSACTIONS.** If prior to the execution of this document by both parties, Seller delivers Product to Buyer and Buyer receives Product from Seller at any time within the term of this Agreement, any such transactions will, at Seller’s option, be governed by the terms and conditions hereof. The parties recognize and agree that neither shall be obligated by their course of conduct to perform any future transactions hereunder unless and until this document is fully executed. The terms and conditions set forth in this Exhibit shall, at Seller’s option, apply to all future spot sales of Product from Seller to Buyer unless a written contract has been entered into by the parties with respect to such sales.

26. **HEADINGS.** Paragraph headings or titles in this Exhibit are included for ease of reference and do not constitute any part of the text or affect its meaning or interpretation

27. **SURVIVING TERMS.** Those terms which by their nature are intended to survive this Agreement, specifically including, without limitation, Sections 7, 10, 12, 13, 14, 15, 16, 17, 18, 21, 22, 23, 24 and 25 of this Exhibit, shall survive any expiration or termination of this Agreement.

28. **CONFLICTING TERMS.** In the event of a conflict between the terms of this Agreement and the terms set forth on any purchase order or confirmation issued pursuant to this Agreement, the terms of this Agreement shall prevail. Any use of or reference to Incoterms shall only be used to specify responsibility for shipping arrangements and/or costs, and shall not affect the title, risk of loss, and/or payment terms set forth in this Agreement.

29. **OTHER TERMS.** This Agreement constitutes 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 the terms or conditions of this Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by the acknowledgment 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 or any other breach or default of any other right or remedy, unless such waiver be express in writing signed by the party to be bound.