

GENERAL TERMS AND CONDITIONS

1. These General Terms and Conditions shall apply and control the sale to you ("Buyer") of the products set forth on the front of this invoice (the "Products") by Eka Chemicals Inc. ("Seller") in the absence of a specific provision to the contrary.
2. The Products are sold and delivered Ex Works (as defined in INCOTERMS2000), Seller's plant or warehouse. Unless otherwise specified in writing by Buyer, all shipments shall be by carrier selected by Seller. Seller shall notify Buyer without delay of the carrier selected for the shipment. Risk of damage to or loss of the Products shall pass to Buyer upon such delivery Ex Works to such carrier, which shall be deemed to be delivery to the Buyer. Buyer shall bear all costs of loading.
3. Any fees, taxes, duties, levies or other charges now or hereafter imposed directly or indirectly on Seller or required to be collected directly or indirectly by Seller by any taxing authority in connection with the sale, delivery, use or consumption of the Products, including, without limitation, any sales, documentary, use, excise, purchase, goods and services tax, turnover and import taxes, consular fees and customs duties shall be for the account of Buyer, and Buyer shall on demand forthwith pay to Seller any such fee, tax, duty, levy or charge.
4. Seller shall be excused for any delay in performance, and shall not be responsible for any loss or damage suffered by Buyer caused by acts of God; accident or casualty; war or warlike activities; insurrection or civil commotion; supply, labor, engineering, or transportation difficulties; acts of any government (with or without valid jurisdiction); strikes, blockades, boycotts, lockouts or any other causes beyond Seller's control, whether or not similar in nature to those specified herein. The provision as regards strikes, blockades, boycotts and lockouts shall apply irrespective of whether Seller itself is the subject or instigator of such a measure.
Performance shall be suspended during the continuance of any such cause and for a reasonable period thereafter. Any such delay does not entitle Buyer to reject the Products or withhold payment of any part of the amount of this invoice.
5. The order represented by this invoice is not divisible and is subject to the terms of payment specified on the face hereof. If in Seller's sole judgement, doubt arises at any time as to the ability of Buyer to pay for the Products, or Buyer is past due in payment of any amount owing to Seller, whether under this invoice or any other issued by Seller to Buyer, Seller may (without liability and without prejudice to any other remedies, and regardless of any schedule of shipment or payment to the contrary) postpone any future shipments and stop any Products in transit until Seller shall have received payment in full of all amounts, whether or not then due and owing to it by Buyer. It is expressly agreed that title to the Products does not pass to Buyer until the price of the Products is paid in full and no other amount is owed by Buyer to Seller in respect of the Products. Buyer undertakes to execute any and all documents necessary to give effect to the foregoing and set up Seller's rights.
6. Seller warrants to Buyer that the Products shall be free from defects in material and workmanship when delivered to Buyer. Save for this warranty, the Products are sold without any warranty whatsoever. Buyer is aware that the Products, if not handled with proper care and consideration, can cause DAMAGE TO PROPERTY AND INJURY TO PERSON AND SELLER WILL NOT BE RESPONSIBLE FOR ANY SUCH DAMAGE AFTER THE PRODUCTS HAVE BEEN DELIVERED TO THE BUYER. THE WARRANTY SET FORTH HEREIN IS IN LIEU OF AND EXCLUDES TO THE FULLEST EXTENT PERMISSIBLE BY LAW, ALL OTHER WARRANTIES, GUARANTEES, UNDERTAKINGS, CONDITIONS OR REPRESENTATIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF QUALITY, PERFORMANCE, MERCHANTABILITY, FITNESS OR SUITABILITY FOR A PARTICULAR PURPOSE.
7. Buyer shall promptly notify Seller in writing of any alleged defects in the Products. Upon receipt of such notice, Seller shall have the right, but shall be under no obligation, to inspect, analyze and test the Products in question. Seller may, at its option, (1) perform such inspection, analysis and test at Buyer's premises, or (2) request Buyer to send to Seller or to a person designated by Seller, at Buyer's expense, such Products or an adequate sample thereof for inspection, analysis and test. No Products or sample thereof shall be sent to Seller without the prior written authorization by Seller. No inspection, analysis or test or any other actions by any third party are authorized or will be paid for by Seller, without Seller's prior consent in writing.
8. Buyer's exclusive and sole remedy for breach of these terms and conditions shall be limited to, at Seller's sole discretion, replacement or correction of any defective Product, or refund of the purchase price for such Product. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED DURING OR AS A RESULT OF THE TRANSPORTATION OF THE PRODUCTS OR THE HANDLING OF THE PRODUCTS BY BUYER OR BUYER'S AGENTS OR FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION LOST PROFITS, LOSS OF INCOME, LOSS OF BUSINESS OPPORTUNITY, AND OTHER RELATED LOSSES OR EXPENSES.
9. To the extent permitted by law, Buyer acknowledges that any claim or legal action by Buyer against Seller must be commenced within one year from the date of this invoice. After said period, any action or claim hereunder by Buyer, whether at law or in equity, shall be barred.
10. No provision of these terms and conditions may be altered, modified, amended, supplemented, terminated or waived except by an instrument in writing signed by Buyer and Seller.
11. Any terms or conditions herein which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by any applicable laws, the parties hereby waive any provision of law that renders any term or condition herein invalid or unenforceable.
12. If any Product covered by this Agreement is supplied in returnable container(s) and so specified, such container(s) shall be billed to Buyer at Seller's standard price and shall be paid for at the same time as contents thereof. Such charge shall be refunded upon return of the empty container(s) in good and reusable condition to Seller's plant of origin.
13. The validity, interpretation and enforceability of the terms and conditions herein shall be governed by the laws of the State of Georgia, USA.
14. (For the Province of Quebec only) It is the express wish of the parties that this document be drawn up in the English language only. C'est le volonte expresse des parties que le present document soit redige en langue anglaise seulement.