

ARCHIMICA TERMS & CONDITIONS OF SALE

1. **ENTIRE CONTRACT:** These terms and conditions are incorporated by reference and constitute the Contract and the entire understanding between the parties relating to the Products covered. In the event of conflicts between the Sales Contract, if any, and Seller's Invoice, the Sales Contract shall prevail. Buyer accepts these terms and conditions and none of Buyer's inconsistent and/or additional terms and conditions submitted in acknowledging or accepting this Contract or in issuing purchase orders, releases, shipping instructions or other documents shall be valid. No additional notice of the foregoing need be given by Seller to Buyer. Neither party shall be bound by any change in, additions to, or waiver of, any of these terms and conditions unless approved in writing by its authorized representative.
2. **PAYMENT:** All sums shall be payable according to the payment terms stated on the front, measured from the date of Seller's invoice. Seller's acceptance of any medium of payment is subject to collection. Seller may recover for each delivery as a separate transaction and may upon reasonable dissatisfaction with Buyer's creditworthiness, or upon late payment or any other default by Buyer, decline to make delivery except for cash. Interest shall accrue on overdue payments at 1.5% per month.
3. **SHIPPING INSTRUCTIONS:** If the sale provides for multiple shipments, on or before the tenth (10th) day of each month, Buyer shall furnish written shipping instructions for the quantity required during the next succeeding month. Seller shall have no obligation for any quantities for which Buyer has not given such shipping instructions. Neither party shall be obligated in any month for more than one-twelfth of the maximum annual quantity specified. If Buyer fails to take any such monthly amount, its total purchase obligation shall not be reduced unless Seller elects to cancel the quantity not taken.
4. **CHANGES:** If the sale provides for multiple shipments, as to any unshipped Product, Seller may revise its prices or terms of payment upon not less than thirty (30) days advance written notice to Buyer. If any law, regulation or other governmental action: materially increases Seller's cost of production or supply of Product, such increased cost will be passed on to Buyer.
5. **WARRANTIES:** Seller shall have no liability with respect to any recommendations or instructions as to handling, use or disposal of any Product, including its use alone or in combination with other products, or as to any apparatus or process for the use of any Product. SELLER'S SOLE AND EXCLUSIVE WARRANTY IS THAT ITS PRODUCT COMPLIES WITH SELLER'S PUBLISHED CHEMICAL AND PHYSICAL SPECIFICATIONS. SELLER MAKES NO OTHER WARRANTIES EITHER EXPRESS OR IMPLIED, WHETHER WITH RESPECT TO ITS RECOMMENDATIONS, INSTRUCTIONS, PRODUCT, PROCESS OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE. Seller's liability to Buyer for any and all losses or damages resulting from Seller's breach of this Contract or Product not meeting Specifications, whether in tort or in contract or otherwise, shall be, at the election of Seller, limited to the replacement of a like quantity of Product or replacement of product and IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES (including, without limitation, loss of anticipated profits, business interruption, loss of use or revenue, cost of capital or loss or damage to property or equipment).
6. **PATENTS:** Seller's recommendations or instructions are not intended to suggest operations which would infringe any patents, and Seller assumes no liability or responsibility for any such infringement. Seller may, without liability to Buyer of any kind, decline to continue deliveries of any Product, the manufacture, sale or use of which, in Seller's opinion would infringe any patent now or hereafter issued. Buyer shall defend, indemnify and hold Seller, and its affiliates, and their respective representatives and employees, harmless against any expense, judgment or loss, including attorneys' fees, for infringement of any patents or trademarks or other third party property rights which results from Buyer's use of the Product or Seller's compliance with Buyer's designs, specifications or instructions.
7. **PACKAGING; USES; SAFE HANDLING:** Buyer 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 warrants that Product will not be used, resold, or combined for end uses intended or reasonably likely to be toxic or lethal to human beings. Buyer will apprise its employees and customers of the hazards, proper use and handling requirements of Product, and shall comply with applicable health and safety regulations, and all other applicable laws, rules and regulations. Seller's weights and measures shall govern, except in case of proven error.
8. **CLAIMS LIABILITY:** Buyer shall be deemed to have waived all product claims except those for which Buyer's notice has been given to Seller within thirty (30) days of receipt of such Product. As to any claim of any nature, whether in contract, tort, strict liability, patent infringement or otherwise, Seller's and its affiliates' total liability shall not exceed the purchase price of the portion of Product in respect of which such claim is made, plus any transportation charges paid by Buyer. In no event shall Seller and its affiliates be liable for any special, indirect, incidental, consequential, or contingent damages including, but not limited to, costs of litigation and lost profits. The price stated for Product is a consideration in limiting Seller's and its affiliates' liability.
9. **LIABILITY AND RESPONSIBILITY:** Except to the extent such is solely and directly caused by any breach of Seller's obligations, Buyer assumes full responsibility for any liability arising out of unloading, discharge, storage, handling, use and disposal of any Product or container, including the use of such Product or container alone or in combination with other substances; compliance or noncompliance with any laws or regulations and damage to or destruction of returnable containers from any cause whatsoever after delivery to Buyer (and if applicable, until their return to Seller). Except to the extent solely and directly caused by any breach of Seller's obligations stated in this Contract, Buyer shall defend, indemnify and hold harmless Seller, and its affiliates, and their respective representatives and employees, from and against all losses, liabilities, damages, and expenses made against or incurred by Seller (including its affiliates, and their respective representatives and employees), arising out of any claim, suit or proceeding by any governmental agency or any third parties (including without limitation any employee (or relative of employee) of Buyer) which alleges death, personal or economic injury or damages to any private or public property or resources, caused or contributed to by the Product.
10. **FORCE MAJEURE:** Performance of any obligation under this Contract may be suspended by either party without liability, to the extent that: a violent act of nature; war; terrorism; riot; fire; explosion; accident; flood; sabotage; mechanical breakdown; plant shutdown; Seller's inability to obtain fuel, power, raw materials or equipment from its usual sources at prices it deems reasonable; governmental laws, regulations or orders; or any other cause (except financial) beyond the reasonable control of such party; or labor trouble, strike, lockout or injunction (whether or not such labor event is within the reasonable control of such party) delays, prevents, restricts, limits, or renders commercially infeasible, the performance of this Contract or the consumption, sale or use of the Product, except as to Product already in transit. The affected party shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. The total Contract quantity shall be reduced by the quantity not delivered during the term of such suspension and the Contract shall otherwise remain unaffected. In no event shall Seller be required to ship Product from Seller's or, if applicable, its affiliates' other locations or to purchase Product or components from other sources to fulfill the Contract requirements. If any of such contingencies occur, Seller may, without liability to Buyer of any kind, keep its available supply of any Product for its own uses, or distribute it among its customers upon such basis and in such manner as Seller deems fair and practicable.
11. **WAIVER / ASSIGNMENT:** Any waiver of any particular breach or default of this Contract shall be in writing and shall not constitute a continuing waiver or a waiver of any other breach or default, and acceptance by Seller of any payments with knowledge of any breach or default shall not constitute such waiver. Any payments to be made or obligations to be performed before, upon, or subsequent to the termination of this Contract shall survive termination of this Contract if not already made or performed at the date of termination. This Contract shall bind the respective successors and assigns of the parties, but none of Buyer's rights or obligations may be assigned without Seller's prior written consent, except to its subsidiary or affiliated corporation, provided that such assignment shall not relieve the assignor of its obligations. Any such assignment without Seller's written consent shall be void.
12. **JURISDICTION:** THE PARTIES AGREE THAT ALL OF THE PROVISIONS OF THIS CONTRACT AND ANY QUESTIONS CONCERNING ITS INTERPRETATION AND ENFORCEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE COUNTRY OF ORIGIN OF THE PRODUCT (SELLER'S BUSINESS ADDRESS) AND THE EXECUTION AND DELIVERY OF THIS CONTRACT SHALL BE DEEMED TO BE THE TRANSACTION OF BUSINESS WITHIN SAID COUNTRY FOR PURPOSES OF CONFERRING JURISDICTION UPON COURTS.
13. **SEVERABILITY; HEADINGS:** If any provision 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 Contract; and if such is impossible, that provision shall fall by itself without invalidating any of the remaining provisions not otherwise invalid or illegal. Paragraph headings or titles are included for ease of reference and do not constitute a part of the text or affect its meaning or interpretation.
14. **DEFAULT; BANKRUPTCY:** Upon failure of Buyer to make any payment required, without deduction, setoff or counterclaim, within ten (10) days after the same becomes due, or if Buyer defaults in the performance of any other obligation, term or condition of this Contract, or if Buyer shall make an assignment for the benefit of creditors, or in the event of a commencement of proceedings by or against Buyer involving bankruptcy, insolvency, reorganization or arrangement, Seller, without demand or notice of any kind and without prejudice to any other remedy of Seller, may cancel this and any other contract with Buyer (Buyer remaining liable for damages) or Seller may defer further deliveries until the default is remedied (in which event, if Seller elects, this Contract shall be deemed extended for a period of time equal to that during which deliveries are deferred).