



## TERMS AND CONDITIONS OF SALE

**1. GENERAL.** These Terms and Conditions of Sale ("Conditions of Sale") apply to all communications relating to all sales and delivery of products ("Products") made by INEOS Calabrian Corporation ("Seller") to the buyer of such Products ("Buyer"). Seller's acceptance of Buyer's order or proposal is expressly conditioned on Buyer's assent to these Conditions of Sale. No other agreements or terms and conditions will be applicable unless expressly agreed to by Seller in writing. References herein to a "Contract" relate to any sales contracts, purchase orders, and any other communication relating to the sale and delivery of the Products, which are all subject to these Conditions of Sale. Buyer's assent to these Conditions of Sale will be conclusively presumed by Buyer's acceptance of Product. Seller reserves the right to change these Conditions of Sale at any time. Any section of these Conditions of Sale with obligations that extend beyond the term of the Contract will survive termination of such Contract. **UNLESS OTHERWISE EXPRESSLY AGREED BY SELLER, PRODUCTS SUPPLIED BY SELLER ARE FOR BUYER'S CONSUMPTION ONLY AND NOT FOR RESALE.**

**2. ORDERS AND SHIPMENTS.** Seller will not be required to deliver a quantity of Product exceeding that specified in the Contract. If no monthly quantity is specified, Seller may limit the quantity to be supplied at Seller's discretion. All orders placed by Buyer will be placed within Seller's standard lead times and will be for full load shipments of one Product each. Orders placed outside of Seller's standard lead times, and/or orders for less than full load shipments, will be subject to Seller's consent and its standard upcharges. For purposes hereof, a full load shipment is a fully packed container based on the logistics mode selected for transportation of an order. Seller will use reasonable efforts to deliver Product on time and in full (+/- 5% weight tolerance being acceptable). Seller will keep Buyer informed of any material variation from agreed delivery times. Shipments of Product will be made only at the location specified by Seller, and Seller will select the origin of shipment, the carrier, and the manufacturing location from which Product is supplied, subject to any facility qualifications required by Buyer. Unless otherwise specified, delivery of Product will be at Seller's facility or a Seller-designated third party facility where the Product is finished and/or

stored, and title to, and risk of loss of, Product will pass from Seller to Buyer at such location, with freight from such location to Buyer's destination for Buyer's account. The quantity of all shipments will be determined in accordance with Seller's usual weighing practices, with Seller's quantity determination governing in the event of conflict.

For deliveries made to Buyer's facilities, such facilities will, at a minimum, meet industry standards and provide proper and safe access for Seller's deliveries. Buyer will reimburse Seller for any costs incurred by Seller if Seller deems it necessary to suspend or refuse delivery where safe access or facilities are not available. Seller may inspect Buyer's facilities, if necessary, by entering Buyer's premises. Upon arrival and placement of Seller's rail car, bulk truck, or other delivery vehicle (the "Equipment") at the delivery point, Buyer will be responsible for promptly unloading Product from the Equipment in a manner that does not damage the Equipment, and for promptly releasing the Equipment empty and clear of any contamination. Buyer shall make no further use of such Equipment except that the Buyer may use, subject to Seller's authorization, the Equipment for temporary storage of Products at the delivery point. Buyer shall not use such Equipment to transport or store any other products. At no time prior to the empty return to Seller of any Equipment used to deliver Product will Buyer cause the Equipment to be transported to any other location without the express prior written consent of Seller. All movement or temporary storage of any such Equipment shall be at the risk and expense of Buyer and Buyer shall indemnify and hold Seller harmless from any claims, costs, expenses, or damages arising from the unloading, movement, or temporary storage or other use of the Equipment prior to its empty return to Seller. Buyer will be responsible for the payment of demurrage or detention charges if Buyer holds the Equipment for more than the lesser of (a) the allowable free time for delivery notified by Seller and (b) 30 days.

**3. PRICE AND PAYMENT TERMS.** Unless otherwise agreed, the relevant price for Product will be Seller's price applicable on the date of loading. In addition to the purchase price, Buyer shall pay Seller any and all governmental taxes, charges or duties of every kind including but not limited to any goods or sales tax, as

applicable, (excluding any tax based upon Seller's income) that Seller may be required to pay with respect to the production, processing, transportation, export, import, storage, delivery, sale, or promotion of Product, and with respect to any materials used in the manufacture of Product. Upon request, Buyer shall provide Seller with proof of any related tax payments made and/or properly completed exemption certificates for any tax or duty from which Buyer claims exemption. Buyer shall indemnify Seller against any tax, duty, cost, or penalty it may incur if a request for exemption is invalid.

Full payment must be received (without deduction for set off or counter claim unless Seller gives its prior written approval) by electronic funds transfer to the account nominated by Seller, in the currency specified on the invoice, and no later than the due date on the invoice. Late payments bear interest at the then-maximum interest rate allowable by law from the due date until actual receipt of payment in full. If Buyer fails to pay any indebtedness to Seller, Seller may, in addition to the above remedies and any other remedies, suspend shipments, change terms of payment or terminate the Contract by notice to Buyer. In addition, Seller reserves the right to review periodically the financial status of Buyer and if Seller determines in its sole discretion, that Buyer is or may become unable to meet its payment obligations, Seller may reduce or withdraw any credit under the Contract, require a performance guarantee, or terminate the Contract. Buyer's obligation to perform will not be limited by any previous waiver by Seller.

**4. WARRANTIES.** Seller warrants that each Product will, upon delivery, meet the specifications agreed in the Contract or the specifications otherwise designated by Seller. Seller reserves the right to change the specifications of any Product at any time on at least thirty (30) days' notice. Seller also warrants that it will comply with all applicable laws in the jurisdiction where the Products are manufactured. Notwithstanding the foregoing, where Products are sold after Seller has identified them as developmental, sample, pilot, test lot, scrap, or off-specification, they are sold to the Buyer "AS IS" at Buyer's own risk, with no warranty whatsoever. **BUYER AGREES IT IS SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY OF ANY PRODUCTS IT SELECTS FOR ANY INTENDED PURPOSE AND ACKNOWLEDGES THAT IT HAS NOT RELIED ON ANY REPRESENTATIONS BY OR FROM SELLER REGARDING THE SUITABILITY FOR USE OF ANY**

**PRODUCT IN ANY INTENDED APPLICATION. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO OTHER WARRANTIES OF ANY NATURE WHATSOEVER REGARDING ANY OF ITS PRODUCTS, WHETHER OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, SHELF LIFE OR OTHERWISE, AND NONE WILL BE IMPLIED. FURTHER, SELLER MAKES NO REPRESENTATIONS AND ASSUMES NO RESPONSIBILITY WHATSOEVER WITH RESPECT TO FREEDOM FROM INFRINGEMENT OF ANY PATENT AND/OR COPYRIGHT RESULTING FROM BUYER'S USE OF ITS PRODUCTS OR SELLER'S INFORMATION.**

**5. CLAIMS.** Receipt by Buyer of any Product delivered under the Contract constitutes unqualified acceptance of and waiver by Buyer of its rights to make any claim of any nature whatsoever with respect to such Product unless Buyer gives Seller written notice of such claim within thirty (30) days after receipt of such Product or, in case of shortage or damage in transit, within forty-eight (48) hours of receipt of such Product. For the avoidance of doubt, any claim by Buyer that Product fails to meet the specifications set forth in the Contract is only valid if made with reference to the specifications upon receipt of such Products by Buyer. All quality claims must include test details, product samples, and test results. If Product, subject to a claim, has been processed prior to Buyer's claim, Buyer must provide reasonable evidence that the defect was not ascertainable prior to processing.

**6. LIMITATION OF LIABILITY. BUYER'S EXCLUSIVE REMEDY AND SELLER'S EXCLUSIVE LIABILITY FOR ANY AND ALL CLAIMS ARISING OUT OF SELLER'S MANUFACTURE AND SUPPLY OF PRODUCT UNDER THE CONTRACT, OR FOR NON-DELIVERY, WHETHER SUCH CLAIM OR LIABILITY IS BASED ON NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, OR ANY OTHER LEGAL BASIS, IS LIMITED TO THE PURCHASE PRICE OF THE PRODUCT SUBJECT TO THE CLAIM (PLUS TRANSPORTATION COSTS, IF ANY, PAID BY BUYER FOR SUCH PRODUCT) OR, AT SELLER'S OPTION, THE REPLACEMENT OF SUCH PRODUCT AT BUYER'S DESTINATION. NO PARTY IS TO BE LIABLE TO THE OTHER FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES.** Nothing in this Contract excludes or restricts either Buyer's or Seller's liability for any matter that may not be excluded or limited as a matter of applicable law.

**7. INDEMNIFICATION.** Buyer shall indemnify, defend and hold harmless Seller, its affiliates and each of their officers, directors, employees and agents from and against any liability (whether strict or otherwise) for any claim, liability, loss or expense of any nature whatsoever, including, without limitation, any injury, disease or death of persons (including Buyer's employees) or damage to property (including Buyer's property) arising out of or related to: (a) Buyer's acts and omissions, including but not limited to Buyer's transportation, unloading, storage, handling, marketing, use, or disposal of any Product, (b) any product, substance or material created (directly or indirectly) by Buyer, which incorporates Product ("Buyer Product"), together with any application, sale, or use of Buyer Product, or (c) any failure of Buyer to comply with Buyer's representations, warranties, covenants or agreements set forth in the Contract.

**8. EXCUSES FOR NONPERFORMANCE.** Either Seller or Buyer will be excused from the obligations of the Contract (except a party's payment obligations) to the extent that performance is delayed or prevented by any circumstance (except financial) reasonably beyond its control, including, without limitation, acts of god, fire, explosion, acts of war or terrorism, mechanical breakdown, strikes or other labor trouble, plant shutdown, unavailability of or interference with the usual means of transporting Product, or compliance with any law, regulation, order, recommendation or request by any governmental authority. The party invoking an excuse for nonperformance shall give prompt written notice of, and utilize commercially reasonable efforts to terminate or remove, the excuse condition. In addition, Seller will be excused from performance in the event it is unable to acquire from its usual sources and on terms it deems to be reasonable, any material necessary for manufacturing Product. If, because of any of the foregoing circumstances, there is a shortage of Product, Seller may apportion its available Product among its customers and its own internal use in any manner it deems appropriate, in its sole judgment. In no event will Seller be required to acquire products from an alternative source or otherwise supplement its available Product. Quantities of Product not shipped as a result of excused performance will be deducted from any applicable quantity obligation.

**9. HEALTH AND SAFETY.** Seller will provide and/or make available to Buyer a Safety Data Sheet (SDS) for each Product delivered to Buyer. The SDS sets forth

information concerning such Product and describes precautions, if required, to be taken in the transportation, delivery, unloading, discharge, storage, handling and use of such Product. Buyer will familiarize itself with all information and precautions, including but not limited to, those related to safety and health, contained in each SDS or otherwise transmitted to Buyer by Seller at any time and all local laws and regulations with respect to the shipping, handling, storage, security requirements, and use of any Product. Buyer will instruct its employees, agents, contractors, customers or any third party which may be exposed to a Product about such information and precautions and make available copies thereof to such parties. If Buyer is unclear as to the correct use of any Product, it should immediately contact Seller for clarification. If Product is further processed, mixed or incorporated into another product, Buyer will likewise disseminate appropriate health and safety information to all persons Buyer foresees may be exposed to such product. Buyer assumes full liability and responsibility for compliance with the above referenced information and precautions, and with all laws, statutes, ordinances and regulations of any governmental authority applicable to the processing, transportation, delivery, unloading, discharge, storage, handling, sale, and use of each Product.

**10. COMPLIANCE.** The obligations stipulated in the Contract shall be performed in an ethical manner, using sound business practices and in accordance with all applicable laws. Buyer agrees to comply with all applicable laws and regulations of all jurisdictions governing the export, re-export, transport, trafficking and brokering of the Product, including, but not limited to, the export control and sanctions laws and regulations of the country in which the Buyer conducts its business and the export control and sanctions laws and regulations of the United States. Any failure by Buyer to comply with the foregoing provisions will be considered a breach of the Contract subject to damages and any other remedies available under these Conditions of Sale and at law including, without limitation, Seller's right to immediately terminate the Contract.

**11. NOTICES.** Notice by either Seller or Buyer will be made only by (a) personal delivery, (b) e-mail to the address set forth in the Contract, or (c) by letter sent to the recipient's address in the Contract through a recognized overnight carrier (charges prepaid) and will be considered delivered on the date of (x) in person

delivery, (y) receipt of an e-mail read receipt, or (z) the business day immediately following the day of deposit with the overnight carrier.

**12. GOVERNING LAW.** This Contract is to be interpreted and the rights, obligations, and liabilities of the parties determined in accordance with the laws of the State of Texas, without regard to the conflicts of laws provisions that would cause the application of the laws of another jurisdiction. The rights and obligations of the parties under this Contract are not to be governed by or construed in accordance with the provisions of the Convention for the International Sale of Goods.

**13. DISPUTE RESOLUTION.** In the event any dispute arises in connection with this Contract, the parties agree to use their commercially reasonable efforts to settle such dispute by consulting and negotiating with each other in good faith to reach a just and equitable solution satisfactory to both parties. In the event that the parties are unable to resolve a dispute within 45 days, the dispute shall be referred to JAMS for mediation. If the parties are unable to resolve the dispute by mediation, the dispute will be finally settled by arbitration in front of one arbitrator in accordance with the rules of JAMS. The arbitrator is to be unaffiliated in any manner with either of the parties and generally familiar with Seller's industry. The arbitration is to take place in Houston, Texas. The arbitrator will have authority to award relief under legal or equitable principles, and to allocate responsibility for the costs of the arbitration and to award recovery of attorneys' fees and expenses in such manner as is determined to be appropriate by the arbitrator. The arbitration award is to be final and binding on the parties, and deal with the question of costs of arbitration and all matters related to such costs. Judgment upon the award rendered may be entered into any court having jurisdiction, or application may be made to such court for a judicial recognition of the award or an order of enforcement of the award, as applicable. The arbitration is to be governed by the laws of the State of Texas. Notwithstanding the foregoing, Seller need not resort to mediation or arbitration for resolving disputes related to Seller's right to enforce payment for Product, and Seller may sue Buyer to enforce its right to payment in any competent court having jurisdiction over Buyer or its assets, wherever located.

**14. ASSIGNABILITY AND TRANSFER.** Seller has the right to perform any of its obligations and to exercise any of its rights under the Contract through any Affiliate and any act or omission of such Affiliate shall for the purposes of this Contract be deemed to be an act or omission of Seller. In addition, Seller may carry out its obligations under the Contract through any agents or subcontractors appointed by it in its sole discretion. Seller may assign all or any part of the benefit of, or its rights or benefits under the Contract, including, without limitation, pursuant to any receivables purchase arrangements, or similar transactions which Seller may enter from time to time. Buyer may not assign, sub-contract, sub-license or otherwise dispose of any of its rights arising from the Contract without the prior written consent of Seller. If needed to give legal effect to any permitted transfer under this Section, Seller and Buyer will execute a novation contract and will use commercially reasonable efforts to procure that any assignee or transferee also execute such novation contract.

**15. NO USE OF SELLER'S MARKS.** Buyer shall not use Seller's trade names, trademarks, logos or other similar identifying marks or characteristics for any reason without Seller's prior written consent.

**16. SEVERABILITY.** In case any one or more of the provisions contained in these Conditions of Sale should be found by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect against any party to this Contract, such invalidity, illegality, or unenforceability will only apply to such party in the specific jurisdiction where such judgment is to be made, and the validity, legality, and enforceability of the remaining provisions contained in this Contract shall not in any way be affected or impaired by such judgment. These Conditions of Sale will not be reformed in any way that will deny any party the essential benefits of the Contract unless such party waives its rights to such benefits in writing.

**17. CONFIDENTIALITY.** Buyer agrees to keep the terms and conditions of the Contract and any other information relating to Seller's business confidential and may only share it with those persons with a need to know such information to carry out the purpose of the Contract.