

General Conditions of Purchase

- Acceptance. This purchase order ("Order") for goods, machinery, plant, equipment, stores, articles, items, or materials ("Goods") and/or services constitutes an offer by INEOS KOH Inc. to Seller at the quantity and price specified herein. Seller shall communicate its acceptance of this offer to INEOS KOH INC. through the prompt return of Seller's confirming Order Acknowledgment. If Seller fails to confirm, Seller may accept this Order through the prompt shipment of Goods or commencement of services. INEOS KOH INC. may withdraw this Order at any time prior to Seller's communication of its acceptance to INEOS KOH INC. Upon Seller's acceptance of this Order according to the provisions of this Section, the terms set forth in this Order shall constitute the entire agreement relating to the Goods ordered or services supplied hereunder. Seller's acceptance or acknowledgment of this Order will not be effective if such acceptance or acknowledgment contains any terms that modify or add to the terms of this Order, unless INEOS KOH INC. accepts Seller's proposed terms in writing. In addition, any changes to this order including but not limited to changes in scope, cost, delivery, material, or services after acceptance must be documented accordingly for INEOS KOH INC.'s written approval before proceeding with the obligations contained herein. INEOS KOH INC. refuses any and all changes to this order not approved in advance and as such, will not be obligated financially or otherwise. Equipment and/or Material Conditional Acceptance. Verification the finished product meets the specifications of the order in strict accordance with any specification, sample, drawings, or designs that INEOS KOH INC. has approved. The goods show no apparent damage upon receipt and appear to be acceptable and in good working condition. Equipment and/or Material Final Acceptance. Verification the finished product meets the specifications of the order in strict accordance with any specification, sample, drawings, or design that INEOS KOH INC. has approved, is free from any defect in material, design, or workmanship, and verification of functionality as intended is proven and satisfied upon use.
 - Delivery. Seller's obligation to meet the times, dates, specifications, and quantities as set forth in this Order is of the essence. If any of Seller's deliveries fail to conform to this Order's schedule, services, or contractual obligations, INEOS KOH INC. may, without limiting its other rights or remedies, direct expedited routing of work schedules, and Seller shall pay any excess cost incurred thereby. INEOS KOH INC. may return, at Seller's expense, deliveries of greater or lesser quantity than specified in this Order and non-conforming goods, unless INEOS KOH INC. provides Seller with written authorization in advance of Seller's delivery. Seller shall bear the risk of loss for any Goods delivered ahead of schedule and, in the event of such a delivery, INEOS KOH INC. may either:
 - Return the Goods at Seller's expense for scheduled delivery or conform to the specifications;
 - Withhold payment for the Goods (delivered in advance of when scheduled) until the date that the Goods are scheduled for delivery; or
 - Store the Goods for Seller's account until the scheduled delivery date.
 Seller shall ship all Goods under this Order adequately secured in containers or attached to pallets in or on which Seller ships them, along with adequate and prominent labeling and handling instructions. With each delivery, Seller shall provide INEOS KOH INC. with all documentation required to use, maintain, modify, store, operate, or dispose of the Goods, unless otherwise specified in the Order.
 - Inspection. INEOS KOH INC. may inspect and test all Goods that Seller delivers under this Order. If INEOS KOH INC. finds that any Goods fail to conform to the specifications of this Order, INEOS KOH INC. may return them to Seller at Seller's expense. If this Order involves Seller's performance of any services, INEOS KOH INC. may inspect, at reasonable times to be coordinated with Seller, all work under this Order at any stage of engineering, manufacture, or installation, and Seller shall require all of its employees, subcontractors, and agents to agree to such inspections. INEOS KOH INC. may reject any work performed or being performed that does not conform to the specifications of this Order, and Seller shall remedy such non-conforming work at no additional cost to INEOS KOH INC.. Any inspection under this Section will not relieve Seller of any of its obligations under this Order.
 - Warranty. Seller represents and warrants that all Goods delivered under this Order will be of merchantable quality; fit for the particular purpose for which INEOS KOH INC. purchased them; free from any defect in material, design, or workmanship; in strict accordance with any specifications, samples, drawings, or designs that INEOS KOH INC. has approved; and free and clear of all liens, encumbrances, or other title defects. Seller shall honor all of the foregoing warranties for a period of one (1) year after INEOS KOH INC.'s receipt and acceptance of the Goods, unless INEOS KOH INC. agrees otherwise in writing. In the event that INEOS KOH INC. determines that any Goods do not conform to these warranties within this period, INEOS KOH INC. may reject the Goods and either hold such Goods at Seller's expense for Seller's disposition or return them to Seller at Seller's expense. All of the foregoing warranties and remedies are in addition to, and do not restrict or limit, any other warranties or remedies arising out of this Order, whether express or implied. Seller shall indemnify, defend, and hold INEOS KOH INC. harmless against any loss, damage (including consequential and incidental damages), liability, cost or expense whatsoever, including attorneys' fees, that INEOS KOH INC. may incur, directly or indirectly, as a result of any breach of the representations and warranties contained in this Section.
 - Responsible Care. Seller and INEOS KOH INC. shall adhere to the Responsible Care® Guiding Principles, which are incorporated herein by reference.
 - Compliance with Law. Seller's performance under this Order shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances, including, without limitation, the applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of regulations and orders of the U.S. Department of Labor issued under applicable requirements of Executive Order 11141 and 11246, as well as the Rehabilitation Act of 1973, as amended, laws prohibiting or otherwise relating to slavery, human trafficking and/or child labor, Occupational Health and Safety Act ("OSHA") including the OSHA Hazard Communication Standard, Hazardous Materials Transportation Act, Toxic Substance Control Act ("TSCA"), Resource Conservation and Recovery Act ("RCRA"), Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), its amendments ("SARA"), and all regulations issued thereunder., Seller shall also comply with the Vietnam Era Veterans Readjustment Act of 1974. Further, Seller represents and warrants that all chemical substances furnished under this Order that are required or permitted to be reported to the U.S. Environmental Protection Agency ("EPA") are listed as chemical substances in the EPA's current inventory listing. Seller shall indemnify, defend, and hold INEOS KOH INC. harmless from any expense, loss, damage, or liability resulting from the failure of Seller to comply with the requirements hereunder. Seller hereby represents and warrants that any food, drug, or cosmetic that may be covered hereby, or comprising all or part of any shipment or other delivery of Goods hereunder, will not at the time of shipment or delivery be adulterated or misbranded within the meaning of the Federal Food, Drug, and Cosmetic Act ("FD&C Act"), as amended, or within the meaning of any state food and drug law whose adulteration or misbranding provisions are identical with, or substantially the same as, those of the FD&C Act (a "Similar State Law") or be an article that may not, under the provisions of the FD&C Act or a Similar State Law, be introduced into interstate or intrastate commerce. Seller hereby warrants that all Goods that Seller provides under this Order will conform to applicable FDA regulations pertaining to such Goods and their intended use.
 - Safety and Health Regulation Compliance. While on INEOS KOH INC.'s premises, Seller shall comply, and see that its employees, subcontractors, and agents comply, with all applicable safety and health laws, regulations, and ordinances and with INEOS KOH INC.'s safety, health, and plant regulations. Seller shall ensure that all of its employees and agents have a safe place of work while on INEOS KOH INC.'s premises. Seller shall keep INEOS KOH INC.'s premises and the vicinity thereof clear of debris and rubbish that its work causes and, upon completion of Seller's work, shall leave the premises clean and ready for use. Upon INEOS KOH INC.'s request, Seller shall promptly remove from INEOS KOH INC.'s premises, at Seller's expense, any person under Seller's control who violates any of the safety, health, or plant laws, regulations, ordinances, or rules of this Section or who may cause or threaten to cause a breach of peace or to whose presence INEOS KOH INC. otherwise objects.
 - Clean Air and Water Certification. Seller hereby certifies that:
 - Seller shall not, in the course of its performance under this Order, utilize any facility that appears on the EPA List of Violating Facilities;
 - Seller shall promptly notify INEOS KOH INC. of its receipt of any communication from the Director of the EPA's Office of Federal Activities indicating that any facility that Seller proposed to use in the course of its performance under this Order is under consideration to be listed on the EPA List of Violating Facilities; and
 - Seller shall include substantially this certification in every nonexempt subcontract related to its performance under this Order.
 - Title; Risk of loss. In the event that INEOS KOH INC. makes any partial payment for Goods under this Order, title to, and property in, the partially completed or completed Goods and any materials and parts to be used in their manufacturing and then on hand shall, subject to INEOS KOH INC.'s rights of subsequent rejection, pass to INEOS KOH INC. and Seller shall appropriately mark such Goods. Regardless of whether INEOS KOH INC. makes any partial payment for Goods under this Order, risk of loss related to the Goods will remain in Seller until Seller delivers the Goods to INEOS KOH INC. at INEOS KOH INC.'s plant, or any other location that INEOS KOH INC. specifies, and INEOS KOH INC. accepts them.
 - Insurance.
 - Goods. Seller shall maintain insurance on the Goods until title and risk of loss pass to INEOS KOH INC..
 - Services. If Seller is to provide any service to INEOS KOH INC. under this Order, Seller shall maintain insurance coverage for Seller and Seller's employees, subcontractors, and agents sufficient to protect Seller and INEOS KOH INC. against all claims for personal injury, property damage, and workers' compensation arising out of Seller's performance of this Order and shall be liable to INEOS KOH INC. for the failure to maintain such coverage. At a minimum, Seller shall have the following types of coverage:
 - Workers' Compensation, including Occupational Disease, for the full extent required by the law of the state where Seller is to perform the service, with an employee liability of not less than Five Hundred Thousand (\$500,000) Dollars;
 - Comprehensive General Liability covering all of Seller's operations including Blanket Contractual Protection, Broad Form Property Damage, and Products Completed Operations, and with the standards explosion, collapse, and underground exclusions removed, with a general aggregate of One Million (\$1,000,000) Dollars Combined Single Limit for Bodily Injury and Property Damage; and
 - Automobile Liability including owned, non-owned, and hired automobiles with a general aggregate of One Million (\$1,000,000) Combined Single Limit for Property Damage and Bodily Injury.
 Before commencing any service under this Order, Seller shall provide INEOS KOH INC. with certificates of insurance for these insurance policies that name INEOS KOH INC. as an additional insured. Seller shall not terminate or materially alter Seller's insurance policies or the certificates of insurance that Seller furnishes to INEOS KOH INC. without providing INEOS KOH INC. with written notice and obtaining INEOS KOH INC.'s written consent. Seller shall waive subrogation against INEOS KOH INC. under all of Seller's insurance claims or losses arising out of Seller's performance under this Order.
 - Independent Contractor. If Seller is to perform any services under this Order, Seller shall act as an independent contractor and not as an employee of INEOS KOH INC. and shall not subcontract any portion of the work that Seller is to perform without INEOS KOH INC.'s prior written consent.
 - INEOS KOH INC.'s Right to Do Work. If Seller neglects to perform any service in accordance with the specifications of this Order or fails to comply with any provision of this Order, including, without limitation, the failure to complete the project within the specified time, INEOS KOH INC. after providing Seller with three (3) days' written notice and without waiving any right that it may have, may take over the work, make good any deficiencies, and deduct the cost thereof from any payment then or thereafter due to Seller.
 - Confidentiality. Seller shall maintain in confidence and not disclose any of INEOS KOH INC.'s confidential, proprietary, or secret information that Seller may acquire pursuant to this Order. Seller shall require all of its employees, subcontractors, suppliers, and agents to comply with Seller's obligation of confidentiality. This obligation will not apply to information that is in the public domain prior to Seller's acquisition of it or to information that Seller can establish that Seller obtained from a third party who was under no obligation to maintain the information's confidential nature.
 - Payment; Invoices. Unless otherwise expressly provided in this Order, INEOS KOH INC. will pay Seller for the Goods or services that Seller provides hereunder the later of (a) forty-five days from INEOS KOH INC.'s receipt and acceptance of the Goods or services or (b) the invoice date. Invoices must show the name of the plant or other destination to which Seller delivered the Goods, INEOS KOH INC.'s Order number, the amount and description of the Goods delivered or services rendered, and the per unit and total price of the Goods or services. Unless otherwise expressly provided in this Order, prices shown on this Order include all taxes, excises, customs' fees, and duties. If this Order provides for any sales tax, duty, excise, or similar tax or charge, for which INEOS KOH INC. has not furnished or agreed to furnish an exemption certificate, Seller must state such tax or similar charge separately on the invoice.
 - Meet or Release. If INEOS KOH INC., during the term of this Order, is able to purchase similar Goods of equal quality at a lower price than herein specified, INEOS KOH INC. shall give Seller evidence of the same, and Seller shall meet such lower price for the quantity of Goods offered or delivered. INEOS KOH INC. to purchase that quantity of Goods elsewhere at such lower price and deduct that quantity from the undelivered portion of the Goods under this Order.
 - Assignment; Offer. Seller shall not assign, delegate, or subcontract any right or obligation under this Order, without INEOS KOH INC.'s prior written consent. For the purposes of this Section, a change in control will constitute an assignment. Any purported assignment, delegation, or subcontract without the prior written consent of INEOS KOH INC. will be void. INEOS KOH INC. may offset any amount at any time owing from Seller to INEOS KOH INC. against any amount owing by INEOS KOH INC. to Seller pursuant to this Order.
 - Indemnity. Seller shall indemnify, hold harmless, and defend INEOS KOH INC.'s officers, directors, and employees; and any person or entity buying, selling, or using any of INEOS KOH INC.'s products from and against all liability, cost, and expense, including, without limitation, INEOS KOH INC.'s cost of inspection and testing, court costs, and attorneys' fees, on account of any claim for injury, death, property damage, or infringement of any patent, copyright, trade secret or other right caused or allegedly caused by the purchase, sale, or use of Seller's Goods or services. Seller shall pay all damages, whether direct, indirect, special, or consequential, awards, interest, and costs in connection therewith. Seller's indemnification obligations under this Order shall apply regardless of whether Seller or a third party was concurrently negligent, whether actively or passively, but shall not apply where the damage or loss was caused solely by INEOS KOH INC.'s negligence or willful misconduct. If this Order involves any service, Seller shall further indemnify, defend, and hold INEOS KOH INC. harmless from and against all liens and claims by laborers and materialmen and/or mechanics liens arising from the performance of Seller's obligations under this Order and shall keep INEOS KOH INC.'s premises free from all such claims, liens, and encumbrances. Seller hereby waives all rights of mechanics liens against INEOS KOH INC.'s property and premises.
 - Termination.
 - Seller's Default. INEOS KOH INC. may terminate this Order in whole or in part by providing Seller with written notice if:
 - Seller fails to make to timely make any delivery or perform any obligation required hereunder;
 - Seller breaches, fails to comply with, or violates any provision of hereof; or
 - Any bankruptcy, receivership, insolvency, assignment for the benefit of creditors, or any similar arrangement, voluntary or involuntary, for or on behalf of Seller's creditors is initiated by or against Seller.
 In the event that any of the events described in Sections 18(a)(i)-(iii) occur, INEOS KOH INC. shall have no liability hereunder, and Seller shall remain liable for any loss, cost, damage or expense caused by such event.
 - INEOS KOH INC.'s Option. INEOS KOH INC. may, without cause, terminate this Order at any time, in whole or in part, by providing Seller with at least fifteen (15) days' advance written notice. Upon the exercise of this option to terminate this Order, INEOS KOH INC.'s shall have no liability to Seller other than to pay the price specified in this Order for fully completed, conforming, and acceptable Goods. INEOS KOH INC.'s exercise of its option to terminate this Order will not extinguish any of Seller's liability:
 - For non-delivery of Goods or failure to provide Goods in accordance with the terms of this Order;
 - For Goods that INEOS KOH INC. accepted prior to termination;
 - As to Seller's obligations with respect to proprietary information, intellectual property, or confidentiality; and
 - As to any other rights or obligations under the Order that expressly or impliedly apply after termination.
 - Force Majeure. INEOS KOH INC. may terminate this Order at any time if INEOS KOH INC. finds it impractical to accept the Goods or services due to circumstances beyond its reasonable control, including, without limitation, circumstances due to fires, floods, labor disputes, shortages of materials, acts of God, or any act of Government. If Seller is unable to provide the Goods or perform services due to such circumstances, INEOS KOH INC. may, without any liability, acquire the remaining portion of the Goods or the unfulfilled portion of the services under this Order from others or, at INEOS KOH INC.'s option, terminate this Order in its entirety.
 - Remedies. INEOS KOH INC.'s remedies set forth in this Order are cumulative and in addition to any other or further remedies provided at law or in equity, including the right to consequential damages. No waiver of any of INEOS KOH INC.'s rights or remedies under this Order will be effective unless it is contained in a writing signed by INEOS KOH INC.. Any such waiver, or INEOS KOH INC.'s failure to enforce any provision of, or right or remedy under, this Order will not constitute a continuing waiver of such provision, right, or remedy or the waiver of any other provision, right, or remedy. In no event shall Seller be entitled to anticipatory profits, loss of profits, or to special or consequential damages as a result of any breach of this Order by INEOS KOH INC..
 - Interpretation. This Order shall be construed in accordance with, and governed by, the laws of the State of Ohio. If any term or provision of this Order is held to be invalid or unenforceable to any extent, the remainder of the terms of this Order shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
 - Notices. The parties to this Order shall give all notices hereunder according to the addresses appearing on the face of the Order by facsimile, email or first class mail. Notices by facsimile and email will be deemed to be communicated at the time of transmission. Notices by first class mail will be deemed to be received on the second business day after delivery. Proof of delivery of notice will be deemed to be proof of receipt thereof by the other party.
 - Dispute Resolution.
 - Mediation. The parties to this Order shall endeavor in good faith to attempt to resolve amicably all disputes that may arise between them in connection with this Order by holding a meeting of their authorized representatives at a mutually convenient time and place. If the parties to this Order cannot resolve the dispute within forty-five (45) days, then either party may give a written notice (a "Dispute Notice") to the other party setting forth the nature of the Dispute (as defined in Section 22(b)) and the parties shall attempt in good faith to resolve the Dispute by mediation in Cleveland Ohio, using the services of a reputable provider of alternative dispute resolution services. If the Dispute has not been resolved by mediation as provided above within one hundred twenty (120) days after the delivery of the Dispute Notice, then the Dispute shall be determined by arbitration in accordance with the provisions below.
 - Arbitration. Any controversy, claim, or dispute between the parties arising out of or relating to this Order or its interpretation, performance, breach, termination, enforceability, or validity (a "Dispute") that is not settled through mediation as provided in Section 22(a) will be decided by binding arbitration in accordance with the current commercial arbitration rules of the American Arbitration Association. Such arbitration will be conducted by a single arbitrator strictly in accordance with the terms of this Order. If the parties cannot agree within forty-five (45) days to the selection of an arbitrator, the American Arbitration Association shall appoint a single arbitrator to resolve the Dispute in accordance with its rules. The Rules of Civil Procedure will apply to any such proceeding, and the parties will be entitled to discovery. The United States Arbitration Act will govern the arbitration, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitrator shall determine a "prevailing party" in such proceeding, and the fees and expenses of the prevailing party, including its attorneys' and witness fees and expenses, will be included in the award. The exclusive venue for any arbitration proceeding will be Cleveland, Ohio. The arbitrator shall not be authorized to award incidental, consequential, punitive, or exemplary damages. Judgment upon the award may be entered in any court of competent jurisdiction, and assets may be attached in any country in the world pursuant to such judgment.