

## GENERAL TERMS AND CONDITIONS

The following General Terms and Conditions (“General Terms”) are applicable to the sale of all Products (as hereinafter defined) by Miller and Company LLC, a Delaware limited liability corporation (“Seller”), to any purchaser thereof (“Buyer”). All of the product or products and/or service or services, the design and/or sale of which are the subject of such Seller’s Proposal (as hereinafter defined) or a Purchase Order (as hereinafter defined) are collectively referred to as “Products” and individually as a “Product.” These General Terms are subject to any additional terms contained in any agreement, statement of work, amendment, addendum or other writing signed by Seller and each such writing, together with these General Terms, is deemed to incorporate these General Terms as if fully set forth therein. All Seller’s Proposals (as defined herein) or Purchase Orders (as defined herein) are subject to approval by Seller at its corporate headquarters in Rosemont, Illinois. These General Terms may be amended by Seller at any time by posting amended General Terms and Conditions on Seller’s website at [www.millerandco.com](http://www.millerandco.com) and any such amended General Terms shall be deemed part of and incorporated in any Seller’s Proposal made after the date of their posting on Seller’s website. Any attempt by Buyer to alter these General Terms with Purchase Orders, acknowledgments or similar documentation shall be void.

**1. Entire Agreement.** These General Terms, along with Seller’s Quotation, Change to Quotation, or Order Confirmation and any other agreement, statement of work, amendment, addendum or other writing signed by Seller, constitute the complete and exclusive statement of the agreement (the “Agreement”) between Seller and Buyer with respect to, and shall exclusively govern, the sale of the Product and other personal property by Seller to Buyer in connection with, or as contemplated by, the Seller’s written or oral proposals, quotations, confirmations and sales, including offers and/or contracts for sales, to Buyer (any such item being a “Seller’s Proposal”) and/or Buyer’s written or oral requests for quotation, purchase orders, acceptances or similar communications to Seller (any such item being a “Purchase Order”). These General Terms shall be deemed part of and incorporated in Seller’s Proposal and the Agreement. In the event of a conflict between these General Terms and the terms and conditions contained in the Seller’s Proposal and/or its confirmation of a Purchase Order, the terms contained in the Seller’s Proposal or confirmation of a Purchase Order shall govern. Notwithstanding any different or additional terms or conditions contained in Buyer’s Purchase Order or other communication to Seller related to the Products, Seller accepts Buyer’s Purchase Order only on the condition that Buyer expressly accepts and assents to these General Terms. In the absence of Buyer’s acceptance hereof, Seller’s commencement of performance or Seller’s acknowledgement of Buyer’s Purchase Order, shall be for Buyer’s convenience only and shall not be construed as Seller’s acceptance of any of Buyer’s terms. Any confirmation by Buyer that states different or additional terms shall operate as an acceptance of these General Terms, but Seller hereby objects to and rejects such different or additional terms and any such different or additional terms shall be deemed to be material alterations and notice of objection to them is hereby given. In addition, Buyer’s acceptance of any Products shall be deemed to be acceptance of all of the General Terms. Seller hereby objects to any additional, contradictory or different terms contained in any initial or subsequent Purchase Order from Buyer pertaining to the Products, including, but not limited to, any indemnification or warranty provisions. Any notice by Buyer objecting to these General Terms must be in a writing separate from any Purchase Order. Seller’s failure to object specifically to provisions contained in any Purchase Order shall not be deemed a waiver of the provisions contained in these General Terms. Seller shall have the right to require Buyer to comply with the provisions contained in these General Terms notwithstanding any course of dealing or course of performance to the contrary.

**2. Delivery Period.** If Buyer does not take all Products by the end of the period indicated on Seller’s Proposal as “Shipping Duration” or “Duration” (the “Delivery Period”), Seller has the right to invoice the remaining tonnage at or at any time after the end date of the Delivery Period. Further, if Buyer does not take all Products by the end of the Delivery Period (whether or not Seller agrees in its sole discretion to extend the Delivery Period or to defer invoicing the remaining tonnage), Seller shall have the right to charge Buyer for interest and storage expenses as provided in paragraph 9 hereof. Buyer shall reimburse Seller for any such interest and storage expenses invoiced by Seller within thirty (30) days after the date of such invoice. The election of Seller not to invoice the remaining tonnage at the end of the Delivery Period and/or not to commence charging Buyer for interest and storage charges accruing after the end of the Delivery Period shall not constitute a waiver of Seller’s right to invoice Buyer for the remaining tonnage and the accrued interest and storage charges at any time following the end of the Delivery Period.

**3. Quality.** Quality shall be conclusively determined at the point of origin indicated on Seller’s Proposal as “Shipping Point Address”, “Ship From Address” or “Inco Location” (the “Point of Origin”). Buyer shall have the right to make a claim to the Seller with respect to quality of Products not later than five (5) business days after arrival at the Point of Origin. The Products shall be deemed accepted by Buyer unless Buyer provides Seller, within five (5) business days after arrival at the Point of Origin, a written notice specifying all defects or discrepancies in the quality or quantity of Products. Seller shall give Buyer reasonable access to the Products upon request at the Point of Origin for testing purposes. Buyer shall permit Seller to inspect and correct any allegedly damaged or otherwise nonconforming Products.

**4. No Resale or Distribution.** Buyer acknowledges and agrees that the Products subject to this Agreement are purchased for consumption by the Buyer and may not be resold or otherwise distributed by Buyer to any other party without the Seller's express written consent. Buyer further acknowledges and agrees that any such sale or distribution without Seller's express written consent shall: (a) constitute a material violation of this Agreement; (b) cause injury to Seller resulting in actual damages the amount of which would be extremely difficult and impracticable to ascertain due to the difficulty in measuring the damage to Seller's market position and business interests that would be caused as the result of Buyer's breach of the restrictions on this paragraph 4; and (c) **entitle Seller to liquidated damages (the "Liquidated Damages") in an amount equal to no less than twenty-five percent (25%) of the total value (quantity x price) of the Products resold or otherwise distributed in violation of this Agreement.** Buyer further acknowledges and agrees (i) that the Liquidated Damages are reasonable and shall be received and retained by Seller in lieu of all other monetary damages that would otherwise be available to Seller, except as otherwise set forth in this Agreement, and shall be due and payable within five (5) business days of a written demand from Seller; and (ii) to reimburse Seller for all costs and expenses, including reasonable attorney's fees, incurred by or on behalf of Seller in enforcing, and collecting the Liquidated Damages and/or any amounts owed by Buyer under, the No Re-Sale provision in this paragraph 4. In addition to its right to recover Liquidated Damages as provided herein, Seller shall have the right to seek specific performance and injunctive relief to enforce the obligations of Buyer under this paragraph 4.

**5. Payment.** Buyer acknowledges and agrees that all credit sales under this Agreement are subject to availability of credit insurance from Seller's regular credit insurer. Buyer further agrees that any uninsured amount of its aggregate debt to Seller shall be secured by a letter of credit or a bank guarantee from a reputable bank acceptable to Seller. Without prejudice to the foregoing, all invoices issued by Seller to Buyer shall be due and payable **net thirty (30) days** from date of invoice, unless different payment terms are expressly set forth in writing in Seller's Proposal. All payments shall be made in U.S. dollars. Buyer's outstanding unpaid balances shall be subject to an annual finance charge equal to 30-day SOFR plus six percent (6.0%), but not to exceed the maximum interest rate permitted by law (the "Applicable Interest Rate") which shall accrue daily until paid in full. Buyer agrees to pay Seller's cost of collection and enforcement of this Agreement (including reasonable attorneys' fees and costs). Payments received may be applied by Seller against any obligation owed by Buyer to Seller. If Seller shall, in its sole discretion, at any time deem itself to be insecure regarding Buyer's ability to comply with the terms of payment or other terms and conditions of this Agreement, whether due to Buyer's failure to make timely payments when due, Buyer's financial condition, Buyer's failure to provide financial or other information requested by Seller or any other reason, Seller may modify the credit terms herein, including requiring Buyer to make full or partial payment for the Products in advance of delivery, accelerate the due date on all outstanding obligations of Buyer, cancel or defer shipments of Products, or require adequate assurance of payment acceptable to Seller in its sole discretion. Any authorized early payment discounts must be taken at the time of invoice payment and will be calculated from the invoice date to the date payment is received by Seller. In the event Buyer fails to make timely payment on any invoice within thirty (30) days from the date of invoice (or such longer period as may be expressly set forth in writing in Seller's Period), then Buyer shall be in default of this Agreement and Seller may, in its sole discretion and without notice to Buyer, immediately cease or suspend further shipments of Products to Buyer and exercise any other remedies available to Seller under this Agreement or under applicable law. Without limiting the rights and remedies of Seller in any way, if Buyer is in default of this Agreement, Seller shall have the right (but not the obligation) to sell or otherwise dispose of any of the Products that have not yet been delivered to Buyer and to apply the proceeds of such sale or other disposition, net of all fees and expenses incurred by Seller in connection therewith and all other enforcement costs of Seller, to the outstanding indebtedness of Buyer, all without notice to or the consent of Buyer. Following any such sale or other disposition, Buyer shall remain obligated for the balance of its indebtedness to Seller, together with interest thereon at the Applicable Interest Rate, until paid in full, and Seller shall have no obligation to account to Buyer for any amount by which the net proceeds of such sale or other disposition exceed the indebtedness of Buyer.

**6. Purchase Money Security Interest.** As security for the Buyer's performance of its obligations hereunder, Seller hereby reserves, and Buyer hereby grants to Seller, a purchase money security interest in all Products sold by Seller to Buyer and to which Buyer has taken title and in the proceeds thereof. In the event of default by Buyer in any of its obligations to the Seller hereunder, Seller may repossess the Products sold hereunder without notice to Buyer. A copy of the invoice covering the Products may be filed with appropriate authorities at any time as a financing statement to perfect Seller's security interest. Buyer hereby authorizes Seller to prepare, execute and file such UCC-1 financing statements and any instruments that Seller may reasonably require to perfect Seller's security interest in the Products sold or delivered by Seller to Buyer and any proceeds thereof. Seller shall have all of the rights and remedies of a secured party under the Uniform Commercial Code, which remedies shall be cumulative and not exclusive.

**7. Price; Taxes; Price Escalation.** Unless otherwise specified in the Agreement, all prices are F.O.B. Point of Origin and cover only the Products expressly specified. Buyer shall be responsible for all applicable freight, shipping and handling charges, taxes, duties and tariffs. Seller shall collect all applicable sales and use taxes unless Buyer submits a valid tax exemption certificate covering the Products.

Buyer shall pay all other taxes, duties, tariffs and charges imposed upon the Products or the sale thereof to Buyer. Unless otherwise specified in the Seller's Proposal, written quotations are valid for twenty-four (24) hours from issuance and thereafter expire unless subsequently confirmed in writing by Seller. **Any increase in Seller's cost of supplying the Product caused by any law, treaty, regulation, order, tax, tariff or other burden imposed after the date of Seller's Proposal on Seller's purchase, import, ownership, processing, production, transportation, distribution or sale of the Product or any raw material, part or component thereof will be added to the price set forth in Seller's Proposal.**

**8. Delivery.** Unless otherwise specified in the Agreement, all Products are sold on an F.O.B. Point of Origin basis. Title to and risk of loss shall pass to Buyer upon delivery of Products to carrier. Seller shall have the right to deliver all Products covered hereby at one time or in partial shipments from time to time. All delivery dates are approximate, and Seller shall not be liable for damages or costs which arise in connection with the delivery of goods before or after the date stated on Seller's Proposal. Delivery dates are further dependent upon the prompt receipt by Seller of all information required by Seller to proceed with the performance of the Agreement immediately and without interruption.

**9. Interest and Storage Expenses.** If Buyer does not take all Products by the end of the Delivery Period (whether or not Seller agrees in its sole discretion to extend the Delivery Period or to defer invoicing the remaining Products) ("Overdue Products"), Seller shall have the right to invoice Buyer for (i) interest at the Applicable Interest Rate on such Overdue Products until Seller has received payment of purchase price therefor, and (ii) a monthly storage charge of \$0.75 per net ton of Overdue Products, or if greater, the storage expenses incurred by Seller in continuing to store such Overdue Products until such Overdue Products have been delivered to Buyer. Buyer shall pay such interest and storage charges within thirty (30) days after the date of Seller's invoice therefor. The billing and collection of such interest and storage charges shall not constitute a waiver of Seller's right to invoice Buyer for the remaining tonnage at any time following the end date of the Delivery Period.

**10. Force Majeure.** Seller shall not be liable for delays in delivery or for failure to perform due to causes beyond the reasonable control of Seller, including, but not limited to, force majeure, acts of God, acts or omissions of Buyer, acts of civil or military authorities, fire, strikes, power surges or outages, epidemics, governmental orders or restrictions (including quarantine and similar restrictions), flood, natural disasters, riot, war, sanctions, Covid related issues, delays in transportation or inability to obtain necessary labor, materials or supplies or any cause which renders Seller's performance commercially impractical under Section 2-615(a) of the Uniform Commercial Code, as amended. Notwithstanding anything herein or any other agreement of the Buyer and Seller, all additional costs or expenses incurred by, or imposed upon, Seller as a result of any cause under this paragraph shall be the sole responsibility of Buyer and such additional costs or expenses shall be paid by Buyer to Seller pursuant to paragraph 5 of the General Terms.

**10. Cancellation.** Once a Purchase Order is accepted by Seller, Buyer may not cancel or change such Purchase Order or delay shipment or performance, except with the written consent of and upon terms and conditions approved by Seller in writing. If Seller consents to the cancellation or rescheduling of a Purchase Order for Products pursuant to the foregoing sentence, Buyer shall pay to Seller within thirty (30) days of such cancellation or rescheduling, all costs and expenses incurred by Seller in connection therewith (including without limitation, any restocking or storage fees and other reasonable cancellation or rescheduling charges) in an amount not less than fifteen percent (15%) of the total amount of the canceled or rescheduled Purchase Order.

**11. Limited Warranty; Exclusive Remedy.** Seller warrants that the Products will conform to Seller's specifications, as in effect at the time of shipment, and are free from defects in material and workmanship for a period of five (5) days from arrival at the Point of Origin. Seller's sole obligation under this warranty shall be at its option to repair or replace any Product or part thereof which proves to be other than as warranted, provided that written notice of the alleged defect shall have been given by Buyer, to Seller prior to five (5) days after delivery at the Point of Origin. This warranty does not extend to any Products or parts thereof which have been installed, operated, maintained, repaired or altered improperly or which have been the subject of misuse, accident or neglect; nor does the warranty apply to normal wear and tear resulting from use of the Products. Seller also warrants that it will convey good title to the Products and that such Products will be delivered free of any security interest or other lien or encumbrance, except in favor of Seller. **EXCEPT AS SET FORTH IN THIS SECTION 11, SELLER MAKES NO REPRESENTATION OR WARRANTY, AND HEREBY EXPRESSLY DISCLAIMS, ANY REPRESENTATION OR WARRANTY, EXPRESS, STATUTORY, IMPLIED OR OTHERWISE, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ANY WARRANTY WITH RESPECT TO THE MERCHANTABILITY OF THE PRODUCTS OR THE FITNESS OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR USE OF BUYER AS WELL AS ANY EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS ARISING BY ANY COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE OF TRADE. SELLER FURTHER DISCLAIMS ANY WARRANTY WITH RESPECT TO THE CONFORMANCE OF THE PRODUCTS WITH ANY REQUIREMENTS OR SPECIFICATIONS PROVIDED BY BUYER, UNLESS THE CONFORMANCE WITH SUCH REQUIREMENTS OR SPECIFICATIONS HAS BEEN SPECIFICALLY AGREED TO BY SELLER IN WRITING. ANY**

**CLAIM, SUIT OR OTHER PROCEEDING FOR BREACH OF THE FOREGOING WARRANTY SHALL BE BROUGHT WITHIN ONE (1) YEAR FROM THE DATE OF DELIVERY OF THE PRODUCTS AT THE POINT OF ORIGIN. BUYER'S SOLE REMEDY IN THE EVENT OF A BREACH ANY OF THE FOREGOING WARRANTIES SHALL BE THE REPAIR OR REPLACEMENT OF THE AFFECTED PRODUCT BY SELLER UPON RETURN OF THE PRODUCT, WITH TRANSPORTATION CHARGES FOR SUCH RETURN PREPAID BY BUYER AND SUBJECT TO A CHARGE TO BUYER FOR ANY DAMAGE OR DEGRADATION OF THE PRODUCT PRIOR TO ITS RETURN.**

**12. Limitation of Liability.** IN NO EVENT SHALL SELLER'S LIABILITY ARISING IN CONNECTION WITH OR UNDER THIS AGREEMENT (WHETHER UNDER THE THEORIES OF BREACH OF CONTRACT, TORT LIABILITY, MISREPRESENTATION, FRAUD, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LAW) EXCEED THE PURCHASE PRICE OF THE PRODUCTS.

**13. Setoff.** Seller shall have the right at any time and without notice, to set off any liability or obligation of Buyer to Seller against any liability or obligation of Seller to Buyer in accordance with applicable law. Under no circumstances will Buyer have a right of setoff against Seller.

**14. Disclaimer of Consequential Damages; Buyer Indemnity.** IN NO EVENT SHALL SELLER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, UPON THE BREACH OF ANY OBLIGATION OR WARRANTY ON THE PART OF SELLER HEREUNDER OR IN CONNECTION HERewith. "CONSEQUENTIAL DAMAGES" FOR PURPOSES HEREOF SHALL INCLUDE WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY TO ANY PERSON, OR LOSS OF OR DAMAGE TO ANY PROPERTY (INCLUDING, WITHOUT LIMITATION, PROPERTY HANDLED OR PROCESSED THROUGH THE USE OF THE GOODS), DAMAGES OR LOSSES RESULTING FROM CLAIMS OF OTHER PERSONS AGAINST BUYER, OR DAMAGES OR LOSSES SUSTAINED AS THE RESULT OF WORK STOPPAGE. BUYER SHALL INDEMNIFY SELLER AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS ("INDEMNIFIED SELLER PARTIES") AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED OR INCURRED BY ANY SELLER INDEMNIFIED PARTY ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

**15. Responsibility of Buyer; Compliance with Laws.** Buyer shall (a) be solely responsible for determining the suitability of Products for Buyer's intended use including use in Seller's formulations, processes and applications; (b) adopt and follow safe and appropriate handling, storage, transportation, use, treatment and disposal practices with respect to the Products, including, without limitation, all such practices required by federal, state and local government statutes, rules, regulations or ordinances; and (c) provide appropriate warnings to, and instruct, its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, treatment, transportation and disposal of the Products. Buyer represents and warrants that the Products will not be used, resold, transferred, exported or reused in any way by Buyer in violation of any laws, regulations of any federal, local, state or other governmental entity including export/import controls imposed by the U.S. Government (collectively, the "Regulations"). In the event Buyer knows or is aware of any Regulation that would adversely impact the transaction(s) contemplated by this Agreement, Buyer shall immediately advise Seller of the same. If Seller, in its sole discretion, determines that the effect of the Regulations is a material increase in Seller's risk with respect to such transaction, Seller may, without cost, liability or penalty of any kind, withdraw Seller's Proposal, revoke its acceptance of Buyer's Purchase Order, terminate this Agreement or suspend shipments hereunder. Buyer shall indemnify and hold Seller harmless for all claims, damages and related costs, including reasonable legal fees and costs, arising out of Buyer's noncompliance with any of its representation, warranties and obligations hereunder.

**16. Disputes and Governing Law.** This Agreement and the interpretation and enforcement thereof shall be governed by the law of the State of Illinois, with giving effect to the conflict of laws principles thereof. Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules, and final judgment on the award rendered by the arbitrator(s) may be entered in any court of competent jurisdiction. Any arbitration proceeding shall be conducted in Chicago, Illinois. No action, regardless of form, arising out of, or in any way connected with, the Products or the performance of this Agreement may be brought by Buyer more than one (1) year after the cause of action has accrued. Notwithstanding the foregoing, Seller shall have the right to seek specific performance and injunctive relief to enforce the restrictions of resale or other distribution under paragraph 4 hereof in any court of competent jurisdiction.

**17. General.** This Agreement shall be binding upon and inure to the benefit of Buyer and Seller, their successors and permitted assigns. No waiver by either party of any breach of these General Terms shall constitute a waiver of any other breach. If any provision hereof is held to be invalid or otherwise unenforceable for any reason, all other terms and remaining conditions will continue to be in force. Any clerical errors are subject to correction.