



## SALES TERMS AND CONDITIONS FOR SURPLUS/OFF SPEC PRODUCT

### 1. DOW'S COMMITMENTS

Dow will convey the Product with good title, free from any lawful lien or encumbrance.

### 2. CUSTOMER'S COMMITMENTS

- a) Payments/Taxes. Customer will pay for the Product on the agreed terms. Customer will also pay all taxes and duties, except income taxes, that are increased or levied, now or in the future, in connection with the manufacture, sale, transportation or disposal of the Product.
- b) Credit. If (1) Customer does not pay on time or (2) Customer's financial responsibility becomes unsatisfactory and Dow deems itself insecure, then Dow may defer shipments, accelerate the due date on all amounts owed Dow, require cash payments or other security, or cancel this Contract. Customer agrees to pay all of Dow's collection costs including reasonable attorney fees. Dow may charge the maximum interest allowed by law on all overdue amounts.
- c) Responsible Practices.
  - i. Customer represents that it understands the nature and characteristics of Product, is aware that Product may be, bear, or contain hazardous substances and is familiar with any health, safety and/or environmental hazards arising out of or resulting from the possession, use, storage, transportation, maintenance, handling, treatment and disposal of such Product.
  - ii. Customer represents that it is accustomed to handling items similar to Product and to handling products bearing or containing hazardous substances and that it has the necessary expertise, equipment and facilities to safely and lawfully conduct all of Customer's activities involving Product including transportation, handling, storage, disposal, treatment and use, and will so conduct such activities.
  - iii. Customer represents that it has read and understands all information relating to Product which is contained in any material safety data sheets and/or other documents which are attached hereto and made a part hereof, [delete remainder if not allow resale:] and buyer agrees to provide all information supplied to it by seller with respect to any Product sold hereunder to any subsequent purchasers of such Product. If any surplus Product to which this Contract applies are to be relabeled by Customer, such re-label must include, as a minimum, all the safety information on the labels as delivered, and be labeled in accordance with applicable local, state, and federal regulations.
  - iv. Customer represents that Product is being purchased for commercial use only and will not be resold, donated or otherwise made available to individuals for personal use.
  - v. Customer agrees to warn all persons (including but not limited to buyer's employees, subcontractors and customers) who may become exposed to Product, of the hazards associated therewith (including but not limited to any hazards indicated in the documents referenced herein or attached hereto), and Customer agrees to take all action necessary to protect such persons from said hazards.
  - vi. Dow may cancel this Contract on 15 days notice if Customer fails to comply with any of its commitments under this subsection 2.c. i-v.
- d) Indemnity. Customer will indemnify and hold harmless Dow, its employees and agents, from and against all claims, liabilities, losses, damages, fines, penalties and expense of every character, including reasonable attorney fees, whatsoever (including but not limited to liability for pollution, environmental damage or restoration, nuisance, bodily injury, sickness and/or disease, including death, and loss of or damage to property), which are caused by, or arise out of or in connection with Product after delivery to Customer of Product at Place of Delivery, whether such liability is based on contract, warranty, tort (including negligence and strict liability), statute, or otherwise.

### 3. QUANTITY [Delete for One Offs]

Customer will give Dow reasonable notice concerning shipments and take deliveries in approximately equal monthly installments. Dow is only obligated to sell in any one month 1/10 of its Maximum Sales Obligation. On 30 days notice, Dow may limit its maximum monthly supply obligation to the average of Customer's monthly purchases for the 3 month period before the notice or 1/12 of Dow's Maximum Sales Obligation, whichever is less, unless seasonal requirements are noted in the Contract.

### 4. PRICE CHANGES [Delete for One Offs]

Dow may increase Prices, change transportation terms, change payment terms, and change notice provisions, by giving Customer at least 30 days prior notice. These changes will be deemed accepted unless Customer objects in writing before the effective date. If Customer objects, then Dow will, within 15 days of receiving Customer's written objection, notify Customer

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whether (a) Dow will continue to sell on the previous terms or (b) Dow wishes to negotiate the changes with Customer. During any negotiations, Price and other terms will be those that Dow implemented by the notice. If negotiations are not finalized within 15 days after the effective date of the change, then either Customer or Dow may terminate the Contract by written notice. For competitive reasons, Temporary Voluntary Allowances (“TVA”) from the current contract Price may be instituted, changed, or withdrawn at any time by Dow and shall not be deemed a change of Price; Dow is not required to give Customer any prior notice of institution, change or withdrawal of any TVA.

#### **5. EXCUSED PERFORMANCE**

Performance is excused when (a) there is any contingency beyond the reasonable control of Dow or Customer (for example, war or hostilities, Acts of God, accident, fire, explosion, public protest, breakage of equipment, governmental actions or legislation, or labor difficulties) which interferes with Dow's or Customer's production, supply, transportation or consumption practice or (b) Dow is unable to obtain raw materials or energy on terms Dow deems commercially acceptable. During times when performance is excused, all quantities of affected Product will be eliminated from this Contract without liability and Dow will allocate its supplies of raw materials and Product among their various uses in any manner that is fair and reasonable. However, Dow will not be obligated to obtain raw materials or Product from other sources if there are shortfalls or to allocate raw materials or Product from Dow's internal use.

#### **6. EXCLUSION OF ALL OTHER WARRANTIES**

Customer understands and agrees that Dow sells Product "as is". The commitment in Section 1 of Good Title is Dow's sole warranty respecting the Product including, without limitation, Product quality and performance, and is made expressly in lieu of and excludes any implied warranties of merchantability and fitness for a particular purpose and all other express or implied representations and warranties provided by statute or common law. Customer assumes all risks and liabilities resulting from the use of the Product delivered hereunder.

#### **7. LIMITATION OF LIABILITIES**

Neither party will be liable to the other for any consequential, punitive, special, exemplary or incidental damages. Customer's exclusive remedy and Dow's total liability for all claims arising out of this contract (including breach of warranty, negligence, strict liability and tort) are limited to customer having the options of replacement or repayment of the purchase price paid for the Products which are the subject of the claim.

#### **8. NOTICE OF CLAIMS**

Within 30 days after customer learns, or should reasonably have learned, of any claim with respect to Products, customer will inform Dow in writing of the claim or the claim is waived.

#### **9. TRANSPORTATION**

[Where Dow provides transportation,] Customer will unload and return all transportation equipment to carrier promptly and in no event later than the tariff or Contracted Period free of detention charges. Dow may collect its standard detention charge for its equipment if held beyond Dow's allowable time. When Product is to be shipped by barges or vessels, an addendum containing additional terms and conditions applicable to such shipment will be made a part of this Contract. Customer will take reasonable steps to preserve claims for loss or damage in transit against carrier.

[Where Customer provides transportation.] Customer agrees to use only Dow-approved carriers to transport and deliver Product.

#### **11. ASSIGNMENT**

This Contract is not transferable or assignable by either party without prior written consent of the non-assigning party except that Customer hereby consents to Dow's potential future assignment of some or all of Dow's obligations hereunder to any wholly owned subsidiary of Dow or its subsidiaries without further notice to Customer. In the event of such an assignment, the subsidiary may effect delivery of the Product and invoice Customer directly. The quantities delivered shall remain subject to the terms of this Contract.

#### **12. AUDIT OF CUSTOMER FACILITY**

Dow reserves the right to conduct periodic audits of Customer's production facilities. Such audits will primarily review health, safety, and environmental issues. Dow will provide reasonable notice of its intent to audit and conduct any audits during normal business hours.

#### **13. GENERAL**

a) This document, together with its attachments and addenda, constitutes the complete and final agreement between Customer and Dow regarding Product. Any additional or different terms provided by either party in subsequent purchase orders, other documents (electronic or hardcopy) or on Dow's, Customer's or third party Internet sites shall not be binding. This document may be modified only by a written amendment, expressly stated as such, signed by both parties.

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- b) The rights and obligations under Sections 2, 7, 8 and 9 will survive the cancellation, termination or expiration of this Contract.
- c) The failure of a party to exercise its rights on one occasion, including the obligation to supply Product, shall not be deemed to be a waiver of the right to exercise those rights in the future.
- d) If any provision of this Contract is declared invalid by any court or government agency, all other provisions shall remain in full force and effect.
- e) This Contract will be governed by Michigan law without reference to its principles of conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods is excluded.
- f) The terms set forth in this document are not binding until signed below by each party's authorized representatives.

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