

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES

1. Applicability.

(a) These terms and conditions of purchase (“**Terms**”) are the only terms which govern the purchase of the goods and services (“**Deliverables**”) by Westlake Chemical Corporation and its subsidiaries and affiliates (“**Buyer**”) from the seller named on the Purchase Order (“**Seller**”).

(b) The purchase order submitted with these Terms (the “**Purchase Order**”) and these Terms (collectively, this “**Agreement**”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral concerning the subject matter herein. These Terms prevail over any of Seller’s general terms and conditions of sale regardless whether or when Seller has submitted its sales confirmation or such terms. This Agreement expressly limits Seller’s acceptance to the terms of this Agreement. Fulfillment of this Purchase Order constitutes acceptance of these Terms.

2. Delivery of Deliverables.

(a) Seller shall provide the Deliverables in the quantities and on the date(s) specified in the Purchase Order, or as otherwise agreed in writing by the parties (the “**Delivery Date**”). If Seller fails to provide the Deliverables in full on the Delivery Date, Buyer may terminate this Agreement immediately by providing written notice to Seller, and Seller shall indemnify Buyer against any losses, claims, damages, and reasonable costs and expenses directly attributable to Seller’s failure to provide the Deliverables by the Delivery Date. Seller shall provide all Deliverables to the address specified in the Purchase Order (the “**Delivery Point**”) during Buyer’s normal business hours, or as otherwise instructed by Buyer. Seller shall pack all Deliverables for shipment according to Buyer’s instructions or, if there are no instructions, in a manner sufficient to ensure that the Deliverables are delivered in undamaged condition. Seller must provide Buyer prior written notice if it requires Buyer to return any packaging material. Any return of such packaging material shall be made at Seller’s risk of loss and expense.

(b) Seller acknowledges that time is of the essence with respect to Seller’s obligations hereunder and the timely delivery of the Deliverables.

3. Shipping Terms. Delivery shall be made in accordance with the terms on the face of this Agreement. The Purchase Order number must appear on all shipping documents, shipping labels, bills of lading, air waybills, invoices, correspondence and any other documents pertaining to this Agreement.

4. Title and Risk of Loss. Title and risk of loss passes to Buyer upon delivery of the Deliverables at the Delivery Point.

5. Inspection and Rejection of Nonconforming Deliverables. Buyer has the right to inspect the Deliverables on or after the Delivery Date. Buyer, at its sole option, may inspect all or a sample of the Deliverables, and may reject all or any portion of the Deliverables if it determines the Deliverables are nonconforming or defective. If Buyer rejects any portion of the Deliverables, Buyer has the right, effective upon written notice to Seller, to: (a) rescind this Agreement in its entirety; (b) accept the Deliverables at a reasonably reduced price; or (c) reject the Deliverables and require replacement of the rejected Deliverables. If Buyer requires replacement of the Deliverables, Seller shall use best efforts, at its expense, to replace the nonconforming or defective Deliverables and pay for all related expenses, including, but not limited to, transportation charges for the return of the defective Deliverables and the delivery of replacement Deliverables. If Seller fails to deliver replacement Deliverables, Buyer may replace them with Deliverables from a third party, and charge Seller the cost and expenses incurred to secure the replacement Deliverables, and terminate this Agreement for cause. Any inspection or other action by Buyer under this Section shall not reduce or otherwise affect Seller’s obligations under the Agreement, and Buyer shall have the right to conduct further inspections after Seller has carried out its remedial actions.

6. Price. The price of the Deliverables is the price stated in the Purchase Order (the “**Price**”). Unless otherwise specified in the Purchase Order, the Price includes all packaging, transportation costs to the Delivery Point, customs duties and applicable taxes, including, but not limited to, all sales, use or excise taxes. No increase in the Price is effective, whether due to increased material, labor, transportation costs, tax, or otherwise, without the prior written consent of Buyer.

7. Payment. Buyer shall make all invoiced payments consistent with the terms in the Purchase Order following receipt of a true and correct statement of account by Seller which is not disputed in good faith by Buyer. Under no circumstances shall Seller invoice Buyer for Deliverables provided or rendered more than 90 days following the date the Deliverables were completed. Buyer shall have no liability for invoices submitted to Buyer following the expiration of such 90 day period.

8. Warranties.

(a) Seller warrants to Buyer that for a period of 18 months from the Delivery Date, all Deliverables will be free from any defects in workmanship, material and design; conform to applicable specifications, drawings, designs, samples and other requirements; be fit for their intended purpose and operate as intended; be merchantable; be free and clear of all liens, security interests or other encumbrances; and not infringe or misappropriate any third party’s patent or other intellectual property rights.

(b) The warranties set forth in this Section are cumulative and in addition to any other warranty provided by law or equity. Any applicable statute of limitations runs from the date of Buyer’s discovery of the noncompliance of the Deliverables with the foregoing warranties.

9. General Indemnification. Seller shall defend, indemnify and hold harmless Buyer [and Buyer’s subsidiaries, affiliates, successors or assigns and its respective directors, officers, shareholders and employees (collectively, “**Indemnitees**”) against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers (collectively, “**Losses**”) arising out of or occurring in connection with the Deliverables purchased from Seller or Seller’s negligence, willful misconduct or breach of the Terms. Seller shall not enter into any settlement without Buyer’s prior written consent.

10. Insurance. Seller shall carry, and shall either cause its sub-suppliers to carry or to provide access to, insurance for Workers’ Compensation, Employer’s Liability, project specific Commercial General Liability (including Products & Completed Operations and Sudden & Accidental Pollution), Watercraft and Aircraft Liability (if same are used in providing Services) and Automobile Liability Insurance (including “Any Auto”), each with minimum limits of \$10,000,000 per occurrence and \$10,000,000 in the aggregate (which can be accomplished in conjunction with an umbrella insurance policy); provided that minimum amounts of Workers’ Compensation shall be set forth in applicable law. Seller shall also carry or provide access to Pollution Liability insurance as required by any applicable environmental laws and/or regulations. Additionally, Seller shall provide All Risks Property insurance with limits equal to the full value of the Deliverables and associated equipment during fabrication / construction and final delivery to Buyer. Seller shall supply Buyer with certificates or policies of such insurance prior to entry upon premises of Buyer. Buyer shall be named as an additional insured, except for Workers’ Compensation and Employer’s Liability, and subrogation shall be waived on all insurance. All insurance of Seller and sub-suppliers shall be primary and shall be with insurers that have an A.M. Best Rating of at least A-, VIII. Seller shall waive subrogation with respect to all deductibles and no self-insured retention shall exceed \$100,000 without written approval of Buyer. Seller shall cause its insurers and its sub-suppliers’ insurers to provide Buyer with thirty (30) days’ written notice of cancellation or material change. In the event Seller or any of its sub-suppliers fail to procure or maintain in force the insurance specified herein, Buyer may secure such insurance and the cost thereof shall be borne by Seller. Buyer confirms to Seller that Buyer maintains insurance in the same amounts as required of Seller. The insurance required under this Agreement shall not be a limitation on Seller’s liability under this Agreement, nor shall it be limited by any other section of this contract.

11. Professional Liability Insurance. Seller shall carry project specific professional liability insurance covering claims to the extent resulting from the Seller’s negligent performance in providing the Deliverables. Minimum limits shall be \$5 million per claim and in the aggregate. Claims-made coverage is acceptable provided the policy retroactive date is maintained prior to the date the Deliverables are rendered to Buyer and continuing for a period of time equal to two (2) years from the actual completion of Seller providing the Deliverables. This coverage is not applicable to any staffing services provided by Seller to Buyer under this Agreement.

12. Compliance with Law. Seller shall comply with all applicable laws, regulations and ordinances. Seller shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Seller shall comply with all export and import laws of all countries involved in the sale of the Deliverables under this Agreement or any resale of the Deliverables by Seller. Seller assumes all responsibility for shipments of Deliverables requiring any government import clearance. Buyer may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Deliverables.

13. Termination. In addition to any remedies that may be provided under these Terms, Buyer may, at any time for any reason whatsoever, terminate this Agreement with immediate effect upon written notice to Seller, either before or after the acceptance of the Deliverables, in whole or in part. If Buyer terminates the Agreement for any reason, Seller’s sole and exclusive remedy is payment for the Deliverables received and accepted by Buyer prior to the termination.

14. Waiver. No waiver by Buyer of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

15. Confidential Information. All non-public, confidential or proprietary information of Buyer, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Buyer to Seller, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized in advance by Buyer in writing. Upon Buyer’s request, Seller shall promptly return all documents and other materials received from Buyer. Buyer shall be entitled to injunctive relief for any violation of this Section.

16. Force Majeure. Neither party shall be liable to the other for any delay or failure in performing its obligations under this Agreement to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, without such party’s fault or negligence, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable (“**Force Majeure Event**”). Force Majeure Events include, but are not limited to, acts of God or the public enemy, government restrictions, floods, fire, earthquakes, explosion, epidemic, war, invasion, hostilities, terrorist acts, riots, strikes, embargoes or industrial disturbances. Seller’s economic hardship or changes in market conditions are not considered Force Majeure Events. Seller shall use all diligent efforts to end the failure or delay of its performance, ensure that the effects of any Force Majeure Event are minimized and resume performance under this Agreement. If a Force Majeure Event prevents Seller from carrying out its obligations under this Agreement for a continuous period of more than 45 business days, Buyer may terminate this Agreement immediately by giving written notice to Seller.

17. Assignment. Seller shall not assign, transfer, delegate or subcontract any of its rights or obligations under this Agreement without the prior written consent of Buyer. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve the Seller of any of its obligations hereunder. Buyer may at any time assign or transfer any or all of its rights or obligations under this Agreement without Seller’s prior written consent to any affiliate or to any person acquiring all or substantially all of Buyer’s assets.

18. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

19. Governing Law and Venue. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than those of the State of Texas. Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the appropriate state or federal court in Harris County, Texas, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a “**Notice**”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Purchase Order or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section.

21. Severability. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.
22. Amendment and Modification. These Terms may only be amended or modified in writing stating specifically that it amends these Terms and is signed by an authorized representative of each party.