

**SUNOCO PROCUREMENT DOCUMENT  
GENERAL TERMS AND CONDITIONS**

- 1. Contract Terms.** This Contract expressly limits acceptance to the terms stated herein unless otherwise stated on the front page of this Contract. Any additional or different terms proposed by Seller, whether in the form of an offer, proposal, quotation, acknowledgement or any other form, are objected to in advance and hereby rejected and Purchaser's acceptance of Seller's products shall not be deemed an acceptance of Seller's terms.
- 2. Quality, Warranty and Ownership.** Seller warrants that it has good and marketable title to the products sold hereunder and that such products shall conform to the applicable specifications. Such products shall be of merchantable quality and fit for the known purpose for which they are sold and shall be free and clear of any liens, encumbrances and security interests. This is in addition to any express warranty given by Seller to Purchaser or provided by law. Seller warrants that if any products furnished by Seller hereunder fail to conform to the prescribed specifications, or are otherwise found to be defective within one (1) year from date of initial receipt, but not to exceed twenty-four (24) months from date of initial receipt by Purchaser, such products shall be promptly replaced at Seller's expense. Seller warrants that products furnished hereunder strictly comply with Purchaser's published specifications in effect at the time of shipment of products, or the specifications attached as an Exhibit hereto, if any. Seller agrees to provide ninety (90) days' advance written notice to Purchaser of any changes in process or quality control. If Seller is not the manufacturer of the products, Seller will specify the manufacturer and the source of products and will notify Purchaser of any change in the manufacturer or source of products. Seller shall supply Purchaser a Certificate of Analysis for each Shipment hereunder, and agrees to keep the records regarding the Certificate of Analysis for a period of 3 years after the dated of each Certificate of Analysis.
- 3. Acceptance.** Seller shall suitably pack, mark and ship products sold hereunder in accordance with its normal procedure and the requirements of each carrier or any written instructions from Purchaser. Delivery of any products shall not be deemed to be complete until actually received and accepted by Purchaser. In no event, however, shall payment by Purchaser be deemed an acceptance of any products delivered hereunder. Products not accepted shall be returned at Seller's expense. Notwithstanding any agreement to pay freight, transportation charges, or to make payment or advances on account, title and risk of loss or damage shall be Seller's until so accepted by Purchaser. Purchaser's determination of quantity received shall be accepted as final and conclusive on all shipments. Seller's right to claim for or recover any alleged underpayment by Purchaser shall be waived, unless the claim, made in writing, is received by Purchaser within 180 days after the end of the particular contract year or the contract term, if less than a year.
- 4. Inspection.** Within a reasonable time after delivery of the products, Purchaser shall have the right, but not the obligation, to inspect the products to determine their conformity with the specifications. If all or any part of the products are found to be non-conforming, Purchaser may reject all or any part of the products, whereupon such rejected products shall promptly be removed by Seller at Seller's cost and the purchase price with respect to such rejected products shall either be refunded to Seller if already paid, or shall be reduced if still owing. If Purchaser so directs in writing, Seller shall promptly replace such non-conforming products with products conforming to the specifications. All direct, consequential and incidental costs of rejecting and removing such non-conforming products shall be borne by Seller.
- 5. Time and Place of Delivery.** Time is of the essence of this Contract. The products shall be delivered at the time and place specified by Purchaser. If Seller fails to deliver the products at the time and place specified, the Purchaser reserves the right to reject that quantity delivered in violation hereof, and to charge Seller for any direct, incidental or consequential loss incurred as a result of such failure.
- 6. Invoices and Payment.** Invoices shall be considered as dated the day they are received by Purchaser. If products are to be delivered in installments, Seller shall prepare a separate invoice for each installment and Purchaser shall pay an amount representing the price of conforming products delivered in each installment. Discount periods shall be calculated either from the date of receipt of acceptable invoices or from date of receipt and acceptance of products, whichever is later. Errors, omissions or delays in receiving invoices shall be considered just cause for withholding payment without loss of cash discount privileges. A separate invoice must be sent for each delivery and each invoice must refer to the purchase order number. The purchase order number must also appear on all packing slips and correspondence. A detailed packing slip must accompany each delivery. Seller grants Purchaser the right to set-off and apply any accounts payable owed by Purchaser to Seller or Seller's successors or assigns against any accounts receivable owed by Seller or Seller's successors or assigns to Purchaser or any collateral held by Purchaser as security for any indebtedness owed by Seller to Purchaser.
- 7. Pricing.** If at any time during the term of this contract, Purchaser receives a third party competitive offer to sell any material sold hereunder under terms that are more favorable to Purchaser than the terms then in effect under this Contract and Purchaser provides written notice thereof to Seller, and Seller fails to meet such more favorable terms for the quantity of material subject to the third party offer within fourteen (14) days of receipt of Purchaser's notice, then Purchaser may purchase such material from such third party on the more favorable terms. In such event, Purchaser and Seller shall be released from their respective obligations under this contract with respect to any and all quantities of material that can be supplied by said third party on such more favorable terms.
- 8. Taxes.** Seller agrees to pay any taxes imposed by law upon, or on account of, the products purchased hereunder.
- 9. Patent Warranty.** Seller shall indemnify, defend, and hold Purchaser harmless and shall pay all damages, fees, penalties and costs awarded or incurred by Purchaser in any claim, suit or proceeding brought against Purchaser or its customers that is based on a claim that any products furnished hereunder constitute an infringement of any patent, trade secret, copyright, or other intellectual property rights, provided that Seller is notified promptly in writing and given authority, information, and reasonable assistance (at Seller's expense) for the defense of same; and if Purchaser elects to defend such claim, suit, or proceeding, Seller shall pay all of Purchaser's attorneys fees and costs in addition to the damages set forth above. In case use of the products is enjoined, Seller shall, at its own expense and at its option, either: procure for Purchaser the right to continue using said products; or replace the same with a non-infringing equivalent.
- 10. Non-Disclosure.** Seller shall not reveal to any third person that Purchaser has purchased or contracted to purchase or receive the material ordered hereunder, or advertise that Seller is a supplier to Purchaser.
- 11. Compliance With Laws.** Seller shall comply with the applicable provisions of all federal, state or local laws or ordinances and all lawful orders, rules and regulations issued thereunder. Seller shall also comply with any provisions,

representations or agreements, or contractual clauses required thereby to be included or incorporated by reference or operation of law in this Contract and dealing with Equal Employment Opportunity, employment of veterans, employment of the handicapped, employment discrimination because of age, utilization of disadvantaged business enterprises and the related acts and executive orders that are now in existence or as they may hereafter be amended, supplemented, enacted, issued, modified or codified.

Without limiting the generality of the foregoing Seller warrants that (a) unless excluded by definition from the United States Toxic Substances Control Act ("TSCA"), all material shipped hereunder is included in the inventory list promulgated under the Act, or is exempt from Paragraph 5 of the Act, and complies in all other respects with applicable requirements and regulations thereunder; and (b) shipments hereunder will comply in all respects with all other applicable laws and regulations. Seller agrees to indemnify, defend and hold Purchaser harmless from all damages and liability (including attorneys' fees) resulting from any breach of these warranties.

From time to time, at Purchaser's request, Seller shall provide certificates to Purchaser relating to any applicable legal requirements, in each case in form and substance satisfactory to Purchaser. Without limiting the generality of the foregoing, Seller shall provide certificates of origin relating to originating products within the meaning of the rules of origin of NAFTA preferential duty rules of origin, which will include a statement whether the products in question were produced in the United States, Mexico, or Canada, or, if the country of origin or manufacture is not NAFTA eligible, then a statement as to the country of origin or manufacture.

**12. LIABILITY AND INDEMNITY:** Seller agrees to defend, hold harmless and indemnify Purchaser, its parent, their subsidiaries and affiliates, as well as the employees, agents, officers, directors, invitees, partners and the assigns, and successors in interest of any of them ("Indemnitees") from and against any and all claims, liabilities, expenses (including reasonable attorneys' fees), losses, damages, demands, fines and causes of action caused by, arising out of, or related to the Seller's products, or the actual or alleged acts or omissions of Seller, that of its suppliers, subcontractors, agents, servants or employees, as well as any joint negligence or fault of Indemnitees, whether or not such actions or omissions occur jointly or concurrently; provided, however, that Seller's obligations hereunder shall not apply to any claim, liability, expense, loss, damage, demand, fine or cause of action established to be the result of the sole negligence of an Indemnitee. The Seller's defense, hold harmless and indemnity requirements, as set forth in this Section 12, shall also extend to injuries sustained by Seller's employees and shall not be limited by any applicable workers' compensation law or similar statute, the application of which is waived. To the extent that state or federal law limits the terms and conditions of this Section 12, it shall be deemed so limited to comply with such state or federal law.

To the extent that this Contract relates to activities of any kind or character attributable to Ohio, the liability and indemnity clause in this Contract is amended to add the following paragraph. "Seller expressly and specifically waives its statutory and constitutional workers' compensation immunity under Ohio law, including amendments thereto". This Section 12 shall survive termination or cancellation of this Contract.

**13. Quality.** Seller shall be ISO 9000-2000 certified, or be in the process, as deemed by Purchaser, of implementing certification. If not ISO certified, Seller shall provide proof of a quality system, or establish a quality system which meets the Purchaser's requirements. Purchaser reserves the right to audit Seller's quality system every 12 months during the contract period.

**14. Termination And Cancellation.** If Seller shall be adjudged bankrupt, or become insolvent, file for voluntary bankruptcy, be subjected to involuntary bankruptcy proceedings, enter receivership proceedings, make an assignment for the benefit of creditors, or is otherwise guilty of a violation of any provision of this Contract, then Purchaser, without prejudice to any other rights or remedies expressly provided by law or in equity, may terminate this Contract, or any part hereof, by written notice to Seller. In such cases of termination, Purchaser shall be relieved of all further obligations hereunder.

**15. Miscellaneous.** Neither this Contract nor any claim against Purchaser arising directly or indirectly out of or in connection with this Contract, shall be assignable by Seller without Purchaser's consent in writing. This Contract contains the entire agreement between the parties hereto and may be modified or rescinded only by a writing signed by both Purchaser and Seller. All notices hereunder shall be in writing and addressed to Purchaser or Seller as the case may be, and directed to the individuals identified on the first page of this Contract. Except to the extent modified herein, this Contract shall be governed by and interpreted and construed in accordance with the substantive laws of the Commonwealth of Pennsylvania, including without limitation the Uniform Commercial Code then in effect in the Commonwealth of Pennsylvania, without regard to Pennsylvania's choice of laws provisions. No waiver by either party of any breach of any of the covenants or conditions herein contained shall be construed a waiver of any succeeding breach of the same or of any other covenant or condition. The invalidity, illegality and unenforceability of any provision(s) of this Contract shall in no way affect or impair the validity, legality and enforceability of the remaining provisions hereof.

**16. Force Majeure.** There shall be no breach or violation of this Contract if either party is prevented from fulfilling its obligations hereunder because of an Event of Force Majeure. Events of Force Majeure include circumstances such as an act of God, war, terrorism, strikes, or other labor disturbances (regardless of the reasonableness of the demands of labor), riots, civil commotions, fires, floods, accidents, explosions, natural calamities, sabotage, breakdowns, shortage of or inability to obtain energy, equipment, transportation, crude petrochemicals or other feed stocks, embargoes or other import or export restrictions, good faith compliance, whether mandatory or voluntary, with any regulation, direction or request, whether valid or invalid, made by any governmental authority or person purporting to act therefore, or any other cause (whether similar or dissimilar to the foregoing) beyond the reasonable control of such party. If Seller cannot supply the total demand for the Product because of an Event of Force Majeure, Seller may allocate its available supply of the material among itself and its contract customers in a manner Seller determines to be equitable. During such an allocation, Seller will not be obligated to purchase material from other sources to satisfy its obligations under this Contract. If deliveries are suspended due to Force Majeure for three (3) consecutive months, the party unaffected by the Event of Force Majeure may cancel this Contract upon 30 days written notice to the other party. During an Event of Force Majeure, the affected Party shall use its best efforts to mitigate the Event of Force Majeure and fulfill its obligations under this Contract.

**17. Mediation.** Any controversy or claim arising out of this contract or the breach hereof shall be referred to non-binding mediation. If mediation does not result in settlement of the dispute, the parties may refer the dispute to binding arbitration under jointly agreed arbitration conditions, or commence litigation.