

**M CHEMICAL COMPANY, INC. dba W.F. McDonald Company**  
**STANDARD CONDITIONS OF SALE**

(a) **TAXES** — Except as expressly provided elsewhere in the Agreement, Buyer will pay any tax (other than on income), duty or other governmental charge now or hereafter imposed on any Products or imposed on M Chemical Company by reason of the manufacture, sale, use or transportation of such products or raw material.

(b) **FORCE MAJEURE** — Neither party shall be liable to the other for any delay or failure of performance resulting from any circumstance (other than the payment of money owed) beyond the reasonable control of such party (a "Force Majeure Event"), including without limitation: fire, storm, flood, act of God, war, earthquake, explosion, sabotage, epidemic, quarantine restrictions, embargo, strikes or other labor trouble, compliance with law, failure of the usual means of production or of transportation, or shortage of labor, raw materials, utilities, fuel and/or energy. M Chemical Company shall not be obligated to make up any deficiencies in delivery due to any such shortage except by written mutual agreement. In the event M Chemical Company experiences a Force Majeure Event, Buyer may purchase elsewhere the amount of product it requires which M Chemical Company is unable to provide.

(c) **APPORTIONMENT**— In the event of a shortage of the product and/or delay in shipment or delivery occasioned by a Force Majeure Event, M Chemical Company will endeavor to allocate equitably the available product among its buyers, its own internal use and the use of its affiliates. In the case of a shortage or anticipated shortage of labor, raw materials, utilities, fuel or energy, M Chemical Company will endeavor to allocate equitably the available labor, raw materials, utilities, fuel and energy to use in the product covered by this contract, to M Chemical Company's own internal use, to the use of its affiliates and to the use in other products.

(d) **WARRANTY** — M CHEMICAL COMPANY WARRANTS THAT (i) THE PRODUCT SOLD HEREUNDER SHALL AT THE TIME OF DELIVERY CONFORM TO THE AGREED SPECIFICATIONS (OR IN THE ABSENCE OF AGREED SPECIFICATIONS, THEN TO M CHEMICAL COMPANY'S STANDARD SPECIFICATIONS FOR THE PRODUCT); AND (ii) BUYER SHALL RECEIVE GOOD TITLE TO THE PRODUCT, FREE AND CLEAR OF LIENS OR ENCUMBRANCES. HOWEVER, M CHEMICAL COMPANY MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. FURTHER, TO THE EXTENT THAT THE PRODUCTS CONFORM TO THEIR APPLICABLE SPECIFICATIONS, THE BUYER ASSUMES ALL RISK AND LIABILITY FOR RESULTS OBTAINED BY THE USE OF THE MATERIALS COVERED BY THIS CONTRACT, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS.

(e) **EXCLUSIVE REMEDIES** — The exclusive remedy against M Chemical Company for any failure to deliver Product or for any failure of the Product to conform to the applicable specifications is expressly limited to one of the following (as may be elected at M Chemical Company's option):

- (i) providing the quantity of Product to Buyer with respect to which the claim is established, or
- (ii) paying the qualifying damages established by Buyer, in an amount not to exceed the purchase price paid for the Product with respect to which such damages are claimed, plus any freight paid by Purchaser with respect to such Product.

This limitation shall apply to all claims, whether stated in contract, warranty, tort, strict liability, infringement of third party rights or any other legal or equitable claim whatsoever. Failure to give written notice of claim within sixty (60) days from date of delivery, or in the case of non-delivery, from the date fixed for delivery, shall constitute a waiver by the parties of all claims with respect thereto. In no event will either party be liable to the other for loss of profits or for punitive, special, exemplary, incidental or consequential damages.

(f) **PATENTS** — Buyer will hold M Chemical Company harmless against any expenses, judgment or loss for infringement of any patents or trademarks or other third party property rights which result from Buyer's particular use of the Products (s) or from M Chemical Company's compliance with Buyer's designs, specifications or instructions. M Chemical Company's instructions and recommendations are not intended to suggest operations which would infringe any patents, and M Chemical Company assumes no responsibility for any such infringement. M Chemical Company may, without liability to Buyer, decline to continue deliveries of any Product where the manufacture, sale or use of the Product would, in M Chemical Company's reasonable opinion, infringe any patent now or hereafter issued.

(g) **DELIVERY**— M Chemical Company will endeavor diligently to deliver the Product on or about the requested delivery dates, given the limits of its

operational and logistical constraints. However, requested delivery dates are for indicative purposes only, and delivery on a date other than the requested date (i) shall not entitle Buyer to reject the goods unless Buyer shall have given M Chemical Company notice of cancellation at least three (3) days prior to shipment; and (ii) shall not entitle Buyer to any claim for compensation or reject the goods unless Buyer shall have given M Chemical Company notice of cancellation at least three (3) days prior to shipment; and (ii) shall not entitle Buyer to any claim for compensation.

(h) **BULK SHIPMENT**— Bulk shipments are invoiced based on quantities measured by M Chemical Company at time of loading. Discrepancies of less than one and one-half percent (1.5%) of total volume will be ignored.

(i) **WAIVER** — Failure of either party in any particular circumstance to insist on the strict performance of any covenant, term, provision or condition hereunder, or to exercise any option herein contained, shall not be construed as a waiver thereof in any other instance.

(j) **CONTAINER CHARGE** — If shipment is made in returnable containers, Buyer shall pay for each container M Chemical Company's standard container deposit in effect at the time of shipment and shall use containers only for reasonable storage of the product originally delivered therein by M Chemical Company. Further, Buyer shall return any such containers (freight prepaid) in good condition (ordinary wear and tear excepted) within ninety (90) days of the date of original shipment. Upon the return of said containers as above provided, M Chemical Company will reimburse Buyer the container deposit paid by Buyer for each container; but if Buyer fails to return any of said containers within the specified time, Buyer will pay M Chemical Company demurrage in accordance with M Chemical Company's published schedule, or (depending on the product and the length of delay) M Chemical Company may refuse to accept the same and may retain the container deposit as liquidated damages.

(k) **TANK CARS** — If shipment is made in tank cars furnished by M Chemical Company, Buyer will unload said cars promptly after placement by carrier and no reconsignment of M Chemical Company's tank cars shall be made by Buyer without the written consent of M Chemical Company. Tank cars held by Buyer in excess of M Chemical Company's published schedule of demurrage free time will be subject to demurrage at rates in M Chemical Company's published schedules.

(l) **NOTICE** — Notice to either party under this Agreement shall be deemed good and sufficient if sent by mail to the address specified on any purchase order or invoice (or otherwise to the last known address of such party), and shall be deemed effective three business days after the date of such mailing.

(m) **ENTIRE AGREEMENT** — This Agreement constitutes the entire contract of purchase and sale of the product(s) named herein. All prior agreements between the parties relating to this subject shall have no further force or effect. The terms of this Agreement shall not, in the absence of prior express written consent of the parties, be amended, supplemented or superseded by any terms or provisions of any purchase order, invoice or other document of any kind.

(n) **GOVERNING LAW** — This Agreement shall be interpreted in accordance with the laws of the State of California, without giving effect to provisions as to the conflicts of laws.

(o) **ASSIGNMENT** — This Agreement is neither transferable nor assignable by either party, except (i) to its majority-owned affiliates, (ii) to its successors to that portion of the business to which this Agreement relates, or (iii) with the prior written consent of the other party.

(p) **SAFE PRACTICES** — Buyer acknowledges that it is familiar with the safety and health data outlined in M Chemical Company's Material Safety Data Sheet(s) relating to the Product and any other information which has been provided by M Chemical Company. Buyer will act with reasonable diligence and prudence to safeguard the health and safety of its employees, customers and the environment.

(q) **CREDITWORTHINESS** — In the event that Buyer's financial responsibility deteriorates materially, M Chemical Company shall be entitled to require advance payment or satisfactory assurances of future payment.

(r) **CONFIDENTIALITY** — M Chemical Company and Purchaser agree to maintain confidentiality as to the commercial terms of this Agreement, except only as may be required (in the good faith opinion of counsel) to comply with applicable law.