

**KOPPERS ASHCROFT INC.  
TERMS AND CONDITIONS OF SALE**



**1. Offer and Acceptance.** These Terms and Conditions of Sale and the non-conflicting provisions in Seller's quotation (if any), acknowledgment, or invoice from Koppers Ashcroft Inc.'s ("Seller"), or any other documentation of Seller referencing "Koppers Ashcroft Inc.'s Terms and Conditions of Sale" (collectively, this "Agreement") constitute an offer from Seller to purchaser ("Buyer") and govern in all respects all sales of any Products described in this Agreement or otherwise referenced in a purchase order, whether in written or electronic form ("Products"), from Seller to Buyer. Acceptance of this Agreement by Buyer is expressly limited to the terms and conditions set forth herein. Any terms and conditions set forth in Buyer's purchase order, acceptance, or any other document of Buyer are hereby expressly rejected. Any such terms or conditions shall not become part of this Agreement, and Buyer's acceptance of this Agreement shall be deemed to confirm Buyer's assent to the exclusive application of the terms and conditions set forth in this Agreement, notwithstanding any provision to the contrary in Buyer's documentation. If, for any reason, Buyer should fail to accept this Agreement in writing, any conduct by Buyer that recognizes the existence of a contract pertaining to the subject matter hereof shall be deemed to constitute acceptance by Buyer of this Agreement and all of its terms and conditions.

**2. Sale and Purchase of Products.** Seller agrees to sell to Buyer, and Buyer agrees to purchase from Seller, Products in accordance with Specifications and the terms and conditions set forth therein and herein. As used herein, the word "Specifications" shall mean the specifications, drawings, plans, qualities, nature, type, properties, amounts, assortments, and other descriptions of and requirements for Products as stated on the front of this Agreement.

**3. Term and Termination.** If applicable, the term of this Agreement shall be as specified herein (the "Term") unless earlier terminated in accordance with the provisions of this Agreement. This Agreement may be terminated: 1) By the non-breaching Party, upon the material breach of this Agreement by the other Party, which is not cured within thirty (30) days after notification in writing thereof; 2) By either Party, immediately by written notice, for just cause. For purposes of this Agreement, "just cause" shall mean: (a) the non-terminating Party ceases or threatens to cease to function as a going concern; (b) the filing by the non-terminating Party of a voluntary petition in bankruptcy or for reorganization or for the adoption of an arrangement under applicable bankruptcy or insolvency laws or an admission seeking the relief therein provided; (c) the non-terminating Party's making of a general assignment for the benefit of its creditors; (d) the appointment of a receiver, administrative receiver, administrator or manager for all or a substantial part of the non-terminating Party's property; (e) in the case of the filing of an involuntary petition in bankruptcy, an entry of an order for relief relating to a Party; (f) the entry of a court order appointing a receiver or trustee for all or a substantial part of the property of a Party without its consent; and (g) the non-terminating Party being, or being deemed to be, insolvent or unable to pay its debts as they fall due, or having any order or resolution made for its dissolution or liquidation, or taking or suffering any similar or analogous procedure, action or event in consequence of debt, in any jurisdiction; 3) By the Party that is not subject to the event of Force Majeure (as defined herein below), upon thirty (30) days written notice, in the event a Force Majeure occurrence, as defined in this Agreement, continues for a period exceeding nine (9) months; 4) By either Party upon the assignment by the non-terminating Party (or attempted assignment) of any rights under this Agreement in contravention of this Agreement; and 5) By Seller immediately on written notice if Buyer fails to pay any sums due under this Agreement within thirty (30) days of receipt of notice from Seller requiring the same. Upon expiration or termination of this Agreement for any reason, Buyer shall within thirty (30) days of such expiration or termination, purchase and take delivery of all Products identified by Seller for Buyer, including all materials purchased for or identified for the manufacture of Products for Buyer, and any materials or Products for which Seller began manufacturing for Buyer.

**4. Price and Payment.** (a) The price for Products shall be as specified in this Agreement. Unless otherwise specified in this Agreement, all payments due to Seller by Buyer under this Agreement shall be due and payable thirty (30) days from the date of Seller's invoice. Buyer shall be responsible, and Buyer shall indemnify Seller, for all sales, use, excise or other taxes presently or hereafter payable in connection with the provision of Products hereunder, unless Buyer provides to Seller an exemption certificate. Seller shall not be responsible, and Buyer shall indemnify Seller, for any income, franchise, or similar taxes of Buyer or its customers, or any taxes incurred by or imposed on Buyer or its customers in connection with the purchase or use of Products or any tax, such as sales, use, value added or purchase tax,

customarily passed on to the ultimate consumer. If Buyer is overdue with any payment hereunder, then without prejudice to Seller's other rights or remedies, Seller shall have the right to receive interest on the overdue amount at the statutory rate, which interest shall accrue on a daily basis from the date payment becomes overdue until Seller has received full payment of the overdue amount together with all interest that has accrued, and shall be payable within thirty (30) days of receipt of Seller's invoice in respect of the same.

(b) If Seller has any doubt as to Buyer's responsibility, or if Buyer fails to fulfil the terms and conditions of payment set forth in this Agreement, Seller may (i) decline to make any further shipment or delivery hereunder, except upon receipt of satisfactory security, including, but not limited to, full or partial prepayment, or (ii) terminate this Agreement. If, pursuant to this provision, Seller defers any shipments or terminates this Agreement, Buyer shall be liable for, and reimburse Seller, for any losses, expenses, and termination charges incurred by Seller as a result of such deferral or termination.

**5. Shipment and Delivery.** Unless otherwise specified in this Agreement, delivery will be FOB Seller's facility. Risk of loss of Products shall pass at the time of delivery. Title to Products shall pass to Buyer at the same time as risk of loss passes to Buyer. Any claims for shortages or damages suffered in transit must be submitted directly to the carrier. Seller reserves the right to make partial shipments. Seller is not bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If shipment of Products is postponed or delayed by Buyer for any reason, including a Force Majeure Event (as defined in Section 9), Seller may move Products to storage for the account of and at the risk of Buyer and Products will be deemed delivered. Buyer is responsible for all demurrage or detention charges. Unless otherwise specified in this Agreement, Product deliveries will be spread relatively evenly over the year, with a specific delivery program to be mutually agreed upon by the Parties at least sixty (60) days prior to the start of each calendar quarter, and Buyer shall at all times place its orders for Products in such manner as to provide Seller with sufficient lead-time to produce and deliver Products to Buyer. Each of Buyer's orders for Products shall contain an order number, shall be dated, and shall state the amount of Products ordered and desired delivery date(s). No delivery date shall be binding on Seller and time shall not be of the essence in respect of Seller's obligations hereunder. Seller will give Buyer written notice of each delivery at least twenty-four (24) hours before the date of such delivery. Such notices shall include the volume of Products and date delivered and Buyer's order number. Transportation equipment shall be loaded in accordance with standard Seller practices.

**6. Limited Warranty.** (a) Seller warrants to Buyer that (i) Products will, at the time of delivery, conform to the Specifications identified in this Agreement; (ii) Seller will convey good title to Products delivered hereunder; and (iii) Products shall be delivered free from any lawful security interest, lien or encumbrance.

(b) Buyer is responsible for disassembly and re-assembly of Products. Seller does not warrant and shall have no obligation with respect to any Products that: (i) have been repaired or altered by someone other than Seller; (ii) have been subject to misuse, abuse, neglect, intentional misconduct, accident, Buyer or third party negligence, unauthorized modification or alteration, use beyond rated capacity, a Force Majeure Event, or improper, or a lack of, maintenance; (iii) are comprised of materials provided by, or designed pursuant to instructions from, Buyer; (iv) have failed due to ordinary wear and tear; or (v) have been exposed to adverse operating or environmental conditions. If Seller has relied upon any specifications, information, representations or descriptions of operating conditions or other data supplied by Buyer or its agents to Seller in the selection or design of Products, and actual operating conditions or other conditions differ, any warranties or other provisions contained herein that are affected by such conditions will be null and void.

(c) Buyer is solely responsible for determining the fitness and suitability of Products for the use contemplated by Buyer. Buyer shall ensure that (i) Products are used only for the purposes and in the manner for which they were designed and supplied, (ii) all persons likely to use or come into contact with Products receive appropriate training. Buyer agrees, upon request of Seller, to provide Seller with a written statement of the procedure and materials used to warn employees, contractors and customers of Product hazards. Buyer assumes all responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from

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the use of Products, either alone or in combination with other Products or components.

**(d) THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. SELLER MAKES NO OTHER REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO PRODUCTS, WHETHER USED ALONE OR IN COMBINATION WITH OTHER MATERIALS, AND HEREBY DISCLAIMS ANY OTHER REPRESENTATIONS OR WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT, AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, USAGE OF TRADE, AND FITNESS FOR A PARTICULAR PURPOSE.** All warranties set forth in this Section 6 are not transferrable and are made solely to and for the benefit of the Buyer. There are no other intended beneficiaries of all warranties set forth in this Section 6 and the warranties shall not confer or be construed as conferring any rights or benefits on any person or entity other than Buyer. **THE REMEDIES PROVIDED IN SECTION 7 ARE BUYER'S SOLE REMEDIES FOR ANY AND ALL CLAIMS ARISING FROM OR RELATED TO PRODUCTS.**

**7. Remedies for Breach of Warranty.** In the event of a breach of the warranty set forth in Section 6 by Seller, Buyer's sole remedies shall be, at Buyer's option, either: (i) a refund to Buyer of the purchase price paid by Buyer for non-conforming Products and the transportation costs incurred by Buyer in transporting Products to Buyer's facility or, at Buyer's request, credit to Buyer's account of the amount of said price or (ii) replacement of the non-conforming Products with conforming Products. Alternatively, Buyer and Seller may, on a case by case basis, mutually agree in writing to waive the requirement for Products to conform to the warranty. If Buyer elects to replace the non-conforming Products, then Seller shall be responsible for the reasonable costs involved in obtaining and shipping the replacement Products; provided, however, that Seller shall have the right to make the arrangements on behalf of Buyer for replacement of non-conforming Products. Upon Seller's request, Buyer shall return the non-conforming Products to Seller or otherwise dispose of the non-conforming Products, which is the subject of the refund, credit or replacement, with any reasonable costs incurred by Buyer in connection with such return or disposition to be for Seller's account. Buyer must notify Seller in writing of any claim for an alleged breach of warranty within ninety (90) days of Buyer's receipt of Products. After expiration of such ninety (90) day period, Buyer will not be entitled to any of the remedies provided herein if Seller has not been notified in writing of an alleged breach of warranty.

**8. Limitations of Remedies. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR FOR PUNITIVE OR EXEMPLARY DAMAGES FOR ANY REASON. "Consequential damages"** includes, without limitation, loss of anticipated profits; business interruption; loss of use, revenue, reputation, costs incurred, including without limitation, costs for capital, fuel or power; loss or damage to property or equipment; and environmental clean-up. **Except in the event of a breach of warranty, which shall be covered by Section 7, Seller's maximum aggregate liability, subject to the previous sentence, for any claim made under or in connection with this Agreement or any collateral contract, whether arising in or caused by breach of contract, tort (including negligence), breach of statutory duty or otherwise, shall not exceed the total purchase price payable by Buyer for Products at issue. No claim of any type or nature may be made or brought by Buyer unless made or brought within one year of delivery of Products at issue.** Seller assumes no obligation or liability for technical advice given or not given, or results obtained. Seller has set its prices and entered into the Agreement in reliance upon the limitations of liability and other terms and conditions specified herein, which allocate the risk between Buyer and Seller and form a basis of this bargain between the parties.

**9. Force Majeure.** A Party subject to an event of Force Majeure (as defined herein below) shall not be liable to the other Party for any loss or damage due to an event of Force Majeure, and such Party shall be excused from performance hereunder during the period such Force Majeure remains in effect, without being held liable to the other Party for damages that may result therefrom, but only to the extent made necessary by such Force Majeure; provided that such Party has made and is making all reasonable efforts to minimize its inability to perform and any consequent loss or damage. The occurrence of Force Majeure shall not relieve Buyer from the

obligation of paying for Products that have been delivered to Buyer or are delivered to Buyer during the occurrence of such Force Majeure. It is agreed that the Party whose performance is affected by the event of Force Majeure shall use due diligence, good faith, and all reasonable efforts to remove such Force Majeure conditions, but that no Party shall have to settle a labor dispute contrary to its best interests. If Seller determines that its ability to perform or the total demand for Products is hindered, limited or made impractical due to a Force Majeure event, Seller may delay delivery of Products and allocate its available supply of Products (without obligation to acquire other supplies of any such Products) among its customers on such basis as Seller determines to be equitable without liability for any failure of performance. "Force Majeure," as used herein, means a condition or cause beyond the reasonable control of a Party (or its contractor(s), transportation provider(s) or supplier(s)) that prevents the affected Party from performing its obligations under the Agreement, including but not limited to: (a) floods, storms, earthquakes, hurricanes, tornadoes, or other severe weather or climatic conditions; (b) acts of public enemy, war, blockade, terrorism, insurrection, civil commotion, embargo or riot; (c) fire, wreck, washout, equipment failure or explosion; (d) strike, lockout, or other combination of workmen or labor dispute; (e) epidemic or quarantine; (f) accidents; (g) Seller's plant shutdown; shortage of labor, fuel, or raw materials; inability to obtain suitable or sufficient energy, labor, fuel, transportation or raw materials from appropriate or usual sources of supply; closing or unavailability of harbors, ports, berths or other facilities required for transport or loading of Product; closing or unavailability of harbors, ports berths or other facilities required for loading, shipment, discharge or transport of the necessary materials, equipment or other supplies required for producing Product, (h) any law, ordinance, regulation, directive, or order; and (i) other causes beyond Seller's reasonable control (or its contractor(s), transportation provider(s) or supplier(s)) that may prevent or delay production or delivery of the goods that are the subject of this Agreement. Buyer's loss of a customer or customers for Product or for products utilizing Product shall not constitute an event of Force Majeure. The Party invoking Force Majeure shall give notice to the other as soon as is reasonably practicable under the circumstances, stating, insofar as known, the probable extent to which it will be unable to perform or be delayed in performing its obligations hereunder. The Party giving the notice pursuant to the preceding sentence shall notify the other when the Force Majeure event is removed. In the event of a Force Majeure, the date of delivery will be extended by a period equal to the delay plus a reasonable time to resume production, and the price will be equitably adjusted to compensate Seller for such delay and related costs and expenses.

**10. Confidentiality.** The terms and conditions of this Agreement and all information relating to Seller obtained by Buyer in connection with this Agreement must be kept confidential and must not be disclosed by Buyer to any third party, except with the prior written consent of Seller. This Agreement does not apply to information that is or becomes public other than as a result of acts by Buyer in breach of this Section; is in the possession of Buyer or its affiliates before such disclosure and is not subject to any duty of confidentiality or is independently derived by Buyer or its affiliates without the aid, application, or use of the confidential information, as demonstrated by written records; or is disclosed to Buyer or its affiliates by a third party on a non-confidential basis provided that such third party is not subject to a confidentiality agreement with Seller. If Buyer or any of its affiliates or anyone to whom any of them discloses the confidential information receives a request to disclose all or any part of the confidential information under the terms of a subpoena or is otherwise required by law to disclose all or any part of the confidential information, Buyer shall: (a) promptly notify Seller of the existence, terms, and circumstances surrounding such request or requirement; (b) consult with Seller on the advisability of taking steps to resist or narrow that request or requirement; (c) if disclosure of that confidential information is required, furnish only such portion of the confidential information as Buyer is advised by counsel is legally required to be disclosed; and (d) use reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the confidential information that is required to be disclosed. This Section 10 will not prohibit disclosure to Buyer's legal advisers, accountants or consultants or its bankers or other financial institutions provided that such persons are legally bound to keep this Agreement and other documents or information confidential in accordance with this Section.

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**11. Binding Effect.** This Agreement shall inure to the benefit of and shall be binding upon Buyer and Seller and their respective successors and permitted assigns, subject, however, to the limitations contained herein.

**12. Waiver.** To the extent permitted by law, no delay or omission to exercise any right or power accruing upon any event of default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be expedient. Any such waiver shall be in writing and signed by the Party against whom it is to operate. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver is expressed in a writing signed by both Parties, specifically referencing the Agreement.

**13. Severability.** If any term or provision of this Agreement or the application thereof to any Party or circumstance be judged invalid or unenforceable to any extent, the remainder of this Agreement and the application of such terms and provisions to persons or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, except as it might be necessary to effectuate the intent of the Parties, and each provision of this Agreement shall be valid and be enforceable to the fullest extent permitted by law.

**14. Entire Agreement; Amendments.** This Agreement sets forth the entire understanding of the Parties with respect to matters set forth herein and supersedes any prior agreement, understanding or arrangement between the Parties, whether oral or in writing. Any printed term contained in any purchase order or other form or document used by Buyer to order the Product or in any acknowledgment or other form or other document used by Buyer or Seller are simply administrative tools conveying shipping, invoicing and scheduling instructions and details and shall not be construed as altering the terms, conditions and provisions of this Agreement, unless such terms have been agreed to in writing by both Buyer and Seller. No conditions, usage or trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement the Agreement shall be binding unless made in writing and signed by both Parties, expressly and specifically referencing the Agreement, and no modification or objection shall be caused by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing different or additional terms to those set forth herein. Nothing in the Agreement confers upon any person other than Seller and Buyer any right or remedy under or by reason of this Agreement. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. No representation, undertaking or promise shall be taken to have been given or be implied from anything said or written in negotiations between the Parties prior to this Agreement except as expressly stated in this Agreement. Any Schedule or Exhibit referenced herein is attached hereto and incorporated herein by such reference. This Agreement is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder. This Agreement may not be amended or altered except by the written agreement of Buyer and Seller.

**15. Headings.** The headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions of this Agreement.

**16. Assignment.** Buyer shall not assign its rights nor delegate the performance of its duties under this Agreement without the prior written consent of Seller.

**17. Governing Law; Choice of Forum.** The Parties specifically agree that the U.N. Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. This Agreement shall be governed by, construed, and enforced in accordance with the laws of British Columbia, Canada, without regard to the conflict of laws principles thereof. In any action between Buyer and Seller arising out of or relating to this Agreement or any of the transactions contemplated by this Agreement, Buyer irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of courts located in Vancouver, British Columbia and irrevocably and unconditionally waives and agrees not to plead or claim in any such court that any such action brought in such court has been brought in an inconvenient forum.

**18. Dispute Resolution.** In the event a dispute, controversy or difference

arises out of or relates to this Agreement ("Dispute") each of the Parties shall send out a written notice to the other Party identifying the Dispute and substantiating their position ("Notice"). The Parties shall use their reasonable best efforts to settle such Dispute. To this end, they shall consult and negotiate with each other, in good faith, to reach a just and equitable solution satisfactory to both Parties. If they do not reach such a solution within a period of sixty (60) working days after the date on which the first Notice has been sent, either Party may initiate legal proceedings.

**19. Authorization and Representations.** Buyer and Seller represent to each other that each is duly organized, validly existing and in good standing under the laws of their respective states of incorporation or formation, as applicable, and each has all requisite corporate power and authority to own its property and to carry out the transactions contemplated hereby, and each has or will take all necessary corporate action to duly authorize said transactions.

**20. Intellectual Property.** By entering this Agreement, Buyer acknowledges that nothing shall be construed to give Buyer any right, title or interest in the intellectual property rights with regard to or relating to Products, including, but not limited to, copyrights, patent rights, trade secrets or the right to use trademarks. All rights, including, without limitation, patent, trademark, trade secret, copyright and all other intellectual property rights in work done or resulting from work done by or on behalf of Seller pursuant to this Agreement shall vest in Seller, including "work made for hire." Buyer agrees to render its full assistance and cooperation to Seller in obtaining and maintaining such rights.

**21. Compliance with Laws.** All Products are sold and transferred by Seller to Buyer hereunder on the condition that Buyer currently complies, and will continue to comply, with all applicable governmental laws, rules, regulations, directives and orders concerning activities contemplated by this Agreement.