

TERMS AND CONDITIONS Canada

1. Definitions:

As used herein, (a) "Seller" shall mean Dow Chemical Canada Inc., (b) "Buyer" shall mean the person whose offer is accepted in writing by Seller; (c) "Articles" shall mean the items of property listed on Invitation to Bid, in a Catalog or on the front side hereof; and (d) "Person" shall be construed to imply both the plural and the singular, as the case may demand, and shall include corporations, companies, associations, societies and municipal corporations as well as individuals.

2. General Information:

Unless otherwise specified, offers shall be for the purchase of Articles F.O.B. Seller's location.

3. Hazardous Chemicals and Other Hazardous Materials:

Buyer is warned and acknowledges that any Articles which Buyer may hereafter purchase from Seller, pursuant to any offer accepted by Seller and subject to the terms and conditions set forth herein, may bear or contain hazardous chemicals or other hazardous materials which may be, or may become by chemical reaction or otherwise, directly or indirectly, hazardous to life, to health or to property by reason of toxicity, flammability, explosiveness or for other similar or different reasons, during use, handling, cleaning, reconditioning, disposal, or at any other time after the Article leaves the possession and control of the Seller. Buyer does hereby discharge Seller from any and all liability directly or indirectly resulting from the presence of the aforesaid chemicals or materials, including, but not limited to, any and all liability directly or indirectly resulting from the failure of Seller to give more specific warning with respect to individual Articles or from the inadequacy of any warning.

4. Conditions and Description of Articles:

(i) All Articles are purchased and sold subject to the terms and conditions set forth in this Agreement. Articles are purchased and sold "as is" and "with all faults." The description of individual Articles is based on the best information available to the responsible sales personnel of Seller. Seller, however, makes no warranty, express or implied as to the description of any of the Articles. "SELLER MAKES NO EXPRESS WARRANTY, EXCEPT THAT IT OWNS THE ARTICLES. NO WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, SHALL BE IMPLIED." Buyer assumes all risk and liability whatsoever resulting from the possession, use, or disposition of Articles.

(ii) BUYER ASSUMES THE ENTIRE RESPONSIBILITY AND LIABILITY FOR AND WILL PROTECT, INDEMNIFY AND HOLD HARMLESS SELLER, ITS AGENTS, SERVANTS AND EMPLOYEES FROM AND AGAINST ANY AND ALL LIABILITIES, DAMAGES, FINES, PENALTIES, LOSSES, EXPENSES, DEMANDS AND CLAIMS OF EVERY CHARACTER WHATSOEVER MADE AGAINST SELLER, ITS AGENTS, SERVANTS, AND EMPLOYEES BY BUYER, ANY AGENT, SERVANT OR EMPLOYEE OF BUYER, ANY SUBSEQUENT PURCHASERS, ANY AGENT, SERVANT OR EMPLOYEE OF ANY SUBSEQUENT PURCHASER, ANY LESSOR OR LESSEE, ANY AGENT, SERVANT OR EMPLOYEE OF ANY LESSOR OR LESSEE, OR ANY OTHER PERSON BECAUSE OF INJURY OR ILLNESS OR ALLEGED INJURY OR ILLNESS (INCLUDING DEATH) OR PROPERTY DAMAGE, ACTUAL OR ALLEGED, WHETHER CAUSED BY THE SOLE NEGLIGENCE OF SELLER, THE CONCURRENT NEGLIGENCE OF SELLER WITH BUYER, ANY AGENT, SERVANT OR EMPLOYEE OF BUYER, ANY SUBSEQUENT PURCHASERS, ANY AGENT, SERVANT OR EMPLOYEE OF ANY SUBSEQUENT PURCHASER, ANY LESSOR OR LESSEE, ANY AGENT, SERVANT OR EMPLOYEE OF ANY LESSOR OR LESSEE, OR ANY OTHER PERSON OR OTHERWISE, ARISING OUT OF, RESULTING FROM OR IN ANY WAY CONNECTED WITH THE OPERATION, MAINTENANCE, POSSESSION, USE, TRANSPORTATION OR DISPOSITION OF THE ARTICLES, INCLUDING BUT NOT LIMITED TO THAT CAUSED BY HAZARDOUS CHEMICALS OR OTHER HAZARDOUS MATERIAL ON OR IN THEM, OR OF THE POSSESSION, OPERATION, MAINTENANCE, TRANSPORTATION, USE OR DISPOSITION OF THE ARTICLES BY SUBSEQUENT PURCHASERS, LESSORS, OWNERS, LESSEES, OR ANY OTHER PERSON, INCLUDING THAT CAUSED BY HAZARDOUS CHEMICALS OR OTHER HAZARDOUS MATERIAL ON OR IN THE ARTICLES. BUYER AGREES TO DEFEND ANY SUIT, ACTION OR CAUSE OF ACTION BROUGHT AGAINST SELLER, ITS AGENTS, SERVANTS OR EMPLOYEES BASED ON ANY SUCH ALLEGED INJURY, ILLNESS OR DAMAGE AND TO PAY ALL DAMAGES, COSTS AND EXPENSES, INCLUDING LAWYER'S FEES IN CONNECTION THEREWITH OR RESULTING THEREFROM.

(iii) Buyer agrees to give warning of the possible hazard to any person or persons to whom Buyer resells or gives or delivers the Articles or whom Buyer can reasonably foresee may be exposed to their hazards; this Agreement in no way limits Buyer's agreement contained in (ii) of this subsection 4.

(iv) Buyer agrees to remove any and all trademarks, labels, distinctive markings and designs of Seller which may appear on the Articles or on the packaging material therefor at the time of delivery of same to the Buyer and to refrain from making any use of such trademarks, labels, distinctive markings and designs.

5. Reserved Right of Seller:

Seller reserves the right to reject any or all offers and, unless otherwise specified by Seller, to accept any one item or group of items in the Agreement, as may be in the best interest of Seller.

6. Title and Risk of Loss:

Title to and risk of loss of all Articles purchased by Buyer shall pass to Buyer upon Seller's delivery to carrier at shipping point. Until the purchase price and all other charges payable by Buyer are received in full, Seller will retain a security interest in the Articles under the Personal Property Security Act. If requested by Seller, Buyer promises to execute such documents as may be necessary or required for Seller to perfect and protect such security interests.

7. Failure to Perform:

In the event the Buyer fails to make payment as required in Paragraph 9, or if obligated to remove any Articles fails to do so within a 30 day period, Buyer agrees that Buyer shall: (1) lose all right, title and interest which he might otherwise have acquired in and to the Articles; and, (2) reimburse Seller for all costs, including lawyer's fees, arising out of Buyer's failure to perform.

8. Force Majeure:

Neither Seller nor Buyer shall be liable for its failure to perform hereunder due to any contingency beyond its reasonable control, including acts of God, fires, floods, wars, sabotage, accidents, labor disputes or shortages, governmental laws, ordinances, rules and regulations, whether valid or invalid (including, but not limited to, priorities, requisitions, allocations, and price adjustment restrictions), inability to obtain material, equipment or transportation, and any other similar or different contingency.

9. Payment:

Payment shall be made in full before shipment or pickup by Buyer for all Articles purchased by Buyer.

10. Taxes:

Buyer shall pay the amount of any tax or any charge now or hereafter imposed by law, upon, with respect to, or measured by the sale, shipment, or price of any Article sold hereunder.

11. Inspection, Advice, and Assistance:

Prior to submitting an offer, Buyer is invited, urged, and cautioned to inspect all Articles. Upon request, Seller will furnish to Buyer such advice and assistance as Seller deems necessary in reference to any Article; Buyer agrees, however, that all such assistance is rendered without compensation and the Seller assumes no obligation or liability for such advice or assistance given or results obtained. Articles will be available for inspection by appointment on regular workdays between 9:00 a.m. and 3:00 p.m.

12. Modification:

Buyer understands and agrees that (a) no modification or waiver of the Terms and Conditions hereof shall be effective unless made by an authorized representative of Seller in writing addressed to Buyer and specifically referring to this document; (b) no course of action on the part of Seller shall be deemed to modify these "Terms and Conditions"; and (c) Seller's acknowledgment or acceptance of anything in writing from Buyer which is in conflict with these "Terms and Conditions" and any subsequent delivery of Articles shall not constitute a modification or waiver of these "Terms and Conditions".

TERMS AND CONDITIONS (continued)

13. Non-Waiver:

Failure of Seller to exercise any right under this Agreement upon one occasion shall not waive the right to exercise the same on another occasion.

14. Compliance with Laws:

(a) All permits, licenses and governmental approvals of whatever nature relating to the purchase, possession, transportation, storage, processing, maintenance, handling, labeling, use and/or disposition of Articles after delivery to Buyer shall be obtained by Buyer, at its own expense, and Buyer hereby represents that it has obtained all such permits, licenses and governmental approvals and will furnish copies of same to Seller upon request.

(b) Buyer shall comply with all laws and ordinances and all governmental orders, rules and regulations relating in any way to its purchase, possession, transportation, storage, processing, maintenance, handling, labeling, use and/or disposition of Articles; to the labor, equipment, and facilities used in connection therewith; and to the protection of the public health, safety, or environment with respect to its transportation, handling, use or disposition of Articles. Buyer shall indemnify and hold harmless Seller against all fines, penalties, assessments, damages and other liability of whatever nature arising out of or resulting from Buyer's failure to comply with this Paragraph 14.

15. Asbestos Containing Material in Used Article:

Certain components of Articles sold by Seller to Buyer may contain asbestos material. Common examples are gaskets on used valves, vessels, heat exchangers, etc., any packing in valves, pumps, mechanical equipment, etc. Buyer hereby acknowledges that it is fully competent and has sufficient knowledge to safely handle asbestos containing Articles and agrees to assume all liabilities incurred in the use and disposal of Articles including any resulting from Buyer not following Federal and Provincial laws, rules, regulations, etc.

16. Miscellaneous:

The validity, interpretation and performance of this Agreement with respect to Articles delivered or to be delivered hereunder shall be governed by the law of the Province in which Seller executes this Agreement. This Agreement contains all of the representations and agreements of the parties hereto pertaining to the subject matter hereof, and there are no oral understandings, representations or warranties affecting it. This Agreement shall be binding upon and endure to the benefit of the respective successors and assigns of each of the parties hereto, but any assignment hereof by Buyer without the prior written consent of Seller shall be void. Neither course of performance nor course of dealing nor usage of trade shall be used to interpret, construe, qualify, explain or supplement any of the terms of this Agreement.