

AG ALCHEMY LLC TERMS OF SALE

1. **Applicability and Priority.** Along with the pricing terms contained on the front of the relevant invoice, the terms contained in the relevant bill of lading, if any, and any written terms agreed upon by the parties during the Buyer's credit application process, if any, these terms of sale (these "Terms") shall govern the purchase and sale of goods covered by your ("Buyer") order to Ag Alchemy LLC any affiliated entity, as the case may be ("Seller").

Unless expressly agreed in writing by Seller, any different, additional, or conflicting terms or conditions set forth on the Buyer's purchase order, or any other document issued by Buyer shall have no force or effect on the transaction between Buyer and Seller and are utilized solely for the Buyer's convenience and internal business records. The use of a purchase order number does not indicate any acceptance by Seller of the terms or conditions in the Buyer's purchase order form (which terms and conditions are specifically rejected) and is in no way indicative of the actual sales agreement made between Seller and Buyer. No waiver, alteration, or modification of these Terms shall be valid unless expressly agreed to in writing by Seller.

2. **Warranty.** The goods shall conform to the description contained on the front of the relevant purchasing document and are warranted to be fit for human consumption, when delivered. THIS WARRANTY IS THE EXCLUSIVE WARRANTY PROVIDED AND IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, CONDITION, OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

3. **Delivery.** Unless otherwise agreed in writing by Seller, the price quoted is for a single shipment, without storage F.O.B. Seller's plant ("Shipping Point"), and Buyer agrees: (a) to assume all risk of loss upon Seller's delivery of the goods to the carrier at the Shipping Point and Seller shall have no further responsibility for the goods, (b) to arrange and pay (or reimburse Seller if Seller makes such payment) for all loading, freight, shipping, transportation, insurance, forwarding and handling charges, taxes, fees, storage, duties, and all other charges, however designated, applicable to the goods after they are delivered by Seller at the Shipping Point (collectively, the "Shipping Costs"), (c) to assume all risk associated with the Shipping Costs, and (d) that Seller shall have no risk or responsibility with respect to the Shipping Costs, including that Seller shall not be required to pay any differences in Shipping Costs, including but not limited to bill-backs, credits, or deductions.

If Seller expressly agrees in writing to arrange for freight, then: (i) Buyer shall pay Seller for the freight charges invoiced by Seller in connection with transporting the goods, (ii) shipment terms shall be F.O.B. Destination, and title and risk of loss shall pass to Buyer upon delivery of the goods to the delivery destination identified in the purchase order or other ordering documents, (iii) freight charges will be based on rates effective on the shipment date based on the quantity of items shipped and whether the shipment constitutes a full load, and (iv) in the event that a charged rate differs from the quoted rate, due to a rate change, change in load size, or for any other reason, then Buyer must reimburse Seller for any additional charges.

4. **Payment.** Amounts not paid within the time required for payment on the front page of the relevant invoice shall bear interest at 12% per annum, if lawful, and otherwise at the highest rates permitted by law. Seller shall have the right to recover reasonable attorneys' fees and costs in any proceeding to enforce payment from Buyer. Buyer hereby grants Seller a security interest in these goods as security for any indebtedness or obligations owed by Buyer to Seller.

5. **No Waiver.** No waiver of any right or remedy set forth in these Terms shall be deemed the waiver of any other right or remedy available under these Terms or under applicable law. No waiver of any right or remedy with respect to one or more sales shall affect a party's right to enforce that or any other right or remedy with respect to any other sale.

6. **Proprietary Rights.** Buyer shall not use or disclose any of Seller's trade secrets or confidential information, whether or not designated as such, except to the extent required in connection with the use or resale of the goods or services covered by these Terms.

7. **Limitation of Liability.** Seller's sole and exclusive liability, and Buyer's sole and exclusive remedy against Seller, for any and all breaches of these Terms shall be limited, at Seller's option, to either: (1) replacement of the goods; or (2) refunding of the purchase price paid by Buyer. In no event shall Seller be liable for any indirect, special, punitive, incidental, or consequential damages based upon breach of warranty, breach of contract, negligence, strict liability, fraud, or any other legal theory, even if Seller has been advised of the possibility of such damages. Excluded damages include, but are not limited to, loss of profits, loss of savings or revenue, cost of any substitute goods, downtime, the claim of third parties including end-customers (whether through claim of contribution, indemnification or otherwise), and damages or injury to property, even if Seller shall have been advised of the possibility of such potential loss or damage.

NOTWITHSTANDING ANYTHING SET FORTH IN THIS AGREEMENT TO THE CONTRARY, SELLER'S CUMULATIVE LIABILITY TO BUYER OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM ANY CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE AGGREGATE AMOUNT PAID BY BUYER TO SELLER FOR PRODUCT DURING THE PREVIOUS THREE (3) MONTHS. BUYER EXPRESSLY ACKNOWLEDGES THAT SELLER HAS SET ITS WARRANTIES, PRICES, AND OTHER CHARGES IN RELIANCE ON THE FOREGOING LIMITATION OF LIABILITY, WHICH FORMS AN ESSENTIAL BASIS FOR THE BARGAIN BETWEEN THE PARTIES. SELLER SHALL ONLY BE LIABLE FOR DAMAGES UNDER THIS AGREEMENT THAT ARE A DIRECT AND PROXIMATE RESULT OF SELLER'S ACTIONS, AND THEN ONLY IN PROPORTION TO THE SHARE OF THE SELLER'S NEGLIGENCE OR WRONGFUL CONDUCT AS MAY BE FOUND TO BE A PROXIMATE CAUSE OF SUCH DAMAGES. SELLER SHALL NOT BE LIABLE FOR ANY AWARD OF PUNITIVE OR EXEMPLARY DAMAGES, OR ANY ASSESSMENT OF ATTORNEY FEES OR COURT COSTS.

8. **Cancellation by Buyer.** Buyer may cancel an accepted purchase order only upon written notice to Seller and payment of reasonable cancellation charges including (a) the price for goods and services completed prior to Seller's receipt of such notice, (b) all costs previously incurred in connection with uncompleted goods and services together with reasonable profit thereon; and (c) the expenses incurred by Seller by reason of such cancellation.

9. **Cancellation by Seller.** Seller may cancel an accepted purchase order, for convenience, upon providing at least 48 hours prior written notice to Buyer.

10. **Force Majeure.** Seller shall not be liable for any delivery or other failure of performance due to causes beyond its reasonable control including, without limitation, acts of God, acts of Buyer, acts of military or civil authorities, fire or casualty, strikes, lockouts, weather, epidemic, war, riot, delays in transportation or car shortages, or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Seller's usual and regular sources at usual and regular prices. In any such event, Seller may, with notice to Buyer, at any time and from time to time without further liability to Buyer, (a) postpone its performance under the contract, (b) make partial performance or cancel any part of the contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation of any part of a contract shall not affect Seller's right to payment for any other part thereof.

11. **Arbitration.** Subject to the limitations of liability and damages contained within this Agreement, any disputes between the Parties will be resolved by binding arbitration as follows: The parties shall agree on a mediator who will serve as the arbitrator. The Parties shall jointly agree on a mediator listed on the Approved Federal Mediators list maintained by the United States District Court for the District of Nebraska. The chosen arbitrator shall receive materials and arguments submitted by both Parties in a proceeding, conducted in Omaha, Nebraska, that shall be completed in one day. Any decision rendered by the arbitrator shall be binding on all Parties pursuant to the Federal Arbitration Act.

If the Parties cannot mutually agree on an arbitrator, then either party may file a lawsuit in the United States District Court for the District of Nebraska for the sole purpose of selecting an arbitrator and enforcing the ensuing arbitration decision. Each side will submit to the assigned judge the names of two mediators listed on the court's Approved Federal Mediators list. The assigned judge shall select the arbitrator and shall stay the case pending the arbitrator's decision on the Parties' dispute. The arbitrator's decision shall be entered as a final order entitled to the full faith and credit of the United States District Court for the District of Nebraska.

A Party must commence arbitration within twelve (12) months of the occurrence of the controversy, claim, or dispute.

12. **Governing Law; Venue.** These Terms shall be governed by, and construed in accordance with, the laws of the State of Nebraska. Any action upon these Terms shall be brought exclusively in the courts of Douglas County, Nebraska.

13. **Overages; Shortages; Damages.** In order to provide the best possible service to our customers, we need your cooperation. It is imperative that all information on shipping documents (bills of lading, manifests, etc.) be complete and accurate for every shipment to every customer. All overages, shortages, or damages for any shipment must be reported to Ag Alchemy. You will be provided with a claim number as proof of your call. If you should get voicemail, please leave the following information: (a) Your name; (b) carrier name; (c) customer name; (d) number of items over, short, and/or damaged; (e) product description for items over, short, and/or damaged; (f) Order number; and (g) phone number where you can be reached to provide you a claim number. If you do not receive a return call within 24 hours of your message, please call back to get your claim number.

IF A CUSTOMER DEDUCTS FROM THEIR INVOICE FOR SHORT OR DAMAGED PRODUCT AND YOU DO NOT HAVE A CLAIM NUMBER TO VERIFY THAT YOU HAVE CALLED, YOU WILL BE CHARGED FOR THE PRODUCT.