

WINFIELD UNITED CROP NUTRIENTS STANDARD TERMS AND CONDITIONS

Effective Date: June 1, 2019

- 1. Acceptance.** These Crop Nutrients Standard Terms and Conditions (“General Conditions”), together with the terms and conditions set forth in the transaction document to which they are attached or incorporated by reference (“Specific Terms”), shall constitute the contract (“Agreement”) between Seller and Buyer. If Buyer has made an offer to Seller, Seller’s acceptance of Buyer’s offer is expressly made conditional upon Buyer’s assent to this Agreement. If Buyer has not made an offer to Seller, Seller objects to any additional or different terms set forth in any acceptance by Buyer.
- 2. Definitions and Interpretation.** Unless otherwise defined in the Specific Terms or the context indicates otherwise, capitalized terms used in these General Conditions shall have the meanings set forth in the Specific Terms. In this Agreement: (a) words indicating one gender include all genders; (b) words indicating the singular also include the plural and *vice versa*; (c) reference to any statutory provision shall include such provision as modified, re-enacted or consolidated from time to time; (d) provisions including the word agree, agreed or agreement require the agreement to be recorded in writing; (e) references to including, included or include will be read as if followed by the words without limitation; (f) references to days are to calendar days and references to a month mean a calendar month beginning on the first day of the month and ending at 00:00 hours on the first day of the next month; and (g) reference to a person includes any individual, company, corporation, firm, partnership, joint venture, association (whether a body corporate or an unincorporated association of persons) or any government institution, department or establishment and a person shall be construed as including a reference to its successors, permitted assigns and permitted transferees in accordance with their respective interests.
- 3. Purchase and Sale.** Buyer agrees to purchase and take delivery from Seller at the Delivery Point, and Seller agrees to sell to Buyer, the Quantity of Product on the terms and conditions set forth in this Agreement.
- 4. Payment.** Seller shall, from time to time, deliver to Buyer invoices for amounts payable under this Agreement. Subject to the Payment Conditions set forth in the Specific Terms, Buyer agrees to pay Seller each amount on such invoice on or before its respective due date identified therein. Unless otherwise specified, all payments shall be made in U.S. Dollars. For Product sold via barge Delivery Method, Buyer agrees to pay the purchase price upon receipt from Seller of hard copies of the original commercial invoice, the independent origin or shore tank survey and the certificate of origin. Buyer shall pay a finance charge on all past due amounts at the lesser of 18% per annum or the maximum amount permitted by law. A payment is considered past due if it is received by Seller after the date on which it is due in accordance with the foregoing. Buyer shall be charged a fee for any check or other form of payment returned due to insufficient funds. Payments received from Buyer may be applied in such manner and order as Seller, in its sole discretion, determines. Seller may, in its sole discretion, extend a line of credit to Buyer, which may be withdrawn or modified at any time. Disputes concerning an invoice must be submitted to and received by Seller in writing within seven days of receipt of the applicable invoice. Buyer may not: (a) set off against any invoice amounts owed to Seller; or (b) postpone its payment obligations to Seller on the grounds that Buyer has any counterclaims against Seller.
- 5. Impairment.** Buyer agrees to provide such financial statements or other information as may be reasonably requested by Seller from time to time to review Buyer’s creditworthiness or ability to perform its obligations under this Agreement. If Buyer’s payments under this Agreement or any other agreement with Seller are in arrears, or Seller determines, in its reasonable judgment, that Buyer’s creditworthiness or ability to fully perform its obligations under this Agreement are impaired or unsatisfactory, then Seller may suspend performance of its obligations under this Agreement until such time as Buyer makes full advance payment of the purchase price for the Product or provides security satisfactory to Seller. If such advance payment or security is not delivered by Buyer to Seller within three days after a demand therefor, Seller may, at its option, declare Buyer to be in Default.
- 6. Term.** This Agreement is effective commencing on the Effective Date and, unless earlier cancelled or terminated pursuant to the terms of this Agreement, shall continue until both final delivery to Buyer of the Quantity of Product at the Delivery Point and final payment to Seller of all amounts under this Agreement have occurred.
- 7. Default.** The occurrence of any of the following shall constitute a “Default” under this Agreement: (a) Buyer’s failure to perform any obligation when required under this Agreement (including payment of an amount when due); (b) Buyer’s failure to take delivery of the entire Quantity of Product on or before the last day of the Shipment Period specified in the Specific Terms (the “Final Shipment Date”); (c) Buyer’s default under any other agreement with Seller; or (d) Buyer becoming insolvent, filing for bankruptcy or having a petition for bankruptcy filed against it. Upon a Default, Seller may, at its option and without prejudice to Seller’s rights under Section 8, exercise any one or more of the following remedies: (a) terminate this Agreement, and recover from Buyer all damages and other amounts (including storage charges) available under this Agreement and applicable law; (b) offset amounts owed to Buyer under this Agreement or any other agreement between the parties against Buyer’s obligations to Seller under this Agreement or any such other agreement; (c) recover from Buyer all costs incurred to enforce this Agreement, including collection fees, attorney fees, expert witness fees, costs and disbursements; and (d) pursue such other rights and remedies available under this Agreement, at law or in equity. Without limiting the foregoing, upon a Default, Seller may demand re-delivery, return and take repossession of any delivered Product for which full payment has not been received by Seller, for which purpose Buyer hereby grants an irrevocable right and license to Seller to enter upon all or any of the premises where the applicable Product is or may be located, and all costs relating to the recovery of such Product shall be for the account of Buyer.
- 8. Damages for Failure to Take.** Buyer and Seller agree that if Buyer refuses delivery or rejects Product in any manner other than (a) by mutual agreement of the parties or (b) as a result of a material failure of Product to comply with Specifications, Buyer shall, without prejudice to Seller’s rights under Section 7, be liable to reimburse Seller, on a full indemnity basis, for all losses, damages, costs and expenses suffered or incurred by Seller that arise, directly or indirectly, from the applicable refusal or rejection. For the purposes of this Section 8, damages suffered by Seller include third party damages (including liquidated damages) for which Seller may be liable under any contract or agreement with one or more third parties that result, directly or indirectly, from Buyer’s purported refusal or rejection of Product in breach of this Agreement.

9. Overage/Underage: Seller and Buyer recognize that loading capabilities for certain transportation methods vary and limit the ability to load exact quantities of Product. If Buyer receives an amount of Product in excess of the Quantity specified in the Specific Terms due to the inability to load exact quantities, Seller reserves the right to charge Buyer, and Buyer agrees to pay, for each ton of such overage the greater of: (a) the prevailing per ton market price at the time of shipment; or (b) the per ton price under this Agreement. If Buyer receives an amount of Product less than the Quantity identified on the Specific Terms due to the inability to load exact quantities but within the acceptable minimum outlined in the table set forth, Seller may, at Seller's option, require pickup or delivery of such undelivered amount or refund to Buyer the portion of the purchase price applicable to such undelivered amount. Unless otherwise specified in the Specific Terms, Product weight is determined at the Origin by the customary method at such location.

Product Type	Delivery Method	Maximum Below Contracted Quantity
Dry & Liquid	Truck	10 tons
	Rail	50 tons
	Barge	15%

10. Origin, Source, Contract Type, Delivery Method, Delivery Point and Buyer Costs.

10.1 The Specific Terms specify the Origin, Source, Contract Type and Delivery Method for this Agreement. The terms in the table set forth below shall apply to the extent that they are specified to apply in the Specific Terms; *provided, however*, that if the Specific Terms do not specify the Origin, Source, Contract Type or Delivery Method, then: (a) the Origin shall be deemed to be open origin; (b) the Source shall be deemed to be open source; (c) the Contract Type shall be deemed to be FOB; and (d) Buyer shall provide for transportation of the Product from the Source at Buyer's expense.

Category	Term	Applicable Contract Term
Origin	Open origin	Seller shall be entitled to deliver Product from an origin determined by Seller at its sole discretion.
	Specified	Seller shall deliver Product from the origin specified in the Specific Terms.
Source	Open source	Seller shall be entitled to deliver Product from a source determined by Seller at its sole discretion.
	Specified	Seller shall deliver Product from the source specified in the Specific Terms.
Contract Type	FOB	FOB means that the Price is for Product loaded on transport Delivery Method at the Source. The price is exclusive of freight to the Destination and Buyer is responsible for the freight cost to the Destination.
	Delivered Destination	Delivered means that the Price is inclusive of freight to the Destination and Buyer has no further responsibility for freight cost to the Destination. If the Specific Terms identify freight as Delivered, the Price shall include one delivery to the Delivery Point and, therefore, is subject to additional charges if the original Delivery Point is changed or more deliveries are added. Any additional costs resulting from diversion, dead freight, in-transit delays, demurrage, fleeting or other cost will be the responsibility of Buyer.

10.2 Unless the Specific Terms identify the freight as Delivered: (a) Buyer shall be required to pay any fuel surcharge increase and any other additional amounts charged by the delivering carrier; and (b) Buyer shall be responsible for all diversion, dead freight, in-transit delays, demurrage, fleeting and other related costs. Without limiting the foregoing, if Seller has arranged for rail transportation of the Product by unit train (65 cars or larger) or by private railcars owned or leased by Seller, Buyer shall not detain any such railcars for more than five days following the shipments constructive or actual placement at the Delivery Point. Buyer shall pay Seller the rate charged by the applicable rail carrier or the railcar lease if Buyer detains longer than such five-day period. Without limiting the foregoing, if barge transportation has been arranged for dry Product, Buyer shall be allowed three days to unload the barge once the barge has reached the Destination. Buyer shall pay Seller an amount equal to the amount charged by the product supplier if Buyer detains the barge longer than such three-day period. Buyer must release barges by contacting Seller at dlwucnbargeraillogistics@landolakes.com. Barges not released in such manner shall continue on demurrage until properly released. Without limiting the foregoing, if barge transportation has been arranged for liquid Product, such barge shall be given priority upon arrival at the Destination and Buyer shall be allowed time equal to the terms by the product supplier to unload the barge once the barge has reached the Destination. Buyer shall pay Seller an amount equal to the amount charged by the product supplier if Buyer detains the barge longer than three hours.

10.3 For dry Product barges: (a) any barge switch charges shall be for Buyer's sole account; (b) any fleeting charges that arise from using fleets not operated by the carrier shall be for Buyer's sole account; (c) any charges that arise from Buyer specifying a fleet shall be for Buyer's sole account; (d) any storage, charges, navigational surcharges and other costs and expenses that arise from Product not reaching its Destination due to river or navigational conditions shall be for Buyer's sole account; (e) any reconsignment of Product shall be for Buyer's sole account; and (f) any cover reset charges shall be for Buyer's sole account, and Buyer shall notify Seller immediately of any difficulties handling covers.

10.4 Title and risk of loss for Product shall pass from Seller to Buyer at the delivery point specified in the table below (“*Delivery Point*”); *provided, however*, that if the Specific Terms do not specify the Contract Type or Delivery Method, then the Delivery Point shall be deemed to be the place at which the Product progressively passes to the transport method used for transporting Product at the Source.

Contract Type	Delivery Method	Delivery Point
FOB	Truck	Title to and risk of loss of Product shall pass to Buyer as such Product progressively passes to the truck at the Source.
	Rail	Title to and risk of loss of Product shall pass to Buyer as such Product progressively passes to the rail car at the Source.
	Barge	Title to Product shall pass to Buyer upon full payment to Seller; risk of loss of Product shall pass to Buyer as such Product progressively passes onto the barge at the Source.
Delivered Destination	Truck	Title to and risk of loss of Product shall pass to Buyer as such Product progressively passes to the truck at the Source.
	Rail	Title to and risk of loss of Product shall pass to Buyer and delivery shall occur upon constructive placement of the applicable rail car at the Destination.
	Barge	Title to Product shall pass to Buyer upon full payment to Seller; risk of loss of Product shall pass to Buyer and delivery shall occur upon arrival of the applicable barge at the shipping dock at the Destination.

11. Shipment Period; Removal and Delivery of Product.

11.1 The Shipment Period is the period of time identified in the Specific Terms during which the Product must be shipped. Buyer agrees to arrange for the removal from, or acceptance at (as applicable), the Delivery Point the entire Quantity of the Product on or before the Final Shipment Date.

11.2 Delivery times and dates set forth in this Agreement are estimates; time is not of the essence unless explicitly agreed otherwise in this Agreement. Seller may deliver the Product in separate batches and invoice them separately.

11.3 **SELLER SHALL NOT BE LIABLE OR RESPONSIBLE FOR LOSS OF USE, LOSS OF CUSTOMERS, LOST PROFITS, INTERRUPTION OF BUSINESS, COVER OR FOR ANY OTHER SPECIAL, INCIDENTAL OR DIRECT OR INDIRECT CONSEQUENTIAL DAMAGES RESULTING FROM DELAY IN SHIPMENT OR DELIVERY, AND SELLER EXPRESSLY DISCLAIMS RESPONSIBILITY THEREFOR.** Any late delivery of Product shall not relieve Buyer from its obligation to take receipt of Product. If the quantity of Product delivered varies from the Specific Terms, Buyer may not refuse Product.

12. Storage. For FOB Contract Types, Seller may assess storage charges, in the amounts identified on the Specific Terms, for each month that Product remains not removed by Buyer after the Final Shipment Date due (directly or indirectly) to any Buyer act or omission. Storage charges may be assessed on the quantity remaining as of the first day after the original contract window and reassessed each month thereafter. For forward contracted barge sales of dry Product, if Buyer does not indicate a Destination to Buyer at the time the barge is loaded with Product or at the time of order for floating barges, Seller will assess Gulf storage charges for such barge. Such barge will not come off Gulf storage charges until the first 7.00 a.m. time following the occurrence of both Buyer indicating a Destination to Seller and Seller accepting Gulf release. If Buyer consigns a barge to an immediate storage location (e.g. Cairo, Illinois or St. Louis, Missouri), Seller will assess Gulf storage charges for such barge until such barge is picked up by a tow and the barge will resume Gulf storage charges once it reaches the intermediate storage location. Gulf storage charges will terminate when such barge is picked up by a tow to resume transit. **UNLESS OTHERWISE AGREED TO IN WRITING BY SELLER, STORAGE OF PRODUCT IS: (A) AT SELLER’S SOLE OPTION AND DISCRETION; (B) MAY BE TERMINATED AT ANY TIME; AND (C) IS IN ADDITION TO (AND SHALL NOT ACT AS A WAIVER OF) SELLER’S RIGHTS AND REMEDIES AS A RESULT OF BUYER’S FAILURE TO TIMELY REMOVE OR ACCEPT DELIVERY OF PRODUCT.**

13. Limited Warranty. Seller warrants that at the time the risk of loss of Product passes to Buyer in accordance with Section 10.4, the Product shall: (a) be free and clear of all liens and encumbrances; and (b) meet the specifications expressly set forth in this Agreement (“*Specifications*”). OTHER THAN AS SET FORTH IN THE PRECEDING SENTENCE, SELLER MAKES NO WARRANTIES, GUARANTEES OR REPRESENTATIONS REGARDING THE PRODUCT, AND SELLER EXPLICITLY DISCLAIMS ALL WARRANTIES, GUARANTEES OR REPRESENTATIONS OF ANY KIND TO BUYER, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, WITH REGARD TO THE PRODUCT, INCLUDING ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE, ELIGIBILITY OF THE PRODUCT FOR ANY PARTICULAR TRADE USAGE AND INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES. BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY BUYER’S USE OR RESELL OF THE PRODUCT AND ALL SUBSEQUENT USES AND RESELLS OF THE PRODUCT.

14. Limitation of Liability.

14.1 THE SOLE AND EXCLUSIVE LIABILITY OF SELLER AND THE SOLE AND EXCLUSIVE REMEDY OF BUYER

FOR BREACH OF CONTRACT, BREACH OF WARRANTY, BREACH OF GUARANTEE, BREACH OF REPRESENTATION, STRICT LIABILITY, PRODUCT LIABILITY, NEGLIGENCE OR OTHER CAUSE OR THEORY IS LIMITED EXCLUSIVELY TO REPLACEMENT OF DEFECTIVE PRODUCT OR, AT THE OPTION OF SELLER, REFUND OF THE PURCHASE PRICE UPON TIMELY RECEIPT OF NOTICE. UNDER NO CIRCUMSTANCES WILL SELLER BE RESPONSIBLE FOR LOSS OF USE, LOSS OF CUSTOMERS, LOST PROFITS, INTERRUPTION OF BUSINESS, COVER OR FOR ANY OTHER SPECIAL, INCIDENTAL, CONTINGENT OR DIRECT OR INDIRECT CONSEQUENTIAL DAMAGES REGARDLESS OF CAUSE. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY TO BUYER ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE PURCHASE PRICE OF THE PRODUCT. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ANY CLAIM BY BUYER UNDER THIS AGREEMENT, WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OF ANY GUARANTEE, FOR BREACH OF ANY REPRESENTATION, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT OR ANY OTHER WRITING, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY OR OTHERWISE.

14.2 Without prejudice to Section 15 of these General Conditions, no claim or action shall be made or brought by Buyer against Seller unless: Buyer first provides written notice to Seller of any claim alleged to exist against Seller within 14 days after the event complained of first became knowable or known to Buyer; and (b) an action in this regard is actually commenced by Buyer within 12 months after the date of such notice.

15. Inspection and Claim Period.

15.1 To limit any damage, Buyer shall promptly inspect the Product to confirm that the Product delivered meets the Specifications before: (a) using, unloading, processing, transporting, storing, damaging, selling or modifying the Product; or (b) otherwise changing the Product from its original condition, organization, grouping or location (either of (a) or (b) being "Use"). Use of the Product, with or without prior inspection, shall constitute absolute and unconditional acceptance of the Product by Buyer and an absolute and unconditional waiver of all claims in respect of the Product.

15.2 Complaints about any defect, default or shortcoming of the Product or of any barge equipment failure (each, a "Defect") shall be made as follows: Defects that could be discovered by reasonable inspection at the time the risk of loss of Product passes to Buyer in accordance with Section 10.4 shall be made in writing and received by Seller within 24 hrs. of such time. Complaints about any other Defects shall be made in writing and received by Seller within 24 hours of the earlier of: (a) the date on which the Defect was discovered; and (b) the date on which the Defect could have reasonably been discovered, but in no case more than 2 days after the time the risk of loss of Product passes to Buyer in accordance with Section 10.4 Buyer's failure to give Seller written notice of a Defect within the applicable claim period shall constitute absolute and unconditional acceptance of the Product by Buyer and an absolute and unconditional waiver of all claims in respect of the Product and any alleged Defect.

15.3 If, on inspection of the Product, Buyer finds a deviation from the Specifications that substantially impairs the value and makes the Product non-conforming, Buyer shall so notify Seller within 24 hours in writing, describing the alleged non-conformity, stating the analysis findings and retaining the sample or samples used in the analysis. Buyer shall also take one additional sample and make it available to Seller. Seller may, at Seller's option, arrange for an independent third party to analyze the sample. The costs of taking the samples and performing the analysis shall be payable by Seller if the applicable Product proves to be non-conforming. Otherwise, the costs of taking the samples and performing the analysis shall be payable by Buyer.

15.4 Whether the Product delivered conforms to the Specifications shall be determined based on an analysis performed in accordance with the methods of analysis prescribed by contract or by prevailing industrial and scientific standards for the Product. Defects in a discrete, divisible part of the Product do not entitle Buyer to reject the entire delivery of the Product. Complaints, if any, do not affect Buyer's obligation to pay for Product pursuant to this Agreement, except to excuse payment for Product rejected by Buyer before Use of the Product. Upon receipt of notice of a Defect, Seller may, at its sole option, suspend further deliveries until the cause of the Defect has been established and corrected or the Defect has been cured.

16. Barge Cleaning. Seller will not accept barges for dry Product that have residual material on a walkway or cover that could contaminate surrounding water. Seller will, or will cause the barge line to, inspect all barges prior to acceptance and will, or will cause the barge line to, document the condition of the barge. Any barge that loads or unloads at a Seller facility that has residual material on a walkway or cover will be detained until such residual material is removed. Any cleaning charges (including switching charges) that exceed \$500 shall be for Buyer's sole account.

17. Buyer's Representation. Buyer represents that it is familiar with and knowledgeable about the allowable use for the Product and that all Product purchased under this Agreement shall be Used in a manner consistent with the Product's intended uses and all applicable laws, regulations, standards, orders, rules and recommendations made by any governmental authority.

18. Indemnity. Buyer shall indemnify, hold harmless and defend Seller and its officers, directors, employees, agents, affiliates, successors and permitted assigns (collectively, "Indemnified Party") against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs or expenses of whatever kind, including attorney fees and expert witness fees, that are incurred by Indemnified Party arising out of any claim alleging or related to: (a) breach or non-fulfillment of any representation, warranty, covenant or agreement under this Agreement by Buyer, which shall include Buyer's refusal to take Product or the rejection of Product in breach of Section 8; (b) any negligent or more culpable act or omission of Buyer (including any reckless or willful misconduct); (c) any bodily injury, death of any person or damage to real or tangible personal property caused by the negligent or more culpable acts or omissions of Buyer (including any reckless or willful misconduct); (d) any failure by Buyer or Buyer's agent to comply with any applicable law, regulation, standard, order, rule or recommendation made by any governmental authority; (e) Buyer's possession, Use or resale of Product; or (f) Buyer's use or misuse of any rail cars, motor vehicles or inland or ocean water craft.

19. Force Majeure. Seller shall not be responsible or liable for any delay or failure to deliver any or all of the Product if occasioned by: act of God; fire; flood; embargo; act of war; terrorism; earthquakes; epidemics; explosion; accident; riots; sabotage; breakdown of machinery or equipment;

emergency repairs or maintenance; delay or failure of supplier; shortage of or inability to obtain fuel, power, raw materials, equipment, transportation or the Product itself (without litigation and at usual prices or from usual sources); disruption or lack of public amenities; late delivery of or defects in goods or services delivered by Seller's suppliers or subcontractors; good faith compliance with any law, regulation, standard, order, rule or recommendation made by any governmental authority; strike or labor controversy (Seller shall not be required to settle any labor matter against its own best judgment); any cause or circumstance beyond Seller's reasonable control; or any other cause or circumstance, whether similar or dissimilar to the foregoing, which makes impracticable the production, transportation or delivery of the Product or any material used in or in connection with such production, transportation or delivery (each, a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, Seller may, at its option, reduce the Quantity of Product deliverable under this Agreement and allocate Seller's supplies of such Product among Seller's customers in a manner that Seller, in its sole discretion, deems reasonable. In no event shall Seller be obligated to purchase Product or deliver from any plant or facility (other than a Source specified in the Specific Terms (subject to the terms of this Agreement) to replace quantities of Product not delivered due to a Force Majeure Event. If a Force Majeure Event causes shipment delay, Seller's obligation to deliver shall be postponed for a period equal to the loss of time caused by the Force Majeure Event. If a Force Majeure Event continues or is expected to continue for more than two months beyond the Final Shipment Date, Seller may cancel the relevant part of the Agreement without incurring any liability to Buyer.

20. Information, Confidentiality and Intellectual Property.

20.1 Buyer acknowledges that data and other information contained in Seller's catalogues, specification sheets and other descriptive publications distributed or published by Seller in print or electronically, and any statement, recommendation, advice, sample or other information provided by Seller regarding any specification, product or use of product is, in each case, subject to variation with or without prior notice to any person, **AND ANY SUCH DATA, INFORMATION, STATEMENT, RECOMMENDATION, ADVICE OR SAMPLE SHALL NOT FORM THE BASIS OF, OR SERVE AS A WARRANTY BY SELLER, WHETHER EXPRESS OR IMPLIED.**

20.2 Buyer agrees to keep confidential the terms and conditions of this Agreement and all other proprietary information disclosed by or on behalf of Seller or otherwise learned or obtained by Buyer in connection with this Agreement or the performance of this Agreement, including Seller's prices, costs, discounts, inventions, planned and existing products, customers and distributors as well as information regarding Seller's business and finances. Buyer agrees that it will not disclose any such confidential information to others and will advise its employees, officers, directors, consultants and legal and tax advisors of such confidential information and take all other steps necessary to protect Seller's confidential information.

20.3 The sale or delivery of Product under this Agreement shall not, by implication or otherwise, convey any license to Buyer under any intellectual property right relating to the composition and/or Use of Product, and Buyer expressly assumes all risks of any intellectual property infringement by reason of its purchase, importation and/or Use of Product.

21. Limits of this Agreement. Unless expressly otherwise provided in this Agreement, this Agreement does not establish or guarantee shipping, handling or price variables for distribution or servicing, including taxes, freight, application fees, surcharges or extra handling fees.

22. Entire Agreement. This Agreement constitutes the sole and entire agreement of Seller and Buyer with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations and warranties, both written and oral, with respect to the subject matter. In the event of any inconsistency between the General Conditions and the Specific Terms, the Specific Terms shall control. **BUYER HAS NOT RELIED ON ANY STATEMENT, REPRESENTATION, WARRANTY OR AGREEMENT OF SELLER OR OF ANY OTHER PERSON ON SELLER'S BEHALF, INCLUDING ANY REPRESENTATIONS, WARRANTIES OR AGREEMENTS ARISING FROM STATUTE OR OTHERWISE IN LAW, EXCEPT FOR THE REPRESENTATIONS, WARRANTIES OR AGREEMENTS EXPRESSLY CONTAINED IN THIS AGREEMENT.**

23. Cumulative Remedies. All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the parties or otherwise.

24. Assignment. Buyer may not assign or subcontract its rights or obligations under this Agreement without prior written consent from Seller's authorized representative. This Agreement shall be binding on the heirs, administrators and executors of Seller and Buyer.

25. Amendments. Seller reserves the right to modify or amend the General Conditions at any time without consent by Buyer. After their effective date, the General Conditions, as modified or amended, will govern all transactions between Seller and Buyer and will be made available to Buyer on the following website: <http://www.unitedsuppliers.com/portals/0/docs/CN/TermsandConditions.pdf>

26. Survival. All obligations, promises and agreements of Seller or Buyer that expressly, or by their nature, survive the expiration, termination or cancellation of this Agreement, including Buyer's indemnification obligations under Section 18, shall continue in full force and effect subsequent to, and notwithstanding, the expiration, termination or cancellation of this Agreement until such obligation, promise or agreements is satisfied or by its nature expires.

27. Taxes. Buyer shall be responsible for all taxes, duties and fees with respect to the transactions contemplated under this Agreement, except for income taxes payable by Seller.

28. Severability. If any term or provision of this Agreement is found to be invalid, illegal or unenforceable under the laws applicable to this Agreement, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement, and the parties shall use their best efforts to replace each affected provision by a valid provision reflecting as close as possible the original intent of the parties.

29. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with laws of the State of Minnesota without

giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Minnesota. Any legal suit, action or proceeding arising out of or related to this Agreement or the matters contemplated under this Agreement shall be instituted exclusively in the federal courts of the United States or the courts of the State of Minnesota in each case located in the city of St. Paul and County of Ramsey, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding and waives any objection based on improper venue or *forum non conveniens*. Service of process, summons, notice or other document by mail to such party's address shall be effective service of process for any suit, action or other proceeding brought in any such court.

30. Waiver. Seller's failure or delay in exercising any right or remedy with respect to this Agreement will not operate as a waiver of that right or remedy. Any waiver of a right or remedy must be in writing and signed by Seller's authorized representative.

31. Notice. Notice under this Agreement may be given by any party to the other at the address set forth on the Specific Terms and shall be effective: (a) three days after deposit in U.S. mail; (b) one day after delivery to a nationally recognized overnight courier; or (c) immediately upon e-mail or facsimile, after verbal confirmation of receipt. Buyer also agrees that notice from Seller shall be deemed received upon posting of such notice on Seller's electronic invoicing system or any other electronic source offered by Seller and subscribed to by Buyer.

32. WARNING. Buyer acknowledges receipt of Seller's Material Safety Data Sheet ("*MSDS*") and acknowledges that it is familiar with the hazards and risks in storing, handling, transporting and using the Product. Buyer is advised to consult with its state and federal agencies or other experts, as applicable, concerning proper procedures for handling, storing, transporting and using the Product. Buyer agrees to comply with all such procedures and all applicable federal, state and local laws governing the handling and Use of the Product. Buyer agrees that it shall advise its employees, contractors and customers of the *MSDS* and of the risks associated with, and proper precautionary procedures for, the storage, handling, transport and use of the Products. Anhydrous ammonia shall only be placed in approved containers and should only be handled, stored, transported and used with equipment that is properly engineered, constructed and maintained in accordance with all laws. Pressure vessels, piping and appurtenances should be regularly inspected and tested by Buyer to reveal any deterioration or defects that may impair the integrity of the equipment. The information contained in this Section 32 is intended to supplement the *MSDS*.