

Terms and Conditions

1. **Additional Terms:** No term or condition of this Contract may be altered or superseded without written notification from both parties. Seller hereby objects to the inclusion of any terms that are different from or in addition to the terms of this Contract.
2. **Cancellation:** This Contract is non-cancellable without approval from both parties. Product rollover may be requested by Buyer, but approval is at Seller's standard rates.
3. **Fixed Quantity:** This Contract confirms a fixed quantity amount. Any product ordered in excess of the fixed quantity will be priced at Seller's market price at the time of delivery.
4. **Taxes:** All taxes, fees, or other charges of every nature, now or hereafter imposed by federal, state, or local government upon the Product sold hereunder or upon the shipment, storage, sale, use or inspection therefore shall be borne by Purchaser, it being understood that the sales price is exclusive of all said taxes, fees and charges. Purchaser shall furnish Seller with satisfactory exemption certificates where any exemption from taxes is claimed.
5. **Refusal of Delivery:** Buyer shall take delivery of the Product during the Shipment Window in accordance with Seller's delivery schedule. If Buyer has not taken delivery of all Product prior to expiration of the Shipment Window in accordance with Seller's delivery schedule, Seller shall have the right to, at its sole option and in addition to any other rights available to Seller: (i) extend the term of this Sales Confirmation for one or more additional periods, in which case Seller may elect to assess a monthly storage charge up to \$20.00 per ton multiplied by the quantity of Product not delivered as of the first day of each calendar month after the Shipment Window, until all the Product has been delivered or the Sales Confirmation is terminated; or (ii) terminate this Sales Confirmation at the end of the term, as may be extended by Seller pursuant to (i) above, and refund to Buyer the amount of any unapplied prepayment (excluding any storage or delivery charges) for the quantity of Product not so delivered or taken during the Shipment Window. Buyer acknowledges that the delivery schedule for any Product delivered after expiration of the Shipment Window shall be at Seller's sole discretion and may be impacted by numerous factors, including, without limitation, loading facility limitations, needs of Seller, needs of other customers, weather, etc., and no assurance can be provided that Seller can deliver the Product within any specific month following the Shipment Window. If any Product is delivered, at Seller's option, in excess of the stated contract quantity referenced above, Seller shall have the option to bill such additional quantity at either (a) the market price, or (b) the Price, applicable on the date of delivery.
6. **Merchants:** Both parties represent and warrant they are merchants as that term is defined by the Uniform Commercial Code, and neither party is a "consumer".
7. **Waiver:** The waiver of any of the terms of this Contract by either party will not be a waiver of any subsequent failure to comply fully with or perform the same of any other term of this Contract.
8. **Payment:** Full payment must be received from Buyer by the agreed-upon payment date. If a final payment date is not identified payment shall be made according to the terms of the Seller's standard terms, which will be provided on request. All payments shall be made in U.S. Dollars. In the event of nonpayment Buyer agrees to pay any and all costs of collection, including but not limited to reasonable attorney fees, court costs and other associated expenses (interest per paragraph 16).
9. **Acceptance:** Buyer's receipt of any Product delivered hereunder shall be an unqualified acceptance of and waiver by Buyer of any and all claims with respect to such Product unless Buyer gives Seller notice of claim within ten (10) days after such receipt. Notice by Buyer under this provision is only effective if written objection is received by Seller's officer or manager at Seller's address set forth in the Contract within the time provided by this provision. Seller shall not be responsible for any claims which are not made in accordance with the provisions of this section. All Products claimed as nonconforming for whatever reason shall be properly protected and held intact by Buyer until settlement is made. Buyer assumes all risk and liability from the result obtained by the use of any Product delivered hereunder, or in manufacturing processes of Buyer or in combination with other substances.
10. **Jurisdiction** for any court proceedings arising out of, or related to, this Contract shall lie exclusively in the courts of Story County Iowa.
11. **Force Majeure:** Neither party shall be liable for delay in its performance when such delay is due to unforeseen causes beyond its control and without its fault or negligence, including but not limited to acts of God, acts of the public enemy, governmental action, fires, floods, earthquakes, epidemics, quarantine restrictions, labor difficulties, freight embargoes, plant breakdowns, or transportation shortages. Should any of the foregoing occur, at the aggrieved party's option and upon notice to the other party, the aggrieved party's performance may be extended for a time equivalent to the delay. Nothing in this provision shall excuse Buyer from this obligation to make timely payment hereunder.
12. **Assignment:** This Contract cannot be assigned without the express written consent of both parties. This Contract shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.
13. **DISCLAIMER OF WARRANTIES:** SELLER MAKES NO WARRANTIES, GUARANTEES, OR REPRESENTATION, EXPRESS OR IMPLIED, THAT EXTEND BEYOND ANY WRITTEN LIMITED WARRANTIES WHICH ACCOMPANY THE PRODUCT PURCHASED HEREUNDER WITHOUT LIMITING THE PRECEDING, SELLER EXPLICITLY DISCLAIMS ALL WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND TO BUYER, EITHER EXPRESS OR IMPLIED, OR BY USAGE OR TRADE, STATUTORY OR OTHERWISE, WITH REGARD TO THE PRODUCT SOLD, INCLUDING, BUT NOT LIMITED TO ALL WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, USE AND ELIGIBILITY OF THE PRODUCT FOR ANY PARTICULAR TRADE USAGE.
14. **DAMAGES LIMITATION & IDEMNIFICATION** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES OF ANY KIND ARISING UNDER OR IN ANY WAY RELATED TO THIS AGREEMENT. IN NO EVENT SHALL EITHER PARTY'S LIABILITY TO THE OTHER PARTY ARISING UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS PLUS INTEREST, ATTORNEYS FEES AND COSTS. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ANY CLAIM HEREUNDER WHETHER FOR BREACH OF ANY WARRANTY, FOR BREACH OR REPUDIATION OF ANY OTHER TERM OR CONDITION OF THIS AGREEMENT OR ANY RELATED ENGAGEMENT LETTER OR OTHER WRITING, FOR NEGLIGENCE, ON THE BASIS OF STRICT LIABILITY OR OTHERWISE.
15. **Interest:** In the event of a breach of this Contract, the Buyer shall pay interest on any amount owing to the Seller by reason of the breach, starting with the date of breach until paid, at the rate of 1.5% per month (or, if less, the highest rate permitted by applicable law).
16. **Solvency:** Both parties represent that they are not insolvent, as that term is defined in the Uniform Commercial Code. If either party's financial condition is unsatisfactory to the other party, the complaining party may suspend its performance until it receives reasonable adequate assurance that the other party is able to fully perform under this Contract.
17. **Enter Agreement:** These terms and conditions constitute the entire agreement between the parties with respect to the subject matter hereof and supersede all previous understandings, representations, proposals, and discussions, whether oral or written, between the parties concerning the subject matter hereof. All rights of the parties hereunder are separate and cumulative. THE LAW RECOGNIZES TELEPHONE TRANSACTIONS TO BE LEGALLY BINDING. CONTRACTS ARE SENT TO CONFIRM PHONE CONVERSATIONS, ENSURING THAT BOTH PARTIES UNDERSTAND THE TERMS. PLEASE REVIEW THIS CONFIRMATION AND NOTIFY WINFIELD UNITED IF THERE ARE ANY TERMS YOU DO NOT UNDERSTAND OR THAT MAY BE IN ERROR.