

KH CHEMICALS NA INC.
TERMS AND CONDITIONS OF SALE

KH CHEMICALS NA INC

1800 East State Street
Suite 168B Hamilton NJ 08609
United States of America

+1 609 981 7146
info.na@khchemicals.com
www.khchemicals.com

1. **Definitions**

The following definitions shall apply in these terms and conditions of sale (the “Terms of Sale”):

“Confirmation” means the written confirmation of a Purchase Order from Seller to Purchaser.

“Contract” means the binding contractual relationship between Seller and Purchaser regarding the sale of Product by Seller to Purchaser.

“Incoterms 2010” means the latest version of the International Commercial Terms published by the Internal Chamber of Commerce.

“Invoice” has the meaning set forth in Section 3(b) hereof.

“Losses” has the meaning set forth in Section 10 hereof.

“Product” means any products offered for sale by Seller.

“Purchase Order” or “PO” means a written offer for Product submitted by Purchaser to Seller.

“Purchaser” means the entity purchasing Product from Seller.

“Quotation” has the meaning set forth in Section 2(c) hereof.

“Seller” means KH Chemicals NA Inc., a Delaware corporation.

Each of Seller and Purchaser may be referred to individually as a “Party,” and collectively as the “Parties.”

2. **Contractual Relationship; Contracts and Adjustments**

(a) The terms and conditions contained in these Terms of Sale are incorporated by reference in every Contract unless otherwise expressly agreed to by Seller in writing. These Terms of Sale and the applicable Confirmation shall govern the Contract to the exclusion of, and shall override, any additional, inconsistent or contrary terms, provisions and conditions submitted by Purchaser, by PO or otherwise.

(b) No Contract shall exist until Seller provides Purchaser its Confirmation. To the extent there is a conflict or inconsistency between these Terms of Sale and the provisions of any Confirmation, the Confirmation shall prevail.

(c) Seller may, either in response to Purchaser's written or verbal inquiry or otherwise, provide Purchaser with a price quotation and any other information relating to a Product, including, without limitation, technical data (each such price quotation and other information collectively, a "Quotation") provided that Purchaser acknowledges and agrees that any Quotation:

(i) does not constitute an offer which is capable of acceptance by Purchaser and does not bind or obligate the Seller; and

(ii) may be withdrawn or modified at any time by Seller and shall be automatically withdrawn after seven (7) days.

(d) Purchaser acknowledges that Seller is entering into a Contract with Purchaser in reliance on the applicable laws, rules, regulations, decrees, agreements, concessions and arrangements (for purposes of this subsection (e), such laws, rules, regulations, decrees, agreements, concessions and arrangement shall hereinafter be referred to collectively as "Regulations") in effect on the date of the Contract. If at any time prior to the date of delivery of Product under the Contract, any Regulations are amended or new Regulations become effective or are due to become effective prior to the completion of the transactions contemplated by the Contract, and such amended or new regulations will have a material adverse effect on the Seller, which effect is not treated by any provision of these Terms of Sale, applicable Confirmation or any other written agreement between the Parties, then Seller shall have the option, in its sole discretion, to request, upon written notice to Purchaser, that the Product sale price or other relevant terms of the applicable Confirmation be revised. Such notice shall contain the new price and/or other terms requested by Seller. If the Parties do not agree upon such revised terms within fifteen (15) days from the date of Seller's notice, either Party may terminate the Contract immediately upon the expiration of such period by providing written notice of termination to the other Party. Any Product delivered during such period shall be sold and purchased at the price and on the terms and conditions specified under the Contract without any adjustment in respect of the amended or new Regulations.

3. Purchasing Terms; Invoicing

(a) The purchase price for any Product shall be set out in the Confirmation, unless otherwise agreed to in writing by the Parties. Any prices do not include any sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Purchaser, and Purchaser shall be responsible for all such charges, costs and taxes which shall be reflected in the Invoice (as hereinafter defined) associated with such Confirmation. Purchaser shall be responsible for providing Seller with resale certificates or other documentation as may be necessary to avoid the imposition of sales taxes for the transactions contemplated by the Contract, to the extent permitted by applicable law. Unless Purchaser provides Seller with such documentation, Purchaser shall pay to Seller the amount of any applicable taxes payable which are listed in the Invoice. Purchaser shall indemnify Seller with respect to any taxes penalties, costs, and/or interest incurred by Seller that results from or relates to any failure or delay by Purchaser in paying any taxes required to be paid by Purchaser.

(b) Seller shall provide Purchaser with an invoice (each, an “Invoice”) for each Product sold pursuant to a shipping Confirmation, which Invoice shall be delivered to Purchaser on or about the date of shipping of any Product under the associated Confirmation. Each Invoice shall include the following information: (i) description of the Product; (ii) Confirmation number; (iii) quantity of Product to be purchased; (iv) purchase price payable for Product; and (v) any applicable sales taxes or other charges that Seller is required by law to collect.

(c) For any Product sold in bulk, the quantity and corresponding price for such Product indicated on the Confirmation is subject to modification based on the weights and measurements stated on the weights and measures bill. Purchaser’s authorized representative shall have the right to be present at the time of weighing and measuring of the Product. Purchaser shall be obligated to accept delivery of any Product that is within five percent (5%) of the quantity listed on the Confirmation.

4. Payment; Default

(a) Unless otherwise agreed to by the Parties in writing, the full amount stated in any Invoice shall be due within twenty (20) days from the Invoice date, without any discount, deduction, withholding, set-off or counterclaim, and payment of such Invoice shall be made by wire transfer of immediately available funds. In addition, Purchaser may not delay or withhold any amounts due and payable by reason of a dispute with Seller. Interest on any unpaid Invoice shall accrue at the rate of 1.5% per month or the maximum allowable rate under applicable law, whichever is greater. If payment of any Invoice is made pursuant to a letter of credit, then such letter of credit will be subject to the continuing approval of Seller.

(b) If Purchaser fails to timely pay an Invoice or breaches any other material obligations hereunder or under the applicable Confirmation and such breach has not been cured within seven (7) days after the date of such breach, then Seller shall have the right, at its option and without limiting any other right or remedy available to the Seller, to either terminate the Contract by providing written notice to Purchaser or to suspend or withhold delivery of any undelivered Product; *provided however*, there shall be no cure period for a breach that (i) results from Purchaser's negligence; willful misconduct or violation of law; (ii) cannot be cured in the reasonable opinion of Seller; or (iii) results in irreparable or continuing harm to Seller. Notwithstanding any termination of the Contract, Seller shall be entitled to recover all damages sustained by it as a result of Purchaser's default, subject to and in accordance with, these Terms of Sale and applicable law. Purchaser shall reimburse Seller for any reasonable costs incurred by the Seller in recovering any unpaid amounts, including, without limitation, attorney's fees and costs of debt collection services.

5. **Warranty**

SELLER WARRANTS SOLELY THAT EACH PRODUCT WILL CONFORM TO THE DESCRIPTION AND SPECIFICATIONS SET FORTH IN SELLER'S CONFIRMATION. SELLER MAKES NO OTHER WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE OR USE OR WARRANTY OF MERCHANTABILITY, WHETHER EXPRESSED OR IMPLIED OR BY FACT OR BY LAW, WITH RESPECT TO ANY PRODUCT.

6. **Incoterms; Delivery and Acceptance; Risk of Loss**

(a) Product deliveries shall be made in accordance with 'Ex Works' (as defined in Incoterms 2010) and each of "deliver" or "delivery" as used herein shall have the meaning set forth in Incoterms 2010. Risk of loss or damage to Product to be delivered pursuant to a Contract shall pass to Purchaser upon Seller making such Product available to Purchaser for pick up at the location specified in the applicable Confirmation.

(b) Seller shall endeavor in good faith to deliver to Purchaser the Product by the date specified in the applicable Confirmation or by such other date as may be agreed to in writing between the Parties. Purchaser acknowledges and agrees that any delivery date stated on a Confirmation shall not constitute a guaranty by Seller and that time is not of the essence with respect to such delivery. Any Product may be delivered by Seller in advance of the scheduled delivery date if the Parties mutually agree to advance such delivery date.

(c) If under the applicable Confirmation, Seller agrees to deliver the Product to Purchaser using one or more tank trucks (or other equipment) belonging to, or contracted by, Seller, then Purchaser shall:

- (i) return to Seller such tank truck to the installation of origin (and/or other equipment) within 24 hours after arrival at the delivery destination, free of charge, and if Purchaser fails to return Seller's tank truck (and/or other equipment) within such 24 hour period, then Seller may assess, and Purchaser shall be responsible for paying to Seller, a hire charge in an amount customary for the type and capacity of the tank truck at issue;
 - (ii) comply with all applicable statutes and regulations and third-party contract terms and conditions governing such tank truck (and/or other equipment) at all times that such tank truck (and/or other equipment) is in Purchaser's possession or control; and
 - (iii) indemnify, defend and hold harmless, Seller from and against any claims of any type or kind arising from or relating to its use or operation of Seller's tank truck (and/or other equipment) at all times that such tank truck (and/or other equipment) is in Purchaser's such possession or control.
- (d) If under the applicable Confirmation, Seller agrees to load Purchaser's vehicle or fill Purchaser's container with Product, Seller shall have no liability to Purchaser, and Purchaser shall indemnify Seller from and against any and all claims (including attorney's fees and court costs) arising from or relating to such loading or filling, except if Seller's acts or omission directly related to such loading or filling constitute gross negligence or willful misconduct. Notwithstanding the foregoing, Seller, may in its sole discretion, refuse to load Purchaser's vehicle or fill Purchaser's container if in Seller's opinion such vehicle or container (as applicable) does not satisfy reasonable industry safety requirements, and Seller shall not be liable to Seller based on any delay resulting from such refusal.
- (e) Purchaser shall have the right prior to acceptance of delivery to inspect all Product and to reject all defective or non-conforming Product; *provided*, that if Seller does not agree that a Product is defective or non-confirming, then the Parties shall attempt in good faith to expeditiously resolve any controversy promptly by negotiations between executives of the parties (if appropriate, with their respective counsel). Purchaser's sole remedy for rejection of defective or non-conforming Product (or any portion thereof) is to receive a refund of the purchase price paid for such defective or non-conforming Product (or portion thereof).
- (f) If Purchaser fails to accept delivery on the date that Seller makes the Product available to Purchaser (subject to Purchaser's right to inspect and reject any defective or non-conforming Product), Seller may elect to store such Product until such time as Purchaser accepts delivery, and Purchaser shall be required to reimburse Seller for all storage costs and expenses incurred by Seller (including, without limitation, insurance costs). If Purchaser fails to accept delivery within seven (7) business days from the date that Seller makes such Product available, Seller may terminate the Contract (or if such delivery is made in installments, terminate the portion of such Contract relating to such installment), and without limiting or waiving any other rights and remedies available to Seller, Seller may sell such Product to a third-party, and Purchaser shall pay to Seller its costs relating to such sale and any loss occasioned by such sale. Notwithstanding Purchaser's failure to accept delivery of such Product, risk of loss shall pass to the Purchaser immediately upon Seller's performance of its delivery obligations.

7. Title to Product

All Product sold by Seller shall remain Seller's sole property unless and until Purchaser has paid all amounts owing or due Seller under the applicable Contract. At all times that such Product remains Seller's property, Purchaser shall (a) hold the Product on a fiduciary basis as Seller's bailee and (b) store the Product (at Purchaser's sole expense) separately from all other goods or products of Purchaser or any third-party in such a way that the Product remain readily identifiable as the Seller's property. At all times during the period that amounts are owed under the Contract, Purchaser shall keep Seller advised of the Product's storage premises, and Purchaser grants Seller an irrevocable license to enter the premises during reasonable business hours, to inspect the Product. Without limiting any other right or remedy available to the Seller, if Seller rightfully terminates the Contract, it may repossess the Product that is the subject of the terminated Contract, and Purchaser grants to Seller (and its agents and employees) an irrevocable license to enter the Product's storage premises at any time to recover possession.

8. Representations and Warranties

Each Party represents, warrants and covenants to the other Party as follows:

(a) Organization. It is duly organized, validly existing, and in good standing under the laws of its jurisdiction of formation.

(b) Authority; Enforceability. It has the requisite corporate power and authority to execute and deliver the Contract and to perform and carry out the transactions contemplated by the Contract and the Contract has been duly executed and delivered on its behalf, and constitutes a legal, valid, binding obligation, enforceable against it in accordance with its terms;

(c) No Conflict. The execution and delivery of the Contract and its ability to perform and carry out the transactions contemplated by the Contract does not conflict with or violate any other agreement to which it is a party or any law or regulation applicable to the transactions contemplated by the Contract.

(d) Compliance with Laws.

(i) It conducts, and shall conduct, its business and operations strictly in compliance with all applicable U.S. and international laws and all applicable rules and regulations.

(ii) It is in compliance with, and shall comply with, the provisions of the Foreign Corrupt Practices Act of 1977 of the United States of America, as amended, and in that connection, has not undertaken or caused to be undertaken, and shall not undertake nor cause to be undertaken, any activity which is illegal under the laws of the United States or any foreign jurisdiction, including, to the extent applicable, any other similar international laws or acts which prohibit bribery or foreign corrupt practices in the jurisdiction in which the Contract is performed. It has not, directly or indirectly, offered, pay, promise to pay, or authorize the payment of anything of value and shall not, directly or indirectly, offer, pay, promise to pay, or authorize the payment of anything of value, to an employee of any government or any department, contractor, instrumentality or wholly-owned corporation thereof, or any person acting in an official capacity for or on behalf of any such government or department, contractor, instrumentality or wholly-owned corporation thereof, or any candidate for political office in any foreign jurisdiction or to any person, while knowing or having reason to know that all or a portion of such thing of value will be offered, given or promised, directly or indirectly, to a government official for the purpose of influencing any act or decision of such government official, including a decision to fail to perform his/her official functions, or inducing such official to do or omit to do any act in violation of the lawful duty of such official; or inducing such government official to use his/her influence with the government or instrumentality in order to assist it in obtaining or retaining business for or with, or directing business to any person. It shall notify the other Party immediately of any extortive solicitation, demand or other request for anything of value, by or on behalf of any government official relating to the subject matter of the Contract. It agrees to maintain adequate internal controls and properly record and report all transactions under such Contract and maintain accurate books and records in the English language. It shall promptly answer in reasonable detail any questionnaire or other written or oral communication from the other Party or its internal or outside auditors, to the extent same pertains to compliance with this provision.

(iii) Prohibition on Forced and Child Labor. It does not, and shall not, utilize slave, prisoner or any other form of forced or involuntary labor, including labor under threat of physical harm or penalty, and that it does not, and shall not, unlawfully employ or exploit children in the workplace, to include all third-party or temporary workers.

(iv) Anti-Terrorism. It does not, and shall not, employ or otherwise do business with any person included on the U.S. Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List in the course of the operation of its business and the conduct of its other activities.

(e) Licenses and Permits. It has obtained and maintains all necessary authorizations, registrations, permits and licenses in each jurisdiction in which the transactions contemplated by the Contract are to be performed.

(f) Debarment and Exclusion. Neither it, nor any of its employees or agents working on its behalf and providing items and services pursuant to the Contract (i) is currently an Ineligible Person (as defined below); (ii) has been charged with a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) or § 1320a-7(b)(1)-(3); or (iii) has been proposed for exclusion, debarment, suspension, or other ineligibility from any Federal health care program or Federal procurement or non-procurement program. If, during the term of such Contract, it has actual notice that any of its employees or agents working on its behalf and providing items and services pursuant to the Contract (i) becomes an Ineligible Person; (ii) is charged with a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a) or § 1320a-7(b)(1)-(3); or (iii) is proposed for exclusion, debarment, suspension, or other ineligibility from any Federal health care program or Federal procurement or non-procurement program, it shall immediately notify the other Party, and the other Party shall have the right to immediately terminate such Contract. "Ineligible Person" means an individual or entity who: (i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the Federal health care programs or in Federal procurement or non-procurement programs; or (ii) has been convicted of a criminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yet been excluded, debarred, suspended, or otherwise declared ineligible.

9. Limitation of Liability

EXCEPT WITH RESPECT TO CLAIMS ARISING UNDER SECTION 10 HEREUNDER, SELLER'S AGGREGATE LIABILITY UNDER ANY CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAID BY PURCHASER FOR THE PRODUCT GIVING RISE TO SUCH LIABILITY, AND IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR AS THE RESULT OF, THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCT OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, EVEN IF SELLER HAS BEEN NEGLIGENCE, WHETHER IN CONTRACT, TORT OR OTHER LEGAL THEORY.

10. **Indemnity**

(a) Except to the extent caused by Seller's gross negligence, willful misconduct or violation of law, Purchaser shall indemnify, defend and hold harmless Seller and its shareholders, directors, officers, employees, agents, and representatives, and the successors and assigns of each of the foregoing, from and against any and all demands, liability, claims, damages, fines, judgments, suits, actions, causes-of-action, costs, losses and expenses, including reasonable attorneys' fees and expenses, whether direct or indirect, including, without limitation, for injury to persons and damage to property (individually and collectively, "Losses"), brought by any third-party resulting from or relating to (i) Purchaser's violation of these Terms of Sale or the applicable Confirmation and/or (ii) Purchaser's negligence, willful misconduct or violation of law. This general indemnity is in addition to and shall not act to limit or waive any more specific indemnity provisions found elsewhere herein.

(b) Any indemnifiable obligation pursuant to these Terms of Sale is subject to Seller providing Purchaser with prompt written notice of the claim; *provided however*, failure by Seller to promptly notify Purchaser after receiving notice of a claim shall not relieve Purchaser of its indemnification obligations hereunder if any delay in notifying Purchaser does not materially prejudice Purchaser's rights to defend the claim. Purchaser shall promptly assume the defense of the claim at its own expense, and will pay all costs associated with the defense of the claim, including attorneys' fees and the amount of any settlement reached, which shall be approved by both Parties, or final judgment awarded against Seller. Purchaser may elect to control such defense including any settlement discussions or agreement. Notwithstanding the foregoing, Seller may participate with counsel of its own choosing, and at its own expense, in the defense of any matter subject to indemnification pursuant to these Terms of Sale, and in any settlement discussions, and Seller shall have the right to approve any settlement agreement purporting to bind Seller to non-financial obligations: *provided, however*, that such approval will not be unreasonably withheld.

11. **Remedies**

The rights, powers and remedies available to each Party under these Terms of Sale are cumulative and not exclusive of any other right, power or remedy which such Party may otherwise have. No failure or delay on the part of either Party in exercising any right, power or remedy available to it under these Terms of Sale and no course of dealing between the Parties shall operate as a waiver by the either Party of any such right, power or remedy, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy under these Terms of Sale. Except as required by the these Terms of Sale, no notice or demand provided by a Party to the other Party shall entitle the receiving Party to any other or future notice or demand in similar or other circumstances or constitute a waiver of the right of the demanding Party to take any other or future action in any such circumstances without notice or demand.

12. Confidentiality; Non-Disclosure

In connection with the Contract, Seller may disclose or make available to Purchaser its commercial, technical and other information, Product pricing, Seller's business and affairs, Seller's intellectual property and other proprietary or sensitive information, Seller's business and marketing plans, and third-party confidential information, whether orally or written, electronic or other form or media whether or not marked, designated or otherwise identified as "confidential" that is the confidential or proprietary information of Seller, including, without limitation, price lists and Quotations, Confirmations and Invoices (collectively, the "Confidential Information"), the disclosure of which would cause irreparable harm to Seller and impair Seller's good will and competitive position. Accordingly, unless required by law, in response to a valid subpoena or by mutual agreement of the Parties, Purchaser shall not, without the prior written consent of Seller, disclose to any third-party any such Confidential Information, other than its directors, officers, managers, employees, agents, attorneys, accountants and auditors on a need-to-know basis, and only upon such recipients being made aware of and agreeing to be bound by the terms of this sub-paragraph. The obligations set forth in this Section 12 shall not apply to any Confidential Information that (i) was known to Purchaser prior to being received from Seller; (ii) is or becomes, without fault of Purchaser, part of the public domain; or (iii) is received by Purchaser from a third-party with the legal right to disclose such Confidential Information and without further restrictions on the disclosure by the Seller. If Purchaser is required to disclose the disclosing party's Confidential Information by law (including, but not limited to, court order, legal process or governmental action), it shall promptly notify Seller of the existence, terms and circumstances surrounding such a requirement and shall consult with the Seller on the advisability of taking legally available steps to resist or narrow such requirement, and shall exercise reasonable efforts to obtain an order or other reliable assurance that confidential treatment will be accorded to that portion of the disclosed information which the Seller designates as confidential. Compliance with any such request shall not be considered a breach of these Terms of Sale or any such Contract so long as Seller abides by the provisions herein.

13. Hazardous Goods

a. Purchaser acknowledges and agrees that Product sold under the Contract may be or become or considered a hazardous material under various governmental laws and regulations and that Purchaser is familiar with any hazards of the Product and its applications and handling of the various modes of transportation of such Product. Purchaser shall not have any right to indemnification from, or claims against, Seller from and against any Losses resulting from or relating to any hazards inherent in the nature of the Product delivered under the Contract.

b. If applicable, Seller shall provide Purchaser a copy of the current material safety data sheet ("MSDS") and any other information relating to the health safety and environmental data in connection with the applicable Product. Notwithstanding the foregoing, Seller does not give any warranty or representation as to the accuracy or completeness of any MSDS and any substance identifiers, and Seller does not assume any responsibility for Losses arising from or relating to any reliance by Purchaser on the accuracy of the MSDS and substance identifiers provided.

14. Force Majeure

Except for Purchaser's payment obligations under the Contract, neither Party shall be liable to the other Party for any failure to perform any of its obligations contained in these Terms of Sale or in any other Contract terms, if such failure is caused, or delay is caused, by circumstances beyond its reasonable control, including without limitation, Acts of God, wars, revolutions, civil disturbances or other disorders, strikes, ordinances, laws or governmental action, unplanned shutdown, shutdown in anticipation of a breakdown, or Seller's inability to acquire from its usual supply source(s) Product, materials or services or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, telecommunication breakdown or power outage ("Event of Force Majeure"). If an Event of Force Majeure should last for a period of more than thirty (30) days, then either Party may terminate the Contract without any further obligation to the other Party.

15. Governing Law

These Terms of Sale and the applicable Confirmation shall be governed by, and construed in accordance with, the laws of the State of New York and applicable United States Federal law without reference to principles of conflicts of law. The Parties hereby waive all provisions of the United Nations Convention for the International Sale of Goods.

16. Venue and Jurisdiction

Any claim or controversy, arising directly, indirectly or otherwise, to enforce any right, assert any claim, or obtain any relief whatsoever in connection with, out of, or from Terms of Sale and the applicable Contract and Confirmation and the transactions contemplated hereunder and thereunder shall be litigated exclusively in the United States District Court for the Southern District of New York or a New York State court sitting in New York County (Manhattan) and any appellate court with jurisdiction over appeals therefrom, so long as one of such courts shall have subject-matter jurisdiction over such claim or controversy. The Parties irrevocably and unconditionally submit to the exclusive jurisdiction of such courts and waive, to the fullest extent permitted by law, any objection that they may now or hereafter have with respect to venue or inconvenient forum. The Parties further agree to waive their rights to a trial by jury to the fullest extent allowed under applicable law. The Parties shall attempt in good faith to resolve any controversy promptly by negotiations between executives of the Parties (if appropriate, with their respective counsel) prior to commencing any litigation. The prevailing Party in any such litigation shall be entitled to an award of reasonable attorney's fees.

17. General Provisions

(a) Notices. All notices and other communications to be given under these Terms of Sale and the applicable Contract and Confirmation shall be in writing and given by a recognized international courier service, *i.e.* Federal Express, to the address specified in the Confirmation or to such other address at which each Party may in advance advise the other in writing. Such notice shall be deemed given as of two (2) business days after being deposited with such overnight courier service. The Parties hereby waives all rights under the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents.

(b) Relationship of Parties. Seller shall provide all Products as an independent contractor. Nothing contained in these Terms of Sale or the applicable Contract and Confirmation shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment, fiduciary or similar relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever, and neither Party shall be a guarantor of the other Party's debts or obligations.

(c) Entire Agreement; Amendment. These Terms of Sale and the applicable Contract and Confirmation contain the entire agreement between the parties with respect to the subject matter hereof and thereof and supersede all prior negotiations, agreements, representations, drafts, and communications, written or oral, of any kind and nature between them. Seller may revise or amend these Terms of Sale at any time without notice.

(d) Binding Effect; Assignment. These Terms of Sale and the applicable Contract and Confirmation shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns. Purchaser shall not assign or transfer its rights and obligations under these Terms of Sale and the applicable Contract or Confirmation, in full or in part.

(e) Waiver. Any waiver of any breach of any provision of these Terms of Sale or the applicable Contract or Confirmation by either Party shall not be considered a waiver of any subsequent or continuing breach of that provision unless expressly agreed otherwise by the Parties in writing, and no such waiver of any breach of any provision of these Terms of Sale or the applicable Contract or Confirmation shall release, discharge or prejudice the right of the waiving Party to require strict performance by the other Party of any other of the provisions of these Terms of Sale and the applicable Contract or Confirmation, as applicable.

(f) Severability. If any provision of these Terms of Sale or the applicable Contract or Confirmation shall to any extent found to be invalid or unenforceable by a trier-of-fact of proper jurisdiction, the remaining provisions of these Terms of Sale and the applicable Contract or Confirmation, or the application of such provisions to other persons or circumstances, shall not be affected thereby, and each provision of these Terms of Sale and the applicable Contract or Confirmation shall be valid and enforceable to the maximum extent permitted by applicable law.

(g) No Third-Party Beneficiaries. These Terms of Sale and the applicable Contract and Confirmation are for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied shall give, or be construed to give, to any person or entity, other than the parties and such assigns, any legal or equitable rights under these Terms of Sale and the applicable Contract or Confirmation.

(h) No Strict Construction; Interpretation. These Terms of Sale shall not be read for or against either Party by reason of presumption of preparation or preparation by such Party.

(i) Headings; Defined Terms. The subject headings of the Sections and subparagraphs contained in these Terms of Sale and the words used to denote defined terms are included for the purposes of convenience only and shall not affect the interpretation or construction of any of its provisions.