

JDC SOLUTIONS, INC. – INVOICE TERMS AND CONDITIONS

1. **ENTIRETY OF CONTRACT:** Seller's acceptance of Buyer's order and shipments made pursuant thereto are subject to and expressly conditioned upon Buyer's acceptance of the terms and conditions herein unless this transaction is subject to a previous applicable contract and signed by Seller. If there is no such contract, the terms and conditions contained herein constitute the contract covering such order and shipments and the entire understanding between the parties relating thereto, and none of Buyer's terms and conditions in acknowledging this invoice or in issuing any purchase orders, releases shipping instructions or otherwise shall apply. Buyer shall be deemed to have assented to the provisions hereof in all respects by its acceptance of any goods shipped or by failure to give Seller written notice of objection within five business days of Buyer's receipt of this invoice. Seller shall not be bound by any change in, addition to, or waiver of any of the provisions hereof unless approved in writing by an authorized representative of Seller.
2. **PRICES:** Unless otherwise stated on the front herein, all sums shall be payable net thirty (30) days from the date of this invoice, in legal tender of the U.S.A. Prices and terms of payment are subject to change without notice; those applicable to this shipment are set forth herein. Shipping dates are conditional upon availability of Product. Seller may recover for each delivery as a separate transaction, without reference to any other delivery.
3. **SHIPPING INSTRUCTIONS:** Buyer shall furnish Seller with such shipping instructions as Seller may request. Seller shall not be obligated to tender delivery of any quantities for which Buyer has not given shipping instructions as herein provided.
4. **WARRANTIES:** Seller's recommendations or instructions as to handling, use, or disposal of any Product, including its use alone or in combination with other products, or as to any apparatus or process or the use of any Product in connection therewith, are based upon information believed to be reliable, but Seller shall have no liability with respect thereto. SELLER'S SOLE AND EXCLUSIVE WARRANTY IS THAT ITS PRODUCT COMPLIES WITH ITS STANDARD CHEMICAL AND PHYSICAL SPECIFICATIONS. SELLER MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED; WHETHER WITH RESPECT TO ITS RECOMMENDATIONS, INSTRUCTIONS, PRODUCT APPARATUS, PROCESS OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES, WHETHER OF MERCHANTABILITY, SUITABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE.
5. **PATENTS:** Seller's recommendations or instructions are not intended to suggest operations which would infringe any patents, and Seller assumes no liability or responsibility for any such infringement. Seller may, without liability to Buyer of any kind, decline to continue deliveries of any Product, the manufacture, sale or use of which, in Seller's opinion would infringe any patent now or hereafter issued. Buyer shall defend, indemnify and hold Seller, and its affiliates, and their respective representatives and employees, harmless against any expense, judgment or loss, including attorney(s)' fees, for infringement of any patents or trademarks or other third-party property rights which results from Buyer's use of the Product or Seller's compliance with Buyer's designs, specifications or instructions.
6. **USES; SAFE HANDLING:** Buyer shall promptly and carefully inspect Product upon receipt and will maintain appropriate safe handling and use procedures. Buyer warrants that Product will not be used, resold or combined for end use intended to be toxic or lethal to human beings. Buyer will maintain appropriate safe handling and use procedures for the Product and will apprise its employees and customers of the hazards, proper use and handling requirements of the Product, and shall comply with the OSHA Hazard Communication Standard, as amended and all other applicable law, rules and regulations.
7. **CLAIMS; LIABILITY:** Buyer shall be deemed to have waived all Product claims except for those for which it gives notice to Seller within thirty (30) days after Buyer's receipt thereof. As to any claim of any nature, whether in contract, tort, strict liability, patent infringement or otherwise, Seller and its affiliates' total liability shall not exceed the purchase price of the portion of the Product in respect of which such claim is made plus any transportation charges thereon paid by Buyer. In no event shall Seller and its affiliates be liable for any indirect, consequential, special, incidental or contingent damages, costs of litigation or for loss. It is agreed and understood that the price stated for the Product is a consideration in limiting Seller's liability.
8. **CONTAINERS AND EQUIPMENT:** Buyer acknowledges and understands that Product containers, whether disposable, returnable or otherwise, are intended only for temporary storage of the Product originally contained therein, and any other use of such containers may be hazardous or unlawful and Buyer will take all actions necessary to prevent their reuse. Tank cars, tank wagons, tote bins and other returnable containers used to deliver Product to Buyer are the property of Seller or its affiliates and are loaned to Buyer; Buyer shall promptly return them in good condition (F.O.B. shipping point, unless otherwise specified) no later than the date specified by Seller's or, if applicable, its affiliates, then standard practices. All applicable demurrage charges shall be for Buyer's account.
9. **LIABILITY AND RESPONSIBILITY:** Except to the extent that such is solely and directly caused by any breach of Seller's obligation hereunder. Buyer assumes full responsibility for any liability arising out of unloading, discharge, storage, handling, use and disposal of any Product or container therefor, including the use of such Product or container alone or in combination with other substances; compliance or noncompliance with any laws or regulations relating thereto; and damage to or destruction of returnable containers from any cause whatsoever after delivery to Buyer and until their return to Seller, or if applicable, its affiliates, in good condition. Buyer shall defend, indemnify and hold harmless Seller, and its affiliates, and their respective representatives and employees, arising out of any claim, suit or proceeding by any governmental agency or any third parties (including without limitation any employee of Buyer or member of his family) which claim, suit or proceeding alleges death, personal or economical injury or damages to any private or public property or resources caused or contributed to by the Product or container therefor if such death, injury or damage occurred subsequent to shipment of the product, except to the extent such is solely and directly caused by the failure of the Product to meet Seller's standard physical and chemical specifications.
10. **TAXES:** In addition to the purchase price, Buyer shall pay Seller the amount of all governmental taxes, excises, duties and/or other changes (including, without limitation, 'Superfund' taxes, and excepting taxes on or measured by net income) that Seller may be required to pay with respect to the production, sale or transportation of any material delivered hereunder.
11. **FORCE MAJEURE:** Neither party shall be liable for any failure to make or accept any one or more deliveries (or portions thereof) arising out of: an act of God; war; riot; fire; explosion; accident; flood; sabotage; mechanical breakdown; plant shutdown; Seller's inability to obtain fuel, power, raw materials or equipment from its usual sources or prices it deems reasonable; governmental laws, regulations or orders; or any other cause (except financial) beyond the reasonable control of such party; or labor trouble, strike, lockout or injunction (whether or not such labor event is within the reasonable control of such party) which delays, prevents, restricts, limits, or renders commercially infeasible, the performance of this Agreement or the consumption, sale or use of the Product, except as to Product already in transit. In no event shall Seller be required to ship Product from Seller's or if applicable, its affiliates' other locations or to purchase Product or components thereof from other sources to fulfill requirements hereunder. If any such contingencies occur, Seller may, without liability to Buyer of any kind, keep its available supply of any Product for its own uses, or distribute it among its customers upon such basis and in such manner as Seller deems fair and practical.
12. **WEIGHTS:** Seller's weights and measures shall govern, except in case of proved error.
13. **EQUAL EMPLOYMENT:** If Seller produces the Product sold hereunder, Seller shall comply with the provisions of the Fair Labor Standards Act of 1938, as amended; Title VII of the Civil Rights Act of 1964, as amended; and Equal Employment provisions of Executive Order 11246. As amended.
14. **NOTICES:** Any notice shall be sufficiently given duty mailed, postage prepaid, addressed to Seller (Attention: Manager, Sales Administration) or to Buyer of their respective addresses appearing hereon, or to such other address for either party as that party may by notice designate.
15. **ASSIGNMENT:** This agreement shall bind the respective successors and assigns of the parties hereto, but none of Buyer's rights or obligations hereunder may be assigned without Seller's prior written consent, except to its subsidiary or affiliated corporation, provided that such assignments shall not relive the assignor of its obligation hereunder. Any such assignment without Seller's written consent shall be void.
16. **JURISDICTION:** THE PARTIES HERETO AGREE THAT ALL OF THE PROVISIONS OF THIS AGREEMENT AND ANY QUESTIONS CONCERNING ITS INTERPRETATION AND ENFORCEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF TENNESSEE, U.S.A. AND THE ORDERING AND DELIVERY OF PRODUCT SHALL BE DEEMED TO BE THE TRANSACTION OF BUSINESS WITHIN THE STATE OF TENNESSEE FOR PURPOSES OF CONFERRING JURISDICTION UPON COURTS LOCATED WITHIN THE STATE. THE PARTIES AGREE THAT ANY LITIGATION ARISING OUT OF THIS AGREEMENT SHALL BE BROUGHT ONLY IN THE FEDERAL OR STATE COURTS IN THE STATE OF TENNESSEE AND BOTH PARTIES CONSENT TO THE JURISDICTION OF SAID COURTS.
17. **WAIVER:** Any waiver of any particular breach or default of this Agreement shall be in writing and shall not constitute a continuing waiver or a waiver of any other breach or default, and acceptance by Seller of any payments with knowledge of any breach or default shall not constitute such waiver. Any payments to be made or obligations to be performed before, upon, or subsequent to the termination of this Agreement shall survive termination of this Agreement if not already made or performed at date of termination.
18. **SEVERABILITY HEADINGS:** If any provisions herein is or becomes invalid or illegal in whole or in part, such provision shall be deemed amended, as nearly as possible, to be consistent with the intent expressed in this Agreement, and if such is impossible, that provision shall fall by itself without invalidating any of the remaining provisions not otherwise invalid or illegal. Paragraph headings or titles are included for ease of reference and do not constitute any part of the text or affect its meaning or interpretation.
19. **COST OF COLLECTION:** Any cost of collection, to be paid by Buyer.