

MJS SALES, INC. STANDARD TERMS AND CONDITIONS OF SALE

1. TERMS.

(a) The terms and conditions set forth in this document establish the standard terms and conditions of sale for all sales of products ("Product") by MJS Sales, Inc. ("Seller") to the purchaser ("Buyer") described in the documents accompanying these standard terms and conditions. This document, together with the order acknowledgments, invoices, specifications, and all supplements and attachments thereto issued by Seller from time to time, shall constitute the entire agreement ("Agreement") between Buyer and Seller for each such sale.

(b) Buyer's acknowledgement, taking possession of the Product, or any other conduct of Buyer which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Buyer of this Agreement and all of its terms and conditions. Acceptance of this Agreement is expressly limited to Buyer's assent to all of the terms and conditions of this Agreement. Additional or different terms provided in Buyer's bid documents, purchase order, or acceptance of Seller's offer which vary in any degree from any of the terms of this Agreement shall be deemed material and are hereby objected to and rejected. If this Agreement shall be deemed an acceptance by the Seller in response to an offer by Buyer and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Seller shall constitute an acceptance expressly conditioned upon Buyer's assent to all of the terms and conditions of this Agreement.

(c) This Agreement sets forth the entire agreement of Seller and Buyer concerning the subject matter hereof. No other agreements or understandings, whether written or oral, whether express or implied, shall be binding on Seller and Buyer, and no amendment, modification, or rescission of this Agreement shall be enforceable unless the same is in writing and signed by the party against whom the terms of such amendment, modification, or rescission are sought to be enforced.

(d) These standard terms and conditions of sale may be modified from time to time by Seller, by notice to Buyer. Each such modification shall be binding upon Buyer with respect to all purchases occurring after the date of such modification. Except as otherwise described herein, no modification or termination hereof or waiver of any of the obligations hereunder shall be effective unless in writing and signed by the party against whom such modification, termination or waiver is sought to be enforced.

2. PRICE ADJUSTMENTS. Seller may adjust Product prices at any time. Buyer may suspend orders immediately upon notice of a price increase.

3. PAYMENT. Payment terms are net 30 days from date of invoice. Unless otherwise specified, if payment hereunder is not made on time, Seller, in addition to all other legal, equitable and contract rights, shall be entitled to interest on such overdue payment at the rate of one and one-half percent (1½%) per month. Notwithstanding the foregoing, interest shall not be charged on any overdue payment at a rate in excess of the maximum rate permitted by law. Buyer shall pay all charges, costs, and legal fees incurred in collecting amounts owed.

4. IMPORT DUTIES, TAXES, AND OTHER CHARGES. Except to the extent otherwise provided in this invoice, Buyer shall pay all taxes (excluding federal, state or local income or franchise taxes of Seller) and all import duties, levies and impositions and all other governmental charges, assessments, fees, and any interest or penalties thereon, whether payable by Seller or Buyer, imposed or levied on or with respect to this Agreement, the amounts payable hereunder, the Product or the possession, sale, use, furnishing or ownership of the Product. If Buyer shall fail to pay and discharge such taxes, duties and other sums when due. Seller may at its option, pay the same, in which event Buyer shall promptly reimburse the Seller for such sums paid.

5. CONTAINERS. Seller retains ownership of all returnable containers. Buyer may use the containers only for the storage of original contents. Buyer shall return the containers to Seller empty and in good condition within 90 days from the date of delivery. Buyer shall pay a deposit on all returnable containers. Seller shall credit the deposit, less handling fee, to Buyer's account if Buyer returns the containers F.O.B. Seller's return point in good condition within 90 days. If not returned within 90 days, Seller may reject the containers and retain the full amount of the deposit.

6. TITLE AND RISK OF LOSS. Title and risk of loss for Product transfers to Buyer at Seller's shipping point. Buyer shall unload railroad tank cars within 48 hours (Sundays and holidays excepted). If the contract provides that Seller shall pay insurance and/or transportation costs, they shall be at the applicable rates available to Seller in effect at the date of the contract; if for any reason the cost of insurance and/or transportation increases prior to shipment date, such increase shall be for the account of, charged to and paid by Buyer.

7. WARRANTY. Seller warrants that Seller branded Products conform to Seller's published specifications at the time of delivery. Seller warrants that services provided by Seller will be consistent with Seller's standard specifications or, if none, with Seller's standard practices. Buyer acknowledges that Seller acts as a distributor for Products not branded by Seller ("Resale Products") and that matters relating to the quality of the Resale Products are not within Seller's control. Accordingly, SELLER MAKES NO WARRANTIES WHATSOEVER CONCERNING RESELLER PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES, GUARANTEES, OR REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE.

8. ACKNOWLEDGEMENT. BUYER acknowledges Seller communicated detailed Product information and provided supporting, written documentation in the form of Technical and Material Safety data as published by US Silica, manufacturer of SIL-CO-SIL and/or MIN-U-SIL ground silica Product(s). BUYER ACKNOWLEDGES THE PRODUCT SHALL NOT BE USED, PROMOTED OR SOLD FOR SANDBLASTING. Seller provided this information and supporting documentation for Buyer's ongoing use and advised Buyer to disseminate same to its employees, agents, contractors, customers, and assigns to advise, inform and train in the appropriate and safe use, handling, storage, transportation and/or disposal of Product(s) in accordance with manufacturer's directives. Buyer confirms Seller also instructed Buyer to access and utilize specific information available through the Occupational Safety and Health Administration (OSHA) and other applicable health standards/agencies regarding crystalline silica (quartz) dust. Buyer acknowledges Seller provided multiple additional sources of reference for information and safety concerning crystalline silica, including Exposure and Health Hazard Information accessible via www.osha.gov/SLTC/etools/silica/faq/faq.html; Mine Safety and Health Administration (MSHA) accessible at www.msha.gov; National Institute for Occupational Safety and Health (NIOSH) accessible at www.cdc.gov/niosh/topics/silica/default.html; American Lung Association accessible at www.lungusa.org. The National Institute for Occupational Safety and Health source above includes a brochure entitled, "A Guide to Working Safely with Silica" and "Tips for Preventing Silicosis," which Buyer was instructed to access by Seller as additional educational and safety information.

Buyer accepts standard terms and conditions of sale contained herein and confirms acceptance of responsibility regarding use and further communication of Product technical and safety information, warnings and potential hazards as they pertain to Product use, environmental safety, transport, storage, sale and/or disposal of crystalline silica (quartz) dust Product(s). Buyer agrees to communicate the additional product, safety and health information reference sites noted above, with its employees, customers, agents, contractors, assigns, etc., as mandatory points of reference. Buyer hereby affirms its understanding relative to all aspects of Product material safety and appropriate use and its responsibility going forward to further the communication of such data in its ongoing business capacity utilizing subject Product(s).

9. REMEDIES. Seller's liability for nonconforming Products is exclusively limited, at Seller's option, to replacement of the defective Products or refund of the purchase price of such Products. Seller's liability for any defective or negligent service is limited to Seller re-performing the service or a refund of an amount not to exceed the amount paid for the service, or, if the services were provided free of charge, to pay an amount not to exceed the amount paid for the Products to which the services related in the 12 months prior to the event of the liability.

10. LIMITATION ON LIABILITY. IN NO EVENT WILL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY, CONTRIBUTION OR ANY OTHER LEGAL THEORY AND IN NO EVENT WILL SELLER BE LIABLE FOR LOST PROFITS OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE SALE, HANDLING, OR USE OF THE PRODUCT SOLD HEREUNDER, INCLUDING WITHOUT LIMITATION TRANSPORTATION, HANDLING, INSTALLATION, PROCESSING OR FABRICATION CHARGES OR EXPENSES. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.

11. INDEMNITY. Buyer shall defend, indemnify and hold Seller, its officers, directors, agents, and employees harmless from and against all claims, demands, actions and causes of action, losses, costs, damages, and liabilities ("Claims") incurred by Seller in connection with the transportation, storage, sale or use of the Product by Buyer, or other acts of Buyer giving rise to third party claims against Seller, including attorney's fees and out of pocket costs. Seller agrees to defend, indemnify and hold Buyer, its officers, directors, agents, and employees harmless from and against Claims to the extent of Seller's negligence.

12. CLAIMS.

(a) Shortages; Damaged and Defective Product: Buyer shall be deemed to have inspected the Product upon receipt. Any claim for shortage or non-conforming Products must be made in writing to Seller within 10 days after Buyer's receipt of the Product. Any claim for non-delivery of Product must be made within 10 days after the date upon which the Product was to be delivered. All claims must state with particularity the shortage, defect, or damage complained of.

(b) Latent Defects: As to any claim not reasonably discoverable within such 10 day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim must be in writing and received by Seller within 180 days after Buyer's receipt of the Product. Buyer shall only be able to make claims with regard to latent defects in Product if such latent defects existed at the time of delivery to Buyer. No claim may be made, and Seller shall have no liability, for any latent defect where the subject Product has been improperly handled or stored, or otherwise abused, after delivery to Buyer unless Buyer can show that such improper handling or storage or other abuse would not have affected the Product or otherwise impaired the usefulness thereof. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim.

(c) Disputes concerning failure to meet specifications: In case of a dispute as to whether Product meets contract specifications, Seller and Buyer shall designate a mutually acceptable independent testing company and/or surveyor to make an examination and in such case said testing company's and/or surveyor's findings shall be conclusive and binding on both parties (the expense of which examination shall be borne by Seller with respect to each item found not to conform to specification and by Buyer with respect to each item found to conform to specifications).

(d) Returns: Products may not be returned without Seller's permission and transportation for return will not be paid by Seller unless authorized in advance. Amounts owing to or payable by either party hereunder these Terms and Conditions shall be deemed finally reconciled on the first anniversary of the final delivery under these Terms and Conditions and any outstanding rights of either party to receive overpayments or under payments including rights to unclaimed credits or refunds shall expire on such date.

(e) Seller's Obligations: In the event that a timely and bona fide claim under this contract is made with respect to a shortage or defective or damaged Product, Seller's sole responsibility shall be, at Seller's option, to furnish the missing or replace the defective or damaged Product or to give Buyer an allowance therefor and Buyer's obligation to accept and make payment on time for the balance of the Product delivered or to be delivered under the contract shall not be affected thereby.

13. FORCE MAJEURE. Seller is not liable for nonperformance or delay in performance caused by circumstances beyond the control of Seller's ("Force Majeure Event"). A Force Majeure Event includes, without limitation, (a) acts of God, war, riots, fire, explosions, floods, strikes, lockouts, injunctions, accidents, Product shortage, unforeseen shutdown of major sources of supply, breakage of machinery or apparatus, or national emergency, (b) Seller's inability to obtain Product, fuel, power, raw materials, labor, containers or transportation at prices Seller deems in its discretion to be commercially reasonable, (c) the occurrence of any unforeseeable contingency making performance impracticable, or (d) or for any reason beyond the control of Seller or of Seller's supplier, whether similar or dissimilar to any of the foregoing. Any delivery so suspended shall be cancelled without liability, but these Terms and Conditions shall otherwise remain unaffected. A Force Majeure Event shall not apply to payment obligations.

14. QUANTITY. Unless otherwise specified, Seller shall have the right to make partial shipments. Each partial shipment shall be deemed a separate sale, and payment shall become due therefor in accordance with the terms of payment contained in this Agreement. When in the opinion of Seller there is a period of shortage of supply of said products for any reason, Seller may allocate its available supply among any or all of its various customers upon such basis as it shall deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified.

15. PRODUCT STEWARDSHIP. Buyer agrees that Product will be used, handled, stored, transported, and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. Buyer agrees to instruct its employees with respect to, and to make certain that they know and understand; procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation, and disposition of the Products. Buyer further agrees to deliver the most recent edition of Product literature, including MSDSs, to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who can handle, use, store, transport, and dispose of Products safely.

16. SUSPENSION OF FUTURE SHIPMENTS – CHANGE OF CREDIT TERMS. Buyer hereby represents that it is solvent and Buyer's signing of any delivery receipt (however denominated) furnished by Buyer to the delivering carrier shall constitute a further representation of solvency at the time of signing such receipt. Should Buyer fail to make payment when due under any contract between Buyer and Seller, Seller shall have the right to withhold shipment of any portion of the Product covered by this Agreement or by any other existing contract between Seller and Buyer. Said action on the part of Seller shall not release Buyer from its obligation to accept and pay for such remaining portion of Product if and when shipped by Seller or otherwise release Buyer of any of its obligations under this or any such other contract. If at any time there is a change in the financial condition or structure of Buyer, arising from a change in business or market conditions or otherwise, or arising from a merger, reorganization or other change in business form or if Buyer becomes insolvent, makes an assignment for the benefit of its creditors or ceases to be a going concern, or if a petition in bankruptcy with respect to Buyer is filed, or if any lien arising from judicial process or otherwise is placed upon or any receiver or trustee is appointed with respect to any material asset of Buyer, then Seller, in addition to any and all other rights and remedies, shall have the right to cancel the contract without liability on its part or to change the credit terms of the contract, including but not limited to requiring the payment of cash in advance of delivery.

17. LAW AND JURISDICTION. The contract is to be governed by and interpreted in accordance with the substantive law of the State of Ohio. Buyer and Seller agree that any legal suit, action, or proceeding to collect payment due hereunder from Buyer or otherwise arising out of or relating to this Agreement may (and, if against Seller, must) be instituted in a State or Federal Court in the City of Cleveland, County of Cuyahoga, and State of Ohio, and Buyer waives any objection which it may have now or hereafter to the venue of any such suit, action or proceeding and hereby irrevocably submits to the jurisdiction of any such court in any such suit, action or proceeding.

18. LIMITATION ON ACTIONS. No claim or cause of action, other than a claim for payment of the Product price, arising under the contract may be asserted more than one year after the date on which such claim or cause of action arises.

19. SEVERABILITY. In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability.

20. BINDING EFFECT; ASSIGNMENT. This Agreement shall be binding upon inure to the benefit of the parties hereto and their respective successors and permitted assigns. Buyer may not assign any rights or claims, or delegate any duties under this Agreement, in whole or in part, without the prior written consent of Seller, which may be withheld at Seller's sole discretion.