

CE Minerals Standard Terms and Conditions of Sale

1. **Pricing, Product, Term and Quantities of Purchase.** The products to be purchased hereunder (the Products), along with the pricing for the Products, the term of this Agreement, and the quantities of Product to be purchased are set forth in the order confirmation, order acceptance or pricing letter to which this schedule is attached.

2. **Shipping and Packaging.** (a) The price for each Product as set forth in the Agreement is either delivered or Ex Works Incoterms[®]2010 (EXW) Seller's plant. If pricing is EXW Seller's plant, then Buyer is responsible for all shipping, delivery, and insurance after delivery at Buyer's plant, either to Buyer or to a common carrier, and title and risk of loss for all Product shipped pursuant to this Agreement shall pass to Buyer upon delivery to Buyer's carrier or common carrier, as the case may be, unless otherwise agreed by the parties hereto in writing. If pricing is delivered, then Seller is responsible for all shipping, delivery, and insurance to the delivery point, and title shall pass to Buyer upon delivery to Buyer's delivery point.

(b) Buyer shall not sell, ship, import, export, re-export or allow trans-shipment of any of the Product in any manner contrary to any applicable export laws, including, without limitation, to any prohibited individual, firm, or entity appearing in Denied Party Lists or any other substantively similar publication published by the U.S. government, such as, without limitation, the list of Specially Designated Nationals published by the U.S. Department of Treasury OFAC, or to any country subject to economic or trade sanctions imposed by the U.S., except as otherwise authorized by U.S. law. Buyer shall also comply with applicable laws and regulations of any destination country. Buyer shall indemnify, defend and hold harmless Seller from and against any breach by Buyer of its obligations under this Section.

(c) Buyer agrees to unload and return to Seller all railcars containing Seller's Product within sixty (60) days after such railcars arrive at Buyer's Facility. If Buyer fails to do so, Buyer will be obligated to reimburse Seller for the railcar rent paid by Seller for each day beyond the sixtieth (60th) days that each railcar is not returned to Seller.

(d) Buyer shall not sell or reuse or allow its employees to reuse any Product packaging provided by Seller.

3. **Ordering.** Buyer shall place orders for Product and shall furnish complete shipping instructions as set forth in the Agreement. Buyer shall use reasonable commercial efforts to order its annual requirements of Product in approximately equal monthly quantities. Buyer acknowledges and agrees that any delivery dates are approximate and are predicated upon the prompt receipt by Seller of all necessary information and documentation from Buyer. The use of any purchase orders or other documents provided by Buyer, whether to commence an order, to confirm a purchase order, or otherwise, shall not modify or supplement this Agreement in any respect; and the terms and conditions of this Agreement will control and govern, notwithstanding any conflicting or additional provisions in any such purchase orders or documents, provided that the standard terms of Seller's shipping invoice shall be deemed to supplement this Agreement.

4. **Product Quality and Specifications.** All Product will comply with the specifications provided to Buyer and incorporated by reference herein. (Specifications). At the time the Product is loaded or packaged by Seller, whichever is earlier, Seller, at its expense, shall sample the Product in accordance with normal sampling procedures. The results of sampling and analysis by Seller shall be final and conclusive for all purposes. In the event the delivered Product does not comply with the Specifications, Buyer shall contact Seller and afford Seller the opportunity to inspect and sample the Product as issue. If Seller agrees that the Product at issue does not comply with the Specifications, Seller may, in its sole discretion and as Buyer's sole, complete, and exclusive remedy for such nonconformance and any claims arising therefrom, either: (a) provide Buyer with instructions as to where to send the nonconforming Product, at Seller's expense, and promptly send Buyer the same quantity of replacement Product that conforms to the Specifications; or (b) issue Buyer a credit for the full price of the nonconforming Product, including freight charges, if paid by Buyer. Any claim by Buyer that the delivered Product does not conform to Specifications shall be made not later than thirty (30) days after receipt by Buyer of nonconforming Product.

5. **Errors.** Weights, tare, and tests fixed by Seller's shipping invoice shall be conclusive and binding upon the parties hereto as to all Product shipped pursuant to this Agreement. In the event of errors in weight, deviation of quality from specifications, or loss or damage to materials, claims against Seller are waived by Buyer unless made in writing within thirty (30) days after arrival of shipment at destination.

6. Limited Warranty, Damages and Remedy.

(a) Seller represents and warrants to Buyer that all Product conforms, as of delivery via EXW Incoterms[®]2010 at Seller's plant, in all material respects to the Specifications and that Seller will convey to Buyer title to all Product purchased and sold hereunder free and clear of all liens, claims, and encumbrances except claims for the purchase price thereof in favor of Seller and any security interest therein in favor of Seller created to secure payment and performance by Buyer of its obligations hereunder. Buyer is solely responsible for ensuring that all Product and packaging materials used in connection with the Product, including without limitation, bags and pallets (collectively, the Packaging Materials), are transported, handled, stored, installed, and used in a proper manner following delivery via EXW Incoterms[®]2010 at Seller's plant, or, if pricing is delivered, to Buyer's delivery point. Seller assumes no liability or obligation for any technical advice provided by Seller with respect to any Product or Packaging Materials or for the results of the application of such advice or Product or Packaging Materials.

(b) THE FOREGOING WARRANTY IS EXCLUSIVE AND SELLER MAKES NO OTHER WRITTEN, ORAL, EXPRESS, OR IMPLIED WARRANTIES. SELLER SPECIFICALLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND AGAINST INFRINGEMENT. BUYER'S REMEDIES FOR BREACH OF ANY WARRANTY SHALL BE LIMITED TO THOSE REMEDIES DESCRIBED HEREIN.

(c) SELLER SHALL NOT BE LIABLE FOR, AND BUYER HEREBY EXPRESSLY WAIVES ALL CLAIMS FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS AND/OR LOST PRODUCTION, WHETHER ARISING UNDER BREACH OF WARRANTY OR CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER TORT, INDEMNITY, OR ANY OTHER THEORY OF LIABILITY. IN ANY EVENT, BUYER ACKNOWLEDGES AND AGREES THAT SELLER'S LIABILITY FOR ANY AND ALL CLAIMS, DAMAGES AND CAUSES OF ACTION ARISING OUT OF THE SALE, USE, STORAGE, DELIVERY OR NON-DELIVERY OF ANY PRODUCT, PERFORMANCE OF ANY SERVICES, OR CURE OF ANY WARRANTY SHALL BE LIMITED TO THE PRICE (INCLUDING THIRD PARTY FREIGHT CHARGES IF PAID BY BUYER) PAID TO SELLER FOR SUCH PRODUCT. BUYER SHALL INDEMNIFY AND DEFEND SELLER AND HOLD SELLER HARMLESS FROM AND AGAINST ANY AND ALL LOSS, LIABILITY, DAMAGE, CLAIM, OR EXPENSE WHATSOEVER (INCLUDING BUT NOT LIMITED TO, ATTORNEYS' FEES AND DISBURSEMENTS) ARISING OUT OF OR RELATED TO (i) ANY BREACH BY BUYER OF ANY PROVISION OF THIS AGREEMENT, OR (ii) ANY CLAIMS BY THIRD PARTIES RELATED TO THE TRANSPORTATION, HANDLING, INSTALLATION, PURCHASE, RESALE, USE OR DISPOSITION OF ANY OF THE PRODUCT OR PACKAGING MATERIALS FOLLOWING DELIVERY VIA INCOTERMS[®]2010 AT THE SELLER'S PLANT

7. **Taxes.** All sales or use taxes, excise taxes or other taxes, transfer fees, or similar charges required to be paid in connection with the transportation, delivery or sale of any Product sold hereunder pursuant to any federal, state, or municipal law or regulation now existing or hereafter enacted shall be added to the prices herein specified and shall be paid by the Buyer.

8. Payment Terms.

(a) Payment for all Product shall be made at the address designated in the invoice, in lawful money of the United States, without deduction or setoff. Payment is due net thirty (30) days from date of the invoice (the Payment Due Date).

(b) Any amount that is not paid in full by the Payment Due Date shall be subject to a late payment charge equal to the lesser of two percent (2%) per calendar month (or any portion thereof) or the maximum interest rate permitted by applicable law from the Payment Due Date until paid. In the event that the payments required herein must be collected by or through an attorney at law or through a collection agency, or in the event a bankruptcy proceeding is filed by or against Buyer, Buyer shall pay said reasonable fees and costs associated with such collection efforts, including reasonable attorneys fees and disbursements, together with all attorneys fees and disbursements incurred by Seller in connection with any matter arising in such bankruptcy proceeding. Including without limitation, any matter relating to the assumption, assignment, or rejection of this Agreement, relief from the automatic stay and/or adequate protection with respect to this Agreement, and/or any Chapter 11 plan in such proceeding and/or filing a proof of claim.

(c) Seller may decline to make deliveries except for cash whenever Buyer is in default under this Agreement or, in Seller's good faith opinion, the financial ability of Buyer to promptly pay the purchase price for Product is impaired or in doubt.

9. **Termination.** Either party may terminate this Agreement by written notice to the other upon the occurrence of any of the following events: (a) breach by the other party of any obligations under this Agreement (including the Buyer's failure to pay any portion of the purchase price for any Product by the Payment Due Date) and failure to cure such breach within thirty (30) days following written notice to the party in breach; provided however, that in the case of a failure to pay any portion of the purchase price for any Product by the Payment Due Date, the cure period will be ten (10) days from the Payment Due Date and no notice shall be required hereunder; or (b) the continuation of a delay of the type specified in Section 17 hereof for more than ninety (90) days; or (c) immediately upon the commencement of bankruptcy or insolvency proceedings by the other party, or the appointment of a receiver, trustee, or custodian for the assets of the other party; or (d) three (3) late payments in any rolling six (6)-month period, notwithstanding any timely cure of such breach of payment obligations. Termination of this Agreement shall not affect the obligation of the Buyer to pay for Product shipped prior to termination. Notwithstanding anything to the contrary, Seller may terminate this Agreement upon sixty (60) days notice to Buyer in the event it determines, in its reasonable business discretion: (a) to close the plant that produces the Product(s) supplied to Buyer hereunder; or (b) to discontinue the production of any of the Products. In the event that Seller elects to terminate this Agreement as set forth in the immediately preceding sentence, should Seller discontinue the production of less than all the Products sold to Buyer hereunder, then this Agreement will

terminate only as to the discontinued Product(s), and shall continue in full force and effect as to the Product(s) that are not discontinued by Seller.

10. **Return Policy.** In the event that Seller delivers Product that complies with Buyer's specifications, and Buyer nevertheless returns such Product, then, in addition to the purchase price therefore, Buyer shall pay the freight charge to return said delivery to Seller and shall also pay Seller a re-stocking fee of twenty percent (20%) of the invoice price of said Product.

11. **Confidentiality.** The parties agree that the terms and conditions of this Agreement are to remain confidential during the term of this Agreement and for three years thereafter. The Buyer shall not discuss or disclose any of the contents of this Agreement during this period of confidentiality without prior written consent of Seller (except to the extent applicable law or enforcement of its terms requires public disclosure). Notwithstanding the foregoing, Seller has the right to disclose the terms and conditions of this Agreement, without consent from or notice to Buyer, to any potential purchaser of the plant(s) that produce(s) the Product, or all of the Seller's assets or stock.

12. **Applicable Law.** The validity, construction, and performance of this Agreement shall be governed by and interpreted in accordance with the laws of the State of Georgia.

13. **Effects of Headings.** Headings to articles and paragraphs of this Agreement are to facilitate reference only, do not form a part of this Agreement, and shall not in any way affect the interpretation hereof.

14. **Assignment.** Neither this Agreement nor the rights nor obligations hereunder shall be assigned or delegated, in whole or in part, by Buyer or Seller to any third party without the prior written consent thereto by the other party. Notwithstanding the foregoing, either party may assign this Agreement to (i) a wholly owned affiliate of the party, by providing notice to the other party of its intent to assign to a wholly owned affiliate; or (ii) an entity that acquires all or substantially all of the assets of the plant(s) that produce(s) the Product, by providing notice to the other party of its intent to assign, except in connection with any bankruptcy proceeding involving Buyer. Notwithstanding anything to the contrary contained in this Agreement, no assignment by Buyer of any of its rights hereunder shall operate to materially increase the obligations of Seller hereunder.

15. **Insurance.** Both parties shall at all material times maintain adequate insurance for the operations of their respective businesses under a comprehensive liability insurance policy against claims for bodily and personal injury, death, and property damage caused by or occurring in conjunction with the operation of each party's respective business.

16. **Notices.** Except as otherwise provided in this Agreement, all notices required or permitted to be given hereunder shall be in writing and shall be sent by certified mail, postage prepaid, return receipt requested, or by reputable overnight courier against shipment receipt, in each case addressed to the address in the first paragraph of the Agreement. Either party hereto may change its address by providing notice of such address change to the other party at the address set forth in the Agreement. Notices given as herein provided shall be considered to have been received five (5) days after mailing thereof, if mailed by certified mail, postage prepaid, return receipt requested; or on the next business day if sent by reputable overnight by courier against shipment receipt.

17. **Force Majeure.** Each party shall be relieved of performance of its obligations under this Agreement when prevented by any events (other than financial or economic incapacity), such as acts of God, acts of a public enemy, insurrections, riots, strikes, labor disputes, work stoppages, fires, explosions, floods, electric power failure, shortage of raw materials, parts, or equipment necessary to make or transport the Product, breakdown of or damage to or contamination of plants, mines, quarries, equipment, or facilities, interruptions in or exigencies of transportation, embargoes, orders, actions or non-actions of civil or military authorities, or governmental requirements or restrictions, that prevent, in whole or in part, either party from performing its obligations under this Agreement, and Seller shall be relieved of performance of its obligations hereunder if it is unable to obtain raw materials or energy on terms Seller considers practicable (each such event is a Force Majeure event). The party suffering such Force Majeure event shall invoke this provision by promptly notifying the other party of the nature and estimated duration of the suspension period. Any deficiencies in deliveries or receipts as a result of a Force Majeure event shall not be made up except by mutual consent of the parties hereto and except to the extent that the Term or any Renewal Term is extended as a result of a Force Majeure event. Notwithstanding the foregoing, Buyer shall in any event be liable to Seller for the invoice price of all Product shipped by Seller.

18. **Severability.** Any provision of this Agreement that is prohibited, unenforceable, or declared or found to be illegal, unenforceable, or void in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remainder of such provision or the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

19. **Waiver.** The failure of either party to enforce, in any one or more instances, performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver or a relinquishment of any right or claim granted or arising hereunder or of the future performance of any such term, covenant, or condition, and such failure shall in no way affect the validity of this Agreement or the rights and obligations of the parties hereto. The parties acknowledge that a waiver of any term or provision hereof may only be given by a written instrument executed by each party hereto.

20. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument, notwithstanding that all parties are not signatories to each counterpart.

21. **Amendments.** This Agreement may not be modified, amended, or supplemented except by an agreement in writing signed by all of the parties hereto.

22. **Dispute Resolution Required.** The parties agree to use their respective reasonable commercial efforts in good faith to resolve any disputes arising out of or related to this Agreement. To the extent that the dispute in question cannot be resolved through such normal business practices, it shall be settled by binding arbitration before a single arbitrator (who is familiar with Seller's Industry) in Atlanta, Georgia in accordance with the rules of the American Arbitration Association. In connection with such arbitration:

(a) The parties consent to the federal and state courts located in Fulton County, Georgia, for all purposes in connection with arbitration, including the entry of judgment on any award, and consent that any process, notice of motion or other application to either of said courts, and any papers in connection with arbitration, may be served by registered or certified mail, return receipt requested, by personal service, or in such other manner as may be permissible under the rules of the applicable court or arbitration tribunal, provided a reasonable time for appearance is allowed.

(b) The arbitrator shall have no power to alter or modify any express provision of this Agreement or to render an award that has the effect of altering or modifying any express provision hereof, provided however, that any application for reformation of this Agreement shall be made to the arbitrator and not to any court, and the arbitrator shall be empowered to determine whether valid grounds for reformation exist.

(c) Arbitration proceedings must be instituted by any party hereto within one year after the claimed breach occurred, and such party's failure to institute arbitration proceedings within such period shall constitute an absolute bar to the institution of any proceedings by such party and a waiver of such claimed breach.

(d) The costs of arbitration, including the fees and expenses of the arbitrator, shall be shared equally by the parties. Each party shall bear the cost of preparing and presenting its case. The parties agree that this provision and the arbitrator's authority to grant relief shall be subject to the United States Arbitration Act, 9 U.S.C. 1-16 et seq. (USAA), the provisions of this Agreement and the ABA-AAA Code of Ethics for Arbitrators in Commercial Disputes. In no event shall the arbitrator have the authority to make any award that provides for punitive or exemplary damages. The award may be confirmed and enforced in any court of competent jurisdiction. All post-award proceedings shall be governed by the USAA.

23. **Third Parties.** Except as expressly provided herein, nothing herein expressed or implied is intended or shall be construed to confer upon or give to any person, entity, or enterprise, other than the parties hereto and their permitted successors or assigns, any rights, benefits or remedies of any kind or character whatsoever under or by reason of this Agreement.

24. **Press Releases.** The Buyer shall not make any public announcement or press release concerning this Agreement without the prior written consent of Seller.

25. **Entire Agreement.** The Agreement, together with all schedules, including this one, and any other exhibits attached hereto and expressly made a part of this Agreement, constitutes the entire agreement between the parties hereto, and supersedes all prior proposals, negotiations, understandings and agreements, whether oral or written.

26. **Compliance with Laws.** Each party represents and warrants that it will comply with all applicable federal, state, and local laws, ordinances, and regulations in performing under this Agreement, Buyer does not require Seller to meet U.S. federal government contracting guidelines.