



# General Terms and Conditions of Sale

## 1 Defined Terms

In these terms and conditions of sale:

**“Advice”** means any advice, opinion, assistance, representation or statement of any sort whatsoever, whether written or oral, technical or otherwise, pertaining to or concerning Product including, without limitation, its use, specifications, merchantability, fitness for any particular purpose, description, compatibility, durability, quality, suitability or condition. “Advice” also includes any of the foregoing whether provided by RUETGERS Canada Inc. before, during or after a Transaction involving the Customer or Third Party;

**“Customer”** means any legal entity, person, corporation, partnership or trust that is involved in a Transaction with RUETGERS Canada Inc. or who acquires, possess or obtains by any means, directly or indirectly, Product or Advice from RUETGERS Canada Inc.;

**“Force Majeure”** means a disabling cause or event which is not within the control of RUETGERS Canada Inc. which results in RUETGERS Canada Inc. being unable either wholly or in part, to perform its obligations under these Terms including acts of God, war or warlike operations, terrorism or acts of terrorism, acts of domestic or foreign governments or their agents or instrumentalities, court orders or decrees, the enactment, amendment or change of laws, regulations or government policies, or by any government and administrative actions, regulations, court orders or decrees, regulatory orders or rulings, sabotage, riot, fire, lightning, flood, storm, tornado, earthquake or other natural calamity, strike or lockout, explosion or other catastrophe, epidemic or quarantine, catastrophic accident, freight embargo, power or other utility failure, communication line failure, inability to secure railcars, trucks, barges or other materials, delays in transportation, delay occasioned by carriers, suppliers or other persons providing goods or services under contract, or an inability to obtain power, fuel or raw materials or major plant breakdown or any other events or conditions beyond the reasonable control of RUETGERS Canada Inc., whether similar or dissimilar to the abovementioned acts or occurrences;

**“Notice”** means when this document is mailed to, e-mailed to, faxed to or is otherwise provided to the Customer or a Third Party by any other means whatsoever. In the case of a Third Party, notice is provided by notifying such Third Party of the website of RUETGERS Canada Inc. containing these Terms. Such notice is provided to a Third Party by placing the website address of RUETGERS Canada Inc. on the packaging of the Product and by indicating that these Terms may be found on the website. Where the Product does not have packaging, notice can be provided by notifying the Third Party by any other means that these Terms are on the website of RUETGERS Canada Inc.;

**“Product”** means all goods now or in the future manufactured by or distributed by RUETGERS Canada Inc. and includes personal property of any kind and any services provided by or on behalf of RUETGERS Canada Inc. in connection with such goods or property;

**“Terms”** means these terms and conditions of sale;

**“Third Party”** means any legal entity, person, corporation, partnership or trust who acquires, possesses or obtains by any means, directly or indirectly, Product or Advice from RUETGERS Canada Inc. and includes handlers of the Product;

**“Third Party Transactions”** means any transfer of Product by any means, including through the marketplace, wherein a Third Party acquires title in, possession of, or the use of any Product whether in its original form or in modified form, including as a component;

**“Transaction”** means any transfer of Product to the Customer and includes any sale, barter, gift, trade, exchange or transfer of title to or transfer of possession of any Product, whether the Product is in its original form or in a modified form, including as a component.

## 2 Applicability

The Terms apply to all Transactions (including Third Party Transactions) involving or pertaining to Product of RUETGERS Canada Inc. and such Terms govern the grounds upon which RUETGERS Canada Inc. places Product into the marketplace.

## 3 Entire Agreement

In the case of any Transaction, the Terms contain the full understanding, agreement and undertaking of RUETGERS Canada Inc. The Terms supersede all other agreements, understandings or undertakings, written

or oral, regarding the subject matter hereof including, without limitation, the terms of the Customer's order or purchase order. For greater certainty, there are no terms, conditions, covenants, warranties, representations (innocent, negligent or otherwise), Advice, understandings, discussions, duties, duties to warn, negotiations, collateral agreements, promises, trade customs, usage or dealings affecting or pertaining to the understanding, agreement or undertaking of RUETGERS Canada Inc. other than as contained in the Terms. The Customer acknowledges that it is not relying on any terms, conditions, covenants, warranties, representations (innocent, negligent or otherwise), advice, understandings, promises, discussions, negotiations, collateral agreements, promises or trade customs, usage or dealings other than as contained in these Terms.

#### **4 No Subsequent Agreements**

The Terms set out exclusively and completely the grounds upon which RUETGERS Canada Inc. is prepared to enter into Transactions or provide Advice. Except as otherwise provided by written agreement accepted by RUETGERS Canada Inc. (which agreement may only be signed by the president or senior officer on behalf of RUETGERS Canada Inc.), the Terms exclusively and completely govern the Transaction and Advice and no subsequent dealings of any sort including, without limitation, any Advice or any orders or purchase orders from the customer or any other terms or conditions subsequently received from the customer, affect, alter, modify or amend the Terms herein or are binding upon RUETGERS Canada Inc.

#### **5 Acceptance of Product**

Acceptance or receipt of possession of the Product by the Customer or anyone on the Customer's behalf including any agent of the Customer or any carrier transporting Product to the Customer shall conclusively constitute acceptance of these Terms. In the case of Customers who receive Notice of these Terms, such Terms are deemed to be accepted by such Customer in respect of that Transaction and any subsequent Transaction with RUETGERS Canada Inc. Customer's purchase orders only become binding on RUETGERS Canada Inc. after written confirmation of acceptance by RUETGERS Canada Inc. on these Terms. Samples of Product given to or examined by Customer are only an approximate indication of the typical characteristics of the Product.

#### **6 Returns**

The Customer who accepts these Terms may return to RUETGERS Canada Inc. any Product by providing written notice to RUETGERS Canada Inc. within 10 days of receipt of the Product and, in addition, by providing the original receipt for the Transaction. Any claim with respect to the Product including, without limitation, claims for shortage of Product, will be deemed waived if RUETGERS Canada Inc. is not notified in writing within 10 days of acceptance or receipt of the Product by the Customer (or anyone on the Customer's behalf including any agent of the Customer or any carrier transporting Product to a Customer). **The Customer's exclusive rights and remedies with respect to Product which is being returned hereunder and for which proper notice has been given are set forth in Section 15.**

#### **7 Risk of Loss**

Title to and all risk of loss (including injury or damages to the Product or to any other person or property) passes to the Customer upon receipt of possession of the Product by the Customer or anyone on the Customer's behalf including any agent of the Customer or any carrier transporting Product to the Customer. This Section also applies to partial shipments to the extent that there has been receipt or possession of part of the shipment by the Customer or anyone on the Customer's behalf including any agent of the Customer or any carrier transporting Product to the Customer.

#### **8 Weight and Shipment**

Unless the Customer provides transportation or indicates shipping instructions when placing its order, RUETGERS Canada Inc. shall, without liability, select the route and carrier by which shipment will be forwarded. Except as otherwise agreed in writing by the president or senior officer on behalf of RUETGERS Canada Inc., transactions are F.O.B. point of shipment. Weight of product, as determined by RUETGERS Canada Inc.'s scale and methods of measurement, shall conclusively govern. All costs, expense, taxes, levies and tolls of or concerning shipment shall be borne by the Customer including, without limitation, freight expense, standby or detention charges, unload charges, fleeting, local switching, demurrage, car service or destination, terminal and cleaning charges.

#### **9 Terms of Payment**

Credit Transactions are subject to written approval by the president or a senior officer of RUETGERS Canada Inc. In all credit Transactions, invoices will be due at the gross amount (all costs, expenses, taxes, levies and tolls of any other sort whatsoever to be paid by the Customer) and are payable not later than 15 days following delivery to or acceptance of receipt of Product by the Customer or any agent of the Customer or any carrier transporting Product to the Customer, whichever is earlier, and regardless of the actual date of invoicing or any course of conduct. The covenant, obligation and liability of the Customer to pay RUETGERS Canada Inc. is independent of all other provisions in these Terms and of any other covenants, obligations or liabilities, if any, of RUETGERS Canada Inc. to the Customer. Payments to RUETGERS Canada Inc. of the invoiced amount or any balance thereof (plus interest and costs as set out in Section 10) are due without set-off (whether legal, equitable or statutory), abatement or deduction for any reason whatsoever. The Customer will not seek a stay of any claim, judgment, order or award for payment to RUETGERS Canada Inc. for any reason whatsoever including, without

limitation, pending the disposition of any claim, claim over or counterclaim by the Customer against RUETGERS Canada Inc., or any other dispute.

**10 Interest and Costs**

Any amount unpaid when due (as set out in Section 9) will bear interest from the day immediately after the due date at the rate of 1% per month (12% per annum), both before and after judgment, such amounts to be paid regardless of any practice to the contrary. In addition to interest, the Customer will be liable to fully indemnify RUETGERS Canada Inc. (by way of a debt or damages claim by RUETGERS Canada Inc.) for all legal costs and disbursements (and G.S.T. on both) incurred by RUETGERS Canada Inc. in enforcing these Terms, both before and after judgment (including on steps to execute on any award, order or judgment).

**11 Additional Terms of Payment**

If at any time the financial ability of the Customer becomes impaired or unsatisfactory, in the sole and unfettered discretion of RUETGERS Canada Inc., then RUETGERS Canada Inc. may require cash payment or satisfactory security in advance of shipment to or delivery to the Customer. RUETGERS Canada Inc. may, without liability, withhold shipments or may stop shipments in transit, notwithstanding any agreements, statements, discussions or undertakings, promises or representations of any sort whatsoever to the contrary (whether such are before the Transaction, contemporaneous with the Transaction or subsequent to the Transaction), until cash or security satisfactory to RUETGERS Canada Inc. is received or in place.

**12. Special Orders**

The Terms herein govern special orders unless otherwise agreed to in writing by the president or senior officer of RUETGERS Canada Inc.

**13 Security Interest**

Notwithstanding anything herein, RUETGERS Canada Inc. shall have a security interest in and a vendor's lien over any Product transferred to the Customer under a Transaction until payment of all obligations and/or liability of the Customer to RUETGERS Canada Inc. have been paid in full. RUETGERS Canada Inc. may, as attorney for the Customer, execute any and all documentation necessary to perfect any security interest (or its equivalent), and RUETGERS Canada Inc. may register such documentation.

**14 Limited Warranty**

- (a) [The Product shall materially conform (for the respective types) in quality to one of the present specification of: (i) the ASTM or (ii) the Canadian Standards Association. Products shall contain the ingredients in the respective percentages set forth in the then current material safety data sheet for such Product (available upon request from RUETGERS Canada Inc.).]
- (b) Except as set out in this Section 14, there are no representations, warranties or conditions whether express, implied, statutory or otherwise, in law or in equity, pertaining to the Product including, without limitation, its use, specifications, merchantability, fitness for any particular purpose, description, compatibility, durability, quality, suitability or condition, whether or not arising from a course of dealing or usage or trade.
- (c) RUETGERS Canada Inc. and the Customer agree to exclude the application of the United Nations Convention on Contracts for the International Sale of Goods or any other international convention governing international sales of goods. Accordingly, the Terms shall not be subject to the United Nations Convention on Contracts for the International Sale of Goods or any other international convention governing international sales of goods, but rather the applicable law governing the Terms shall be determined by the provisions of Section 23 herein.

**15 Limitations of Remedies**

- (a) The sole and exclusive remedy of the Customer against RUETGERS Canada Inc. is governed by this Section 15. This Section 15 applies whether such remedy is in contract, tort, equity (including extraordinary relief) or is statutory, and regardless of whether such remedy relates to or arises out of or is connected with or results from the use or misuse of a Product or any Advice, and regardless of whether the claim is based on the Terms or on any other grounds including any alleged term, condition, covenant, warranty, representation (whether innocent, negligent or otherwise), understanding, discussion, duty, duty to warn, negotiation, collateral agreement or promise, or from a course of dealing or usage or trade.
- (b) The sole and exclusive remedy of the Customer is that RUETGERS Canada Inc. shall replace the Product with an equivalent amount of Product subject to the following. Such replacement Product shall be provided F.O.B. at a plant or terminal or facility of RUETGERS Canada Inc.'s choosing. The basis upon which such replacement Product is provided to the Customer shall also be subject to the Terms herein. At the sole option of RUETGERS Canada Inc., it may refund to the Customer the purchase price (or other consideration) provided for the Product.
- (c) No other remedy is available to the Customer including, but not limited to, direct, indirect, incidental, special or consequential damages, equitable relief (including extraordinary relief), lost profits, lost sales or revenues, punitive damages, injury to persons or property or any other losses, damages, expenses or outlays of any other sort whatsoever.

- (d) Without limiting the foregoing, it is acknowledged that RUETGERS Canada Inc. has no control over the use of the Product and does not guarantee finished work. RUETGERS Canada Inc. is not responsible for the Product including, without limitation, its condition after shipment to or delivery to the Customer or someone on the Customer's behalf including any agent of the Customer or any charter transporting product to the Customer.

**16 Advice**

From time to time RUETGERS Canada Inc. may provide Advice to the Customer (or to others including Third Parties) including, without limitation, with respect to the Product. Such Advice is provided as a matter of goodwill and is expressly not intended to be relied upon the Customer (or others including Third Parties). Such Advice is not intended to and does not create any legal obligations on RUETGERS Canada Inc., including any duty or duty to warn. Customers (and others including Third Parties) are hereby notified to retain their own expert advice. The Customer (or others including Third Parties) acknowledge and agree that any Advice provided by RUETGERS Canada Inc. is given and accepted solely on the basis that it is at the Customer's risk (or the risk of others including Third Parties) and the Advice does not create or contain any warranty, representation, condition or other legal, equitable or statutory obligation or liability and does not in any manner whatsoever affect, alter, modify or amend the limitations of liability herein. Any Advice provided by RUETGERS Canada Inc. to the Customer (or any other person including Third Parties) shall not be provided to any other persons without the express prior written consent of the president or senior vicepresident on behalf of RUETGERS Canada Inc.

**17 Hazards and Precautionary Procedures**

The Customer agrees that it will familiarise itself with all hazards and precautionary procedures with respect to the handling, transportation, use, specifications, merchantability, fitness for any particular purpose, description, compatibility, durability, quality, suitability or condition of the Product and will manage the Product accordingly.

**18 Notice to Others**

The Customer agrees that it will provide or make available to any Third Party the Terms herein and any other information (including safety information) provided by RUETGERS Canada Inc. to the Customer with respect to the Product. The Customer agrees to indemnify RUETGERS Canada Inc. for any and all claims or claims over made against RUETGERS Canada Inc. by any Third Party who acquires or uses the Product through the Customer. Such indemnity includes any damages, costs or expenses, including all legal fees and disbursements and sales taxes including G.S.T. or H.S.T. thereon, of RUETGERS Canada Inc. in defending or dealing with the claim or claim over. The Customer also agrees that RUETGERS Canada Inc. can claim on such indemnity from time-to-time while RUETGERS Canada Inc. is defending or dealing with the claim or claim over.

**19 Duties and Taxes**

All duties, taxes, tolls, levies of any governmental authority relating to or arising out of the Transaction (including delivery of the Product) are for the account of the Customer.

**20 Third Parties**

Third Parties are hereby notified that their rights, if any at all, against RUETGERS Canada Inc. (and its past, present and future officers, directors, employees and agents) are restricted by these Terms. In particular, the Terms herein apply with equal force to a Third Party and, for this purpose, wherever the word "Customer" appears it shall, vis-à-vis a Third Party, be deemed to refer to such Third Party, whether or not the provision itself refers to a Third Party. To the extent that any Third Party has a claim of any nature against RUETGERS Canada Inc., if any at all, such Third Party's remedies are limited to those in Section 15 upon proper compliance with Section 6 (which, for this purpose, is modified, as appropriate, to apply to Third Parties). Third Parties are notified that any duty of care or duty to warn owed by RUETGERS Canada Inc., if any at all, and foreseeability of loss or damage of any sort whatsoever, are circumscribed or eliminated by the Terms herein.

**21 Amendment**

The Terms herein may only be affected, altered, modified or amended by a written agreement signed by the Customer or a person on the Customer's behalf and by the president or senior officer on behalf of RUETGERS Canada Inc. No one other than the president or a senior officer of RUETGERS Canada Inc. has authority to affect, alter, modify or amend the Terms.

**22 Waiver**

No waiver of, acquiescence in, consent to or departure from the Terms shall be binding against RUETGERS Canada Inc., unless the same is agreed to in writing and signed by the president or senior officer on behalf of RUETGERS Canada Inc., and then such waiver, acquiescence, consent or departure shall be effective only in the specific instance and for the specific purpose for which it has been given. No failure on the part of RUETGERS Canada Inc. to exercise any right under these Terms, and no delay in exercising any right under these Terms, shall operate as a waiver of, acquiescence in, consent to or departure from such right. No single or partial exercise of any such right by RUETGERS Canada Inc. shall preclude any other or further exercise of such right or the exercise of any other right.

**23 Jurisdiction**

These Terms shall be governed by, interpreted and enforced in accordance with the laws in force in the jurisdiction in which RUETGERS Canada Inc.'s plant or terminal is located from which delivery or shipment is made and shall be treated in all respects as a contract governed by the laws of such jurisdiction. In all other instances, these Terms are governed by the laws of Ontario.

**24 Arbitration and Class Proceedings**

Save with respect to proceedings to enforce payment by RUETGERS Canada Inc. under Articles 9 and 10, which proceedings may be brought by RUETGERS Canada Inc. against the Customer in any court of competent jurisdiction, all other claims, counterclaims, claims over, disputes, differences or questions (hereinafter "Claims") arising between or among or involving RUETGERS Canada Inc. or the Customer or any Third Party shall be submitted to arbitration in the jurisdiction where RUETGERS Canada Inc.'s plant or terminal is located from which delivery or shipment of the Product is made and, in all other instances, in Ontario. Such arbitration is to be governed by the Arbitrations Act (or equivalent) in effect in such jurisdiction and the arbitrator will determine the procedure for the arbitration. The arbitrator's expenses are to be borne proportionately by RUETGERS Canada Inc. and the other parties to the arbitration, subject to any discretion and jurisdiction of the arbitrator to award costs (including lawyer's costs and disbursements) and expenses of the arbitration. The arbitration is a private arbitration. The result of the arbitration and evidence at the arbitration is to be kept confidential, save with respect to the enforcement of any award. In the event of any conflict between this arbitration provision and any statute pertaining to arbitration, the terms of this arbitration provision shall govern.

The Customer agrees and stipulates that it will not commence or participate in any class action either as a representative plaintiff or as a member of a plaintiff class. Further, the Customer will opt out of any class action, if the class involves, direct or indirectly, any Claims against RUETGERS Canada Inc. The Customer further agrees and stipulates that no joinder or consolidation of Claims with any other persons is permitted without the written consent of RUETGERS Canada Inc. which may be signed only by the president or senior vice-president on behalf of RUETGERS Canada Inc. and further, that the discretion of RUETGERS Canada Inc. to consent to a joinder or consolidation is unfettered.

In all events, RUETGERS Canada Inc., the Customer and the Third Parties irrevocably waive any and all rights they have or may have to a trial by jury.

**25 Force Majeure**

RUETGERS Canada Inc. shall not be liable for any expense, loss or damage resulting from any delays in manufacturing, shipping or delivering Product caused by a Force Majeure or by acts or omissions of the Customer.

**26 Successors and Assigns**

The Terms herein shall enure to the benefit of and be binding upon RUETGERS Canada Inc., the Customer, the Third Parties and their respective successors (including by way of amalgamation or statutory arrangement), assigns, and heirs, executors and administrators.

**27 Officers, Directors, etc.**

The Customer acknowledges and conclusively stipulates that all of its dealings with RUETGERS Canada Inc. including, without limitation, any Transaction and any Advice, are with RUETGERS Canada Inc. as a corporate entity. The Customer will not claim and waives all Claims against present, past and future officers, directors, employees, agents and shareholders of RUETGERS Canada Inc. The Customer further acknowledges and agrees that, should it pursue a Claim against such persons, RUETGERS Canada Inc. may rely on this Section to stay and/or dismiss such Claim, and the Customer consents to such relief. In this article, "Claim" has the same meaning as in Section 24.

**28 Termination**

If the Customer fails to comply with the Terms, RUETGERS Canada Inc. shall have the right, in addition to any other rights hereunder and/or at law or in equity, to terminate any unfilled or undelivered orders without any liability whatsoever.

**29 Assignability**

The rights of the Customer hereunder are not assignable

**30 Intellectual Property**

All intellectual property rights associated with the Product, the purchase and sale relationship and the Advice belong solely to RUETGERS Canada Inc.

**31 Headings**

Headings in these Terms are for convenience only and do not affect the interpretation of the Terms or the scope of the Terms.

**32 Execution**

These Terms herein are effective without any need for formal execution.

**33 Severability**

If any of these Terms is determined by a court of competent jurisdiction to be illegal or unenforceable in that jurisdiction, the remaining provisions of these Terms shall continue in full force and effect, without impairment by any such determination.