

**EP Minerals, LLC**

**TERMS AND CONDITIONS FOR SALE OF PRODUCTS**

These terms and conditions will apply to, and automatically become part of, all Purchase Orders (which term will include all purchase orders and all releases against blanket purchase orders) issued by you, as Buyer, and EP Minerals, LLC or its affiliates, as Seller, for goods or services of Seller and all Order Confirmations (which term will include bids, quotes, proposals, counter-offers, order acknowledgments and similar documents) of Seller issued to Buyer in connection therewith.

**1. OFFER; ACCEPTANCE:** A Purchase Order is an offer by Buyer to Seller to enter into a contract for the purchase of the goods or services described in such order ("Products"). Buyer represents and warrants to Seller that Buyer has the authority and legal right to enter into, and perform under, the Purchase Order without breaching or violating any fiduciary, contractual, statutory or other legal obligation. A Purchase Order will be deemed accepted by Seller and constitute a binding contract upon the earlier of (i) the date of Seller's signed acknowledgment of a Purchase Order or the date of issuance of an Order Confirmation, or (ii) the date Seller commences work under such Purchase Order, regardless of whether Seller ever signs or returns a copy of the Purchase Order or issues an Order Confirmation. Seller has no obligation to accept a Purchase Order or sell Product to Buyer prior to acceptance of a Purchase Order by Seller. These Terms and Conditions are for the sole benefit of Seller and Buyer and not for the benefit of any other person or entity, and nothing contained herein will be construed to create any rights, benefits, remedies, obligations or liabilities for or to any person or entity other than Seller and Buyer.

**2. PURCHASE ORDER CANCELLATION:** If Buyer cancels a Purchase Order after acceptance by Seller or Buyer requests a delay in the shipment of a Purchase Order by more than seven (7) days and said request is made within four (4) days of the scheduled shipment date for said Purchase Order, Buyer will be charged a restocking fee in an amount equal to 25% of the total Product purchase price of said Purchase Order; said restocking fee will be payable in full to Seller net thirty (30) days of the invoice date thereof. Notwithstanding the foregoing, no Purchase Order which requires either non-standard (including private label) Product packaging or non-standard (including customer specified) Product specifications may be cancelled within four (4) days of the scheduled shipment date of said Purchase Order nor may a delay in shipment be made within said four (4) day period.

**3. THESE TERMS & CONDITIONS GOVERN:** An Order Confirmation, including these Terms and Conditions, will be the complete and exclusive statement of the contract between Seller and Buyer for the purchase of Products and will constitute the entire agreement between the parties with respect to its subject matter, superseding all prior and contemporaneous agreements, representations and understandings of the parties with respect to its subject matter. **Seller expressly rejects any additional or inconsistent terms in any Purchase Offer, counter-offer or other document from Buyer. These Terms and Conditions will be the only terms and conditions applicable to the purchase of Products of Seller by Buyer** and may not be modified or changed without the prior written consent of Seller. Buyer's efforts to change these Terms and Conditions will constitute a material alteration and will not be binding on Seller. Unless Buyer provides Seller with written notice within five (5) business days of the date of an order placed by Buyer of its express rejection of these Terms and Conditions and does not purchase Product from Seller thereafter, then Buyer will be deemed to have accepted these Terms and Conditions in full and without modification. Notwithstanding the foregoing, any Purchase Order form used by Buyer in accordance with these Terms and Conditions will apply solely and exclusively as to the designation of Product type, quantity, specification, packaging, delivery date and shipping instructions and may be incorporated into these Terms and Conditions for those purposes alone. Seller's acceptance of a Purchase Order is expressly conditional on assent by Buyer to these Terms and Conditions. Buyer acknowledges and agrees that, in the event of a conflict between these Terms and Conditions and any terms of an applicable Purchase Order, counter-offer or other document from Buyer, these Terms and Conditions will govern and control.

**4. PAYMENT TERMS:** Seller will sell Products at the prices set forth upon the Order Confirmation or any applicable written proposal, quote or other agreement authorized and executed by Seller or Seller's then current product catalog, as the case may be. Buyer acknowledges that Seller may implement an energy and/or fuel surcharge as it deems necessary, however, any such energy and/or fuel surcharge will not be effective until Buyer is provided at least ten (10) days prior written notice thereof. Unless otherwise specified in writing, prices do not include federal, state or local sales, excise, use or other taxes now in effect or hereafter levied by reason of this sale. All such taxes will be paid by Buyer. Payment terms are net thirty (30) days from the date of delivery, subject to Buyer's satisfactory credit rating, and Seller will invoice Buyer for Products upon Products leaving Seller's warehouse (F.O.B. Origin). If payment is not received by the due date stated on the invoice, interest will accrue on the outstanding balance of the invoice at the rate of eighteen percent (18%) per year or the maximum permissible rate permitted by applicable law, whichever is lesser, until paid in full. Buyer will have no right of set-off against any amounts due and owing Seller in connection with the purchase of Products.

**5. QUANTITIES:** Seller's weights and quantity counts taken at the shipping point will govern and control. Buyer hereby waives any claims concerning weight or quantity excesses or shortages, unless Buyer notifies Seller in writing of any discrepancy within ten (10) days after the date of delivery.

**6. DELIVERY AND TITLE:** Seller and Buyer agree that any sales transaction will be deemed to have occurred in the state or location where the Products are manufactured or produced. Delivery of Products will be F.O.B. Origin and Buyer will arrange for and pay all shipping and transportation costs ("Freight"), unless otherwise agreed in writing by both parties. Freight will be added to the Product invoice as a separate line item and is payable by Buyer in accordance with paragraph 4 above. Title to and risk of loss or damage will pass to Buyer upon delivery of the Products to Buyer or a third party common carrier at point of origin, as the case may be. Seller will not be responsible for failure or delay in delivery of Product when such failure or delay is due to any cause beyond Seller's reasonable control (a "Force Majeure Event"), including, without limitation, acts of God,

actions by any government authority, governmental priorities, strike, work slowdown or other labor unrest, shortage of supplies or raw materials, fires, floods, windstorms, explosions, riots, natural disasters, terrorism, war or sabotage. Following the occurrence of a Force Majeure Event, Seller will have the right, by written notice to Buyer, to suspend or make changes in delivery schedules for the Products to be provided by Seller under a Purchase Order or Order Confirmation, without liability to Seller. If the suspension or any material change in delivery schedule lasts more than thirty (30) days, Seller may cancel the applicable Purchase Order or Order Confirmation without liability by written notice to Buyer.

**7. QUALITY CONTROL, INSPECTION, ACCEPTANCE OF PRODUCT:** Seller will manufacture or produce Product in accordance with its current published specifications unless otherwise agreed in writing by Seller and Buyer. Buyer will have an affirmative obligation to inspect delivered Product within ten (10) days from date of delivery and to notify Seller in writing within said ten (10) day period of any nonconforming Product. Failure to provide such timely written notification to Seller will be deemed to be an acceptance of the Product by Buyer. If Buyer inspects any Product and discovers any nonconforming Product, Seller, at its option, may either replace the nonconforming Product or refund the purchase price paid therefore by Buyer to Seller in accordance with paragraphs 9 and 10 below.

**8. ASSIGNMENT:** Seller may assign any Purchase Order or Order Confirmation to any affiliated entity or the purchaser of all or substantially all of the assets of Seller, without notice to or the written consent of Buyer. Buyer may not transfer, sell or assign this Purchase Order or an Order Confirmation without the prior written consent of Seller.

**9. WARRANTIES:** Seller expressly warrants that Product will be manufactured or produced in accordance with its current published specifications unless otherwise agreed in writing by Seller and Buyer, but does not guaranty or warrant any Product for any specific application or service condition. **Seller SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.** This warranty is expressly limited to a ninety (90) day period commencing as of the date the Product at issue is removed from Seller's facility for shipment to Buyer. This warranty does not cover Product which was modified, contaminated, combined with third party product or otherwise physically damaged by Buyer or a third party or which was not in the original Seller product packaging, if applicable.

**10. REMEDIES:** Under no circumstances, including, without limitation, negligence, will Seller be liable to Buyer or any other party for any direct, indirect, special, punitive, incidental, exemplary, consequential (including, without limitation, damages for business interruption, loss of business profits, or any corrective action) or any other damages arising in any way from or related to the sale, resale or use of the Products, even if Seller has been advised of the possibility of such damages. Seller's liability and Buyer's exclusive remedies are hereby limited to Seller's choice of replacement of the defective or nonconforming Product or refund of the purchase price paid therefore by Buyer to Seller; provided notice of the defective or nonconforming Product is promptly provided to Seller upon the discovery of any alleged defect or nonconformity and in no case more than ninety (90) days from the date of shipment of said Product. In no event will Seller's total cumulative liability to Buyer in connection with the sale, resale or use of Products exceed the purchase price paid for the defective or nonconforming Product by Buyer to Seller. Notwithstanding the foregoing, Buyer agrees to use commercially reasonable efforts to promptly limit or otherwise reduce the extent of potential and actual damage to its own product or product of any third party once it discovers any alleged defective or nonconforming Product, to promptly notify Seller in writing of any alleged defective or nonconforming Product and to promptly provide Seller with samples of any alleged defective or nonconforming Product for testing by Seller. Because some states or jurisdictions do not allow the exclusion or limitation of liability for consequential or incidental damages, in such states or jurisdictions, Seller's liability will be limited to the fullest extent permitted by law. Under no circumstances will Buyer be permitted or entitled to setoff or credit any amounts due and owing to Seller, unless Seller has agreed in writing to the same.

**11. CHOICE OF LAW & VENUE:** (a) The parties agree that any Purchase Order and Order Confirmation, including, without limitation, these Terms and Conditions, will be construed according to the laws of the State of Nevada. (b) Buyer agrees that any action brought by Buyer to enforce any Purchase Order or Order Confirmation, including, without limitation, these Terms and Conditions, will be brought exclusively in the state court of general jurisdiction with jurisdiction over Seller's principal place of doing business, and at that such court will have exclusive venue over any such dispute, and Buyer submits to the jurisdiction of such court in any action brought by Seller.

**12. MISCELLANEOUS:** (a) The failure of Seller to insist upon strict adherence to any provision of these Terms and Conditions will not be considered a waiver or deprive Seller of the right thereafter to insist upon strict adherence to that term or any other term of these Terms and Conditions. Any waiver of any provision of these Terms and Conditions by Seller must be in writing signed by an authorized officer of Seller. (b) In any action or proceeding brought by Seller to enforce any provision of these Terms and Conditions, if Seller prevails it will be entitled to recover the reasonable costs and expenses incurred by it in connection with that action or proceeding, including, without limitation, attorneys' fees and court costs. (c) Neither party will be deemed the drafter of these Terms and Conditions and they will not be construed or interpreted in favor of or against either party. (d) Caption headings are for the convenience of the parties only and will not be used to construe or interpret these Terms and Conditions. (e) If any provision of these Terms and Conditions will be found by a court of competent jurisdiction to be unenforceable in any respect, then (i) the court will revise such provision the least amount necessary in order to make it enforceable, and (ii) the enforceability of every other provision of these Terms and Conditions will not be affected thereby.

**END OF TERMS AND CONDITIONS**