

ROCHESTER MIDLAND CORPORATION

PURCHASE ORDER TERMS AND CONDITIONS

1. Sale and Purchase. By accepting a Purchase Order (the "Order") from Rochester Midland Corporation ("RMC"), you ("Vendor") agree to furnish RMC with the goods and/or services ("Goods") described on the face of the Order and that the Terms and Conditions set out herein will apply to and govern the provision of the Goods.

2. Acceptance; Applicable Terms and Conditions. Acceptance by Vendor of an Order may be made by duly executing and returning a signed copy of this Order, commencement of work on the Goods subject to the Order or shipment of such Goods, whichever occurs first. Acceptance of an Order will constitute a Contract. Any acceptance of an Order is subject to acceptance of the express terms contained herein. Any proposal for additional or different terms or any attempt by Vendor to vary in any degree any of these terms in Vendor's acceptance or otherwise is hereby rejected, but such proposal shall not operate as a rejection of the Order, nor an alteration thereof, and the Order shall be deemed accepted by Vendor without said additional or different terms. Notwithstanding the foregoing, should any proposal purport to vary the description, quantity, price, or delivery schedule of the Goods, the Order will be deemed withdrawn and no Contract will have been created.

If an Order is an acceptance of a prior proposal by Vendor, such acceptance and the resulting contract is limited to the express terms herein.

3. Prices. If prices are not set forth on the Order, the prices shall be no higher than last quoted or charged to RMC by Vendor for comparable quantities, unless RMC has been notified in writing as a Purchase Order Acknowledgement (POA) prior to delivery of the Order. All prices, unless otherwise specifically provided, include all applicable federal, state, and local taxes in effect, packaging, shipping, labeling, custom duties, storage, and insurance, and Vendor warrants that the prices are complete and no additional charges of any type shall be added without RMC's prior express written consent. In the event that there are any new taxes or increased rates or repeal of any tax or reduction of taxes, prices shall be adjusted accordingly. If prices are not set forth on the Order and previous Orders have not been submitted to Vendor, Vendor shall immediately notify RMC of the prices to be charged. No Contract shall be made until such prices are accepted in writing by RMC. Submittal of a price list by Vendor is not recognized as confirmation of pricing. The only recognized method of confirming price on an RMC Order is the Purchase Order Acknowledgement.

Vendor warrants that they will not sell similar products to a competitor of RMC's at a lower price than that provided to RMC.

RMC will provide Vendor with a commercial invoice for all International Orders to ensure that proper documentation is available to the Vendor for Vendor's shipment on behalf of RMC. Acceptance of an International Order confirms Vendor's agreement to use only RMC's commercial invoice. Should Vendor provide a commercial invoice under Vendor's letterhead or other that results in loss of revenue or business to RMC, RMC reserves the right to seek damages.

4. Progress Reports; In-Production Inspections. If the Order provides for progress reports, Vendor shall provide reports as agreed to in the Order, during the performance of the Contract which reports shall in each instance include a detailed statement of the work commenced, in-process, and completed at the end of the reporting period, as well as a statement of the estimated time remaining for the completion of the Contract. In addition, RMC shall have the right to make such examinations and tests at a location of its choice including Vendor's premises, as it shall deem necessary to determine whether or not the Goods are being produced in a good and workmanlike manner and in accordance with specifications.

5. Private Label Requirements. The Goods must be labeled with the most current approved RMC label. If Vendor is required to apply RMC labels to Goods, then the following shall apply.

a) Labels provided by RMC to Vendor with the Order may be printed labels or in an electronic file to be printed by Vendor.

b) Labels created by Vendor using Vendor's format and RMC's logo must be approved in writing by RMC prior to adhering to the Goods.

c) If requested by RMC on the Order, Vendor shall apply RMC's lot number to the appropriate label template location as defined in the Order.

d) Regardless of which method is used to create labels, at the end of each shipment fulfilling an RMC Order, any remaining labels containing a lot number must be discarded.

6. Chemical Substance Labeling & Identification. By acceptance of this Order, Vendor certifies that any chemical substance(s) furnished pursuant to this Order has been properly labeled, and that proper information on the substance(s), e.g., safety data sheets, have been provided to RMC, pursuant to all federal, state, or local laws, rules, regulations, and ordinances including but not limited to the requirements of GHS, Globally Harmonized System of Classification, and shall hold RMC harmless from any liability resulting from failure of such compliance.

7. Partial Shipments and Substitutions. Unless otherwise agreed in writing, shipments must equal the precise amounts ordered, and no partial shipments, changes, or substitutions in specifications may be made without the prior written consent or request of RMC.

8. Deliveries. RMC production schedules are based upon the agreement that the Goods will be delivered to RMC on or before the date specified in the Order. Time is, therefore, of the essence, and in the event that any deliveries are not made at the time(s) agreed upon, RMC reserves the right to cancel the Order, purchase elsewhere, and hold Vendor liable for any resulting damages and losses. Acceptance by RMC of late shipments or partial shipments shall not constitute a waiver of this provision. If no date for delivery is specified, Vendor shall at the time of acceptance provide notice in writing to RMC setting out the date upon which shipment shall be made. If, in order to comply with RMC's required delivery date, it becomes necessary for Vendor to ship by a more expensive way than specified in the Order, any increased transportation costs resulting therefrom shall be paid by Vendor.

All shipments to RMC require a Certificate of Analysis (C of A), which must be provided prior to or at the time of shipment. No delivery of Goods will be accepted by RMC without the C of A on file with RMC prior to its arrival. Goods arriving at RMC without a C of A will be rejected. Certificates of Analysis should be provided as directed on each individual Order. RMC reserves the right to reject any chemical raw material or chemical finished product if it does not have a minimum 50% remaining shelf life, or six (6) months, whichever is greater.

9. Invoicing and Shipping Memoranda. On the date of shipment, Vendor shall forward a shipping memo (in full) with bill of lading, PRO or tracking number, or express receipt to RMC. For each separate shipment Vendor shall forward invoices in duplicate showing the Order number.

10. Payment Terms. Payment terms are net 45 days (unless otherwise agreed to and designated on the Order) beginning the later of (i) the date of receipt of invoice at RMC's Accounts Payable Department, and (ii) the delivery of the Goods.

11. Changes in Deliveries and Quantities Ordered. RMC reserves the right to change shipping schedules and defer shipment of any or all of the Goods ordered, or to cancel the whole or any part of the Contract in the event that fire, flood, embargo, strike, change in its production schedules, or any other circumstance beyond RMC's reasonable control which interferes with or adversely affects RMC's receipt, handling, stocking, or need for the Goods.

12. Termination for Convenience. RMC reserves the right to terminate the Order, in whole or in any part at any time, either before or after acceptance by Vendor, at any time for any reason of its own convenience or without reason by giving written notice to Vendor. In the event of such termination by RMC, RMC agrees to pay a termination fee with respect only to those Goods which, because they have been specially manufactured for RMC, cannot be returned to Vendor's stock. Such termination fee shall be equal to the price payable but not yet paid, for any Goods already delivered to and accepted by RMC, together with the reasonable costs, if any attributable to work-in-process, including costs of raw materials, labor, and reasonable overhead and profit for the remainder of the Goods, but in no event exceeding the price specified in this Order.

RMC reserves the right to take delivery of any Goods represented by this work-in-process and/or audit Vendor's books and records in relation to the claims made by Vendor pursuant to this paragraph

13. Inspection and Rejection. Payment for the Goods delivered shall not constitute acceptance thereof. RMC shall have the right to inspect such Goods and to reject any or all of said Goods which are in RMC's judgment defective or nonconforming to its requirements. Goods rejected may be returned to Vendor at Vendor's expense. In addition to RMC's other rights, RMC may charge Vendor all expenses for unpacking, examining, repacking, and reshipping such Goods. In the event RMC receives Goods whose defects or nonconformity are not apparent on examination, RMC reserves the right on ultimate discovery of the defect(s) to require replacement, as well as payment of any resulting losses and/or damages. Nothing contained in the Order shall relieve in any way Vendor from the obligation of testing, inspection, and quality control. Failure by RMC to inspect, however, shall not be considered a waiver of RMC's rights with respect to nonconformity or otherwise.

14. Packaging. All Goods shall be properly packaged without charge to RMC, except where specifically agreed to in writing by RMC. Containers, pallets, and other packaging materials will not be returned unless specifically requested in writing by Vendor. All costs and expenses for handling and returning packaging materials shall be charged to, and payable by, Vendor.

15. Risk of Loss. Notwithstanding the method of shipment, Vendor shall deliver all Goods to RMC at RMC's place of business or such other location specified by RMC at Vendor's own risk. Vendor shall bear the risk of loss, destruction, or damage until the Goods are so delivered.

16. Warranty. Vendor expressly warrants that all Goods furnished shall strictly conform to all specifications and appropriate standards, will be new, and will be free from defects in material and workmanship. Vendor warrants that all such Goods will conform to any statements made on the containers or labels or advertisements for such Goods, and that any Goods will be adequately contained, packaged, marked, and labeled. Vendor warrants that all Goods furnished will be merchantable, and will be safe and appropriate for the purpose for which Goods of that kind are normally used. If Vendor knows or has reason to know the particular purpose for which RMC intends to use the Goods, Vendor warrants that such Goods will be fit for such particular purpose. Vendor warrants that Goods furnished will conform in all respects to any samples provided by Vendor. Inspection, test, acceptance, or use of the Goods shall not affect Vendor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance, and use. Vendor's warranty hereunder shall apply to the benefit of RMC, its successors, assigns, and customers, and users of products sold by RMC, each of which is deemed a third party beneficiary of this warranty. Vendor agrees to promptly, and without cost to RMC, replace or correct defects in any Goods not conforming to the foregoing warranty when notified of such nonconformity by RMC, provided RMC elects to provide Vendor with the opportunity to do so. In the event of

the failure of Vendor to correct defects or replace nonconforming Goods promptly, RMC, after reasonable notice to Vendor, may make such corrections or replace such Goods, in which case Vendor will be responsible to reimburse RMC on account of any resulting loss or damage.

17. Indemnification. Vendor shall defend, indemnify, and hold harmless RMC, its successors, assigns, customers, and users of products sold by RMC, against all loss, (including, without limitation, loss of use), damages, claims, liabilities, demands, actions, fines, penalties, proceedings, and all costs and expenses (including attorneys' fees) arising out of or resulting in any way from any defect in the Goods purchased (including, without limitation, based upon the doctrines of strict liability, product liability, tort, or negligence), any breach, or failure by Vendor to comply with the Contract, or from any act or omission of Vendor, its agents, employees, or subcontractors. This indemnification shall be in addition to the warranty obligations of Vendor. Vendor further agrees to indemnify and protect RMC against all liabilities, claims, or demands arising out of the performance of labor, including, but not limited to, any claims for Workers' Compensation.

18. Infringement. Vendor agrees upon receipt of written notification from RMC to promptly assume full responsibility for the defense of any suit or proceeding which may be brought against RMC, or its agents, customers, or users of products sold by RMC, for alleged patent infringement, as well as for any alleged unfair competition resulting from similarity in design, trademark, or appearance of Goods furnished, and Vendor further agrees to indemnify RMC, and its agents, distributors, and customers, against any and all expenses, losses, royalties, profits, and damages including court costs and attorneys' fees resulting from any such suit or proceeding, including any settlement. RMC has the right to be represented by and actively participate through its own counsel in any such suit or proceeding if it so desires, and the costs of such representation shall be reimbursed by Vendor. In the event that Vendor is determined by a court of law or equity to have committed such an infringement, Vendor shall be obliged to supply RMC with non-infringing substitute Goods, or to alter supplied Goods as to make them non-infringing, failing which Vendor will be deemed to have breached the Contract with RMC, incurring liability for damages, including the full amount of consequential and incidental damages allowed by law. The foregoing shall not apply to any infringement resulting from Vendor's use of a patented invention required to comply with written specifications of RMC if such patent invention is not normally used or sold by Vendor and Vendor has made RMC aware of such possible infringement prior to its utilization.

19. Proprietary Information; Confidentiality. Vendor shall consider all information furnished by RMC (including, without limitation, models, drawings, sketches, or plans) to be confidential and shall not disclose any such information to any other person, or use such information itself for any purpose other than performing its obligation pursuant to this Contract, unless Vendor obtains written permission from RMC to do so. This paragraph shall apply to drawings, specifications, or other documents prepared by Vendor for RMC in connection with an Order. Unless otherwise agreed in writing, no commercial, financial, or technical information disclosed in any manner or at any time by

Vendor to RMC shall be deemed secret or confidential, and Vendor shall have no rights against RMC with respect thereto except such rights as may exist under patent laws.

20. Default. If Vendor repudiates or breaches any of the terms of this Order, or RMC rightfully rejects the Goods or justifiably revokes acceptance thereof, then with respect to any of the Goods involved, and with respect to the whole if the breach is, in the estimation of RMC fundamental to the Contract in its entirety, RMC may cancel the Contract and, whether or not it has done so, RMC may, in addition to recovering so much of the price as has been paid, "cover" and recover damages from Vendor on account of all of the Goods affected whether or not they have been identified to the Order. RMC may "cover" by making, in good faith and without unreasonable delay, any reasonable purchase of or agreement to purchase the Goods in substitution for those due from Vendor. Vendor shall pay RMC as damages the difference between the cost of "cover" and the contract price together with any incidental or consequential damages. The foregoing shall be in addition to any other rights available to RMC at law equity.

21. On-Site Services. If an Order includes services to be performed on RMC's premises, then: (a) RMC's Safety & Health Instructions for Contractors will be considered a part of the Contract, and, (b) Vendor must provide a Certificate of Insurance with proof of at least \$2,000,000 of automobile, \$2,000,000 of general liability and \$1,000,000/\$1,000,000/\$1,000,000 of worker's compensation coverage.

22. Bankruptcy of Vendor. If Vendor shall become insolvent or unable to meet its obligations as they become due, or if a voluntary or involuntary petition of bankruptcy is filed by or against Vendor, or if an assignment for the benefit of the Vendor's creditors or a receiver is appointed, with or without Vendor's consent, or RMC deems itself insecure, at any time prior to the completion of Vendor's terms and conditions to be performed under the Contract, the Contract shall be deemed breached by Vendor, and RMC shall have the right, but not the obligation, to terminate the Contract by serving written notice of termination. Such termination shall not affect any claim for damages available to RMC, nor shall RMC incur any liability to Vendor for pursuing its rights under this paragraph. RMC reserves the right to obtain all materials on Vendor's premises which are owned by RMC. These materials while on site at Vendor are to be clearly identified as RMC materials and segregated from other Vendor materials.

23. Changes. RMC shall have the right at any time to make changes in drawings, designs, specifications, materials, packaging, time and place of delivery, and method of transportation. If any such changes cause an increase or decrease in the cost, or the time required for the performance, an equitable adjustment shall be made and this Order shall be deemed modified in writing accordingly. Vendor agrees to accept any such changes subject to this paragraph.

24. Limitation on RMC's Liability. **IN NO EVENT SHALL RMC BE LIABLE FOR ANTICIPATED PROFITS OR FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. RMC'S LIABILITY ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM AN ORDER**

OR FROM THE PERFORMANCE OR BREACH THEREOF SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE GOODS OR UNIT THEREOF, WHICH GIVES RISE TO THE CLAIM. RMC SHALL NOT BE LIABLE FOR PENALTIES OF ANY DESCRIPTION. ANY ACTION RESULTING FROM ANY BREACH ON THE PART OF RMC AS TO THE GOODS DELIVERED MUST BE COMMENCED WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

25. Assignments and Subcontracting. No part of this Contract may be assigned or subcontracted by Vendor without the prior written approval of RMC.

26. Set-Off. All claims for money due or to become due from RMC shall be subject to deduction or set-off by RMC by reason of any counterclaim arising out of this or any other transaction with Vendor.

27. Waiver. RMC's failure to insist on performance of any of the terms or conditions herein or to exercise any right or privilege or RMC's waiver of any breach hereunder shall not thereafter waive any other terms, conditions, or privileges, whether of the same or similar type.

28. Government Subcontracts. If this Order is a non-exempt government subcontract Executive Order 11246, the Equal Opportunity Clause as defined in Rules and Regulations of the Department of Labor, Office of Federal Contract Compliance (41 CFR Part 60-1) and other applicable rules and regulations are hereby incorporated by reference.

29. Country of Origin. If the materials purchased hereunder are materials of foreign origin, Vendor will cause all such materials and their containers to be marked with the country of origin, as required by United States law, and will indicate the country of origin on all invoices for the products. Upon RMC's request, Vendor will promptly provide certification to evidence the origin of such materials purchased hereunder.

30. Fair Labor Standards. Vendor certifies that the Goods were produced in compliance with all applicable requirements of Sections 6, 7, and 12 of the Fair Labor Standards Act, as amended, and of Regulations and Orders of the United States Department of Labor issued under Section 14 thereof. Rochester Midland Corporation is an Equal Opportunity Employer.

The Equal Employment Opportunity Clause required under Executive Order 11246, and the employee notice clause pertaining to employee rights under the National Labor Relations Act, set forth in 29 CFR Part 471 Appendix A to Subpart A, are incorporated by reference in this Order. By accepting this Order, Vendor additionally certifies that, to the extent applicable, **this contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or**

national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.”, that it complies with the authorities cited above, and that it does not maintain segregated facilities or permit its employees to perform services at locations where segregated facilities are maintained, as required by 41 CFR 60-1.8.

31. Invalidity. If any of the provisions or portions hereof are invalid under any applicable statute or rule of law, they are to that extent to be deemed omitted, and the remainder shall continue in full force and effect.

32. Survival of Certain Terms. Any provisions or portions contained herein which by their nature would continue beyond the termination, cancellation, or expiration of this Order will survive such termination, cancellation, or expiration.

33. Governing Law and Jurisdiction. Each Order and Contract shall be governed by and construed under the laws of the State of New York without reference to provisions of conflict of laws. The federal and state courts of the County of Monroe, State of New York, shall have exclusive jurisdiction to adjudicate any dispute arising out of an Order or the Contract. The parties hereto each consent to: (a) the personal jurisdiction of the courts in the County of Monroe, State of New York, and (b) service of process being effected upon it by registered mail sent to the address set forth in the Order.

34. Entire Agreement. By accepting an Order, Vendor acknowledges that it has read these Terms and Conditions, understands them, and agrees to be bound thereby, and further agrees that these Terms and Conditions, together with any non-conflicting portion(s) of any Vendor proposal, is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, and all other agreements, oral and written, between the parties relating to the subject matter of the Order.