

CHEMICAL TERMS AND CONDITIONS

These terms and conditions of sale ("Terms and Conditions") are applicable to the sale of Products (defined below) provided by Best Technology, Inc. ("Supplier") to a customer ("Customer") who places a purchase order pursuant to a proposal or quotation ("Quote") supplied by Supplier (the "Order") to receive Products (defined below) from Supplier. Supplier reserves the right to change these Terms and Conditions at any time.

1. **ACCEPTANCE OF TERMS AND CONDITIONS.** The agreement ("Agreement") between Supplier and Customer shall consist of the Quote, Order and these Terms and Conditions. These Terms and Conditions are integrated into, and form an integral part of, the Agreement. Supplier, upon acceptance of the Order from a Customer, will supply the Products specified in the Order to Customer, pursuant to the terms and conditions of this Agreement. The applicability of terms contained in Customer's Order is limited to the identification and the quantity of Products ordered. No terms or conditions in any acceptance, acknowledgement, invoice, purchase order, or other document submitted by Customer which are in conflict with, different from, or in addition to this Agreement shall be binding upon Supplier unless expressly agreed to in writing by a duly authorized officer of Supplier. In the event of any inconsistency between the Quote, Order and these Terms and Conditions, the Quote and these Terms and Conditions shall control.
2. **PRODUCT ORDERING.**
 - A. Orders. Supplier shall supply the products, fluids, chemicals or chemical solutions (the "Products") described in the Order to Customer at the prices and in accordance with the payment terms outlined in the Quote.
 - B. Cancellation of Orders. Orders placed with Supplier may not be canceled without Supplier's written approval. In the event the Supplier elects to accept a cancellation, Supplier reserves the right to charge Customer for all actual costs incurred including reasonable profit and a \$5,000.00 cancellation charge.
3. **PRICING AND PAYMENT TERMS.**
 - A. Prices. Customer shall pay Supplier the costs, including all state, local, service taxes or fees, freight charges, and express and courier services, described on the applicable invoice in accordance with the payment terms outlined in the Quote. All prices quoted are in U.S. currency and all invoices are made out in U.S. currency.
 - B. Payment Terms. Customer shall comply with the payment terms as set forth in the Quote. Payment terms shall be effective from the date of invoice and/or detailed on the specific Quote. Supplier may, in its sole discretion, extend credit to Customer subject to Supplier's credit requirements to determine credit status or credit limits. Customer must keep their account current at all times.
 - C. Non-Compliance. In the event Customer does not comply promptly and completely with the payment terms, Supplier has the right to place the Order on hold until the issue is resolved to Supplier's satisfaction. Supplier has the right to impose additional charges to Customer for any cost resulting from Customer's failure to comply with payment terms. Supplier reserves the right to suspend or cancel (at its option) other Customer Orders and/or deliveries when an invoice remains unpaid after the due date.

4. DELIVERY.

- A. Shipments. Unless otherwise specified in the Quote or the Supplier's invoice, Products are shipped FOB Origin. Supplier shall not be liable for any delays, loss or damage in transit. Title and risk of loss passes to Customer upon delivery of the Products to the carrier. All freight costs will be the responsibility of Customer.
- B. Lead Times. Supplier shall use commercially reasonable efforts to ship the Product in accordance with the lead times set forth in the Quote; however, Supplier shall not be liable for any delays in transit or failure in the estimated delivery or shipment, or for any damages that may result to Customer from such delay.
- C. Partial Shipments. Supplier may, in its sole discretion, without liability or penalty, make partial shipments of Products to Customer. Each shipment will constitute a separate sale, and Customer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Customer's purchase order. Any failure or defect in any one (1) shipment shall not affect the remaining shipments.
- D. Inspection Period. Customer shall inspect the Products within seven (7) days of the date they are first delivered and made available for Customer's use (the "Inspection Period"). Customer shall inspect and verify the Product identified on the Product label matches the Product identified in the Order before opening the Product. If a Customer opens the Product before verifying, Customer cannot return the Product. Customer will be deemed to have accepted the Products unless it notifies Supplier in writing and within the Inspection Period of any damage, shortage, loss or failure of the Products to comply with the specifications and requirements related thereto as set forth in the Quote and the applicable Product Certificate of Analysis provided by Supplier. If Customer timely notifies Supplier of any non-conforming Products, Supplier shall, in its sole discretion, (a) replace such non-conforming Products with conforming Products; or (b) credit or refund the price for the non-conforming Products. Supplier will have no liability for damage, shortage, or loss caused by acts or omissions of the carrier, or by other causes beyond Supplier's reasonable control. Products reportedly damaged will be held by the Customer for disposition as instructed by the Supplier. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS SECTION 4(D) ARE CUSTOMER'S EXCLUSIVE REMEDIES FOR THE DELIVERY FOR NON-CONFORMING PRODUCTS. EXCEPT AS PROVIDED UNDER THIS SECTION 4(D), ALL SALES OF PRODUCTS TO CUSTOMER ARE MADE ON A ONE-WAY BASIS AND CUSTOMER HAS NO RIGHT TO RETURN THE PRODUCTS TO SUPPLIER.

5. **CONFIDENTIAL INFORMATION.** From time to time, either party (the "Disclosing Party") may disclose or make available to the other party (the "Receiving Party") information not generally known to the public about its business affairs, goods and services, forecasts, production methods, formulae, recipes, trade secrets, third-party confidential information, and other sensitive or proprietary information, as well as the terms of this Agreement, whether orally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" or which a reasonable person under like circumstances would treat as confidential due to its character and nature (collectively, "Confidential Information"). Confidential Information does not include information which (a) was known by or in possession of the Receiving Party prior to disclosure by the Disclosing Party; (b) is or becomes available to the Receiving Party on a non-confidential basis from a third-party, provided that such third party is not prohibited from disclosing such Confidential Information; (c) is or becomes generally available to and known by the public other than as a result of, directly or indirectly, any breach of this Agreement; or (d) was or is independently developed by the Receiving Party without reference to or use of, in whole or in part, any of the Disclosing Party's Confidential Information. The Receiving Party shall protect and safeguard the confidentiality of the Disclosing Party's Confidential Information with at least the same degree of care as it would protect its own Confidential Information, but in no event with less than a commercially reasonable degree of care; (ii) not use the Disclosing Party's Confidential Information, or permit it to be accessed or used, for any purpose other than to exercise its rights or perform its obligations

under this Agreement; and (iii) not disclose the Disclosing Party's Confidential Information to any third party, except to Receiving Party's personnel and representatives who need to know the Confidential Information to it, or act on its behalf, to exercise its rights or perform its obligations under this Agreement.

6. **INTELLECTUAL PROPERTY.** Customer acknowledges and agrees that Supplier's Intellectual Property (as defined below) shall remain the sole and exclusive property of Supplier and all right, title and interest in and to the Supplier Intellectual Property shall vest solely with Supplier. No license, transfer of ownership or other right is granted by Supplier to Customer under this Agreement, by implication, estoppel or otherwise, under any Intellectual Property right now or hereafter owned or controlled by Supplier. Customer agrees that it shall not: (i) take any action that interferes with the Supplier's Intellectual Property rights, including Supplier's ownership or exercise thereof; (ii) challenge any right, title or interest of the Supplier in Supplier's Intellectual Property assets; (iii) make any claim or take any action adverse to Supplier's ownership of its Intellectual Property assets; (iv) register or apply for registrations, anywhere in the world, the Supplier's trademarks or any mark that is similar to Supplier's trademarks or that incorporates such trademarks in whole or in confusingly similar part; or (v) use any mark, anywhere, that is confusingly similar to the Supplier's trademarks. "Intellectual Property" means a patent, invention, discovery, know-how, moral right, technology, software, copyright, trade secret, trademark, confidentiality, proprietary, privacy right, or other similar rights (including rights in applications, registrations, filings and renewals) which are now or hereafter protected or legally enforceable under state or federal common laws or statutory laws of the United States or under laws of foreign jurisdictions.

7. **CUSTOMER RESPONSIBILITIES AND WARRANTIES.**

- A. Many factors beyond Supplier's control and uniquely within Customer's knowledge and control can affect the use and performance of the Products in a particular application. Supplier may provide Product information, including technical information, specifications, literature and other materials (collectively, the "Product Information") for Customer's convenience in Customer's selection of Products. The accuracy or completeness of Product Information is not guaranteed and is subject to change without notice. No license under any Supplier or third party intellectual property rights is granted or implied with this Product Information. Customer is solely responsible for evaluating and selecting Products and determining whether each Product is suitable for Customer's intended use or application and each Product is fit for a particular purpose and application.
- B. Customer is solely responsible for complying with all federal, state and local governmental laws and regulations applicable to the purchase and use of the Products, including without limitation handling, transportation, storage, use, processing, disposal, and the conditions of safe use of the Products, and to any of Customer's products that contain or are made by using the Products. Products are sold for use or consumption within the United States only.
- C. Customer shall be solely responsible for any data, information, and documents provided to Supplier in order to purchase Products from Supplier. Supplier shall be entitled to rely on such data, information, and documents in providing the Products and shall have no duty to independently verify the accuracy of the same.

8. **WARRANTIES OF SUPPLIER; DISCLAIMER OF WARRANTY.**

- A. Supplier represents and warrants that the Products are not subject to any liens or encumbrances and the Products sold to Customer meet the Product specifications identified in the applicable Certificate of Analysis at the time the Product is shipped to Customer. Except as expressly set forth in this Section 8, Supplier makes no representations or warranty of any kind, expressed or implied or otherwise whatsoever, including but not limited to, any implied warranties of merchantability or fitness for any particular purpose or use, and infringement, misappropriation or other violation of the

- intellectual property rights of any third party, whether arising by law, course of dealing, course of performance, custom, usage of trade or otherwise. There is no guaranty of result, or of functionality.
- B. Supplier assumes no liability for damages related to the use or misuse of any Product purchased by Customer from Supplier incurred or claimed by Customer, whether in any process, used alone or in combination with other substances. Supplier shall not be liable for any injury, loss or damage, direct or consequential, regardless of the legal theory asserted, including warranty, contract, negligence or strict liability arising out of use or the inability to use the Product. Supplier disclaims any liability, and Customer assumes all risk, related to the efficacy, safety or use of the Product(s) to create any derivative product or the incorporation of the Product(s) into another Product. Supplier makes no representations or warranties to Customer regarding the legality or uses of the Products that may be derived from the Products under Federal, State, local or other law, all of which are the sole and exclusive responsibility of Customer to assess, monitor and comply with.
- C. In the event of any breach of Supplier's warranties, Customer's sole and exclusive remedy shall be that Supplier shall, at its sole option, replace the Product at no cost to Customer or refund any purchase price paid for such defective Products. To make a warranty claim, Customer must notify Supplier in writing within thirty (30) days of the date of tender or such claim shall be forever barred. Supplier shall have no liability under this Agreement in the event a breach of the warranties contained herein is: (i) a result of circumstances beyond Supplier's control; or (ii) due to third party errors or omissions.
9. **DISCLAIMER.** EXCEPT FOR THE EXPRESS WARRANTY SET FORTH IN SECTION 8 ABOVE, PRODUCTS ARE PROVIDED ON AN "AS-IS" BASIS. SUPPLIER DOES NOT MAKE, AND HEREBY DISCLAIMS, ANY AND ALL OTHER WARRANTIES WHATSOEVER CONCERNING THE PRODUCTS AND ANY AND ALL OTHER EXPRESS AND IMPLIED WARRANTIES. SUPPLIER DOES NOT ASSUME ANY RESPONSIBILITY FOR THE PRODUCTS OR ACTIONS OF ANY THIRD PARTIES.
10. **PRODUCT RECALL.** Supplier is not the manufacturer of Products and any recalls will be handled via the manufacturer's recall protocols or procedures.
11. **INDEMNIFICATION.**
- A. Customer's Indemnification. Customer shall indemnify, defend, and hold Supplier and its affiliates, officers, directors, employees, owners, agents, representatives, successors and assigns harmless from and against any and all losses, damages, fees, suits, judgments, debts, claims, demands, actions, proceedings, settlement amounts, penalties, costs or expenses (including reasonable attorneys' fees), liabilities of any nature or any adverse governmental action (collectively, "Losses") arising from claims asserted by third parties alleging: (i) Customer's use of Products or any of Customer's products that incorporates the Products, in whatever form, is defective, is mislabeled, or otherwise caused any type of harm, injury or damage; (ii) a breach of Customer's representations and warranties; (iii) a violation of applicable law by Customer, its affiliates or their owners, directors, officers, employees, representatives or agents; (iv) acts or omissions that constitute a breach of this Agreement by Customer, its affiliates or their owners, directors, officers, employees, representatives or agents; (v) use by the Customer (or any third party acting on behalf of or under authorization from Customer) of the Products under this Agreement; or (vi) the negligence or misconduct of Customer, its affiliates or their owners, directors, officers, employees, representatives or agents.
- B. Supplier's Indemnification. Supplier shall defend, indemnify, and hold Customer and its owners, officers, directors, employees, agents, representatives, successors and assigns harmless from any Losses arising from claims asserted by third parties alleging: (i) a breach of Supplier's representations and warranties; or (ii) the grossly negligent or intentional misconduct of Supplier.

- C. **Process.** The Party entitled to indemnification under this Section 9 (the “Indemnified Party”) shall provide the Party obligated to provide indemnification under this Section 9 (the “Indemnifying Party”) with prompt notice of any third-party claim for which it seeks indemnification under this Section 9.C, provided that the failure to do so will not excuse the Indemnifying Party of its obligations except to the extent prejudiced by such failure or delay. The Indemnifying Party will have the sole right to control the defense and settlement of the third-party claim, provided that the Indemnifying Party may not, without the Indemnified Party’s consent (which must not be unreasonably withheld, conditioned or delayed), enter into any settlement that admits guilt, liability or culpability on the part of the Indemnified Party or requires the Indemnified Party to take any action or incur any expense. The Indemnified Party will provide reasonable cooperation information and assistance to the Indemnifying Party in defending any third-party claim. The Indemnifying Party will have no liability for any settlement effected without the Indemnifying Party’s consent, which consent must not be unreasonably withheld, conditioned or delayed.
12. **LIMITATION ON LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES, INCLUDING PUNITIVE DAMAGES, LOST PROFITS, REVENUES, DATA, USE, ANY OTHER ECONOMIC ADVANTAGE ARISING OUT OF OR RELATING TO THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION IN CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, EVEN IF EITHER PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY FOR SUCH DAMAGES. SUPPLIER’S LIABILITY UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, SHALL BE LIMITED TO THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO SUPPLIER UNDER THE APPLICABLE ORDER UPON WHICH A CLAIM IS BASED. IN NO EVENT SHALL SUPPLIER’S LIABILITY FOR ALL CLAIMS IN THE AGGREGATE UNDER THIS AGREEMENT EXCEED THE TOTAL AMOUNTS RECEIVED BY SUPPLIER FROM CUSTOMER IN THE PRIOR TWELVE (12) MONTHS PRIOR TO THE DATE OF THE CLAIM OR THAT SPECIFIC PURCHASE ORDER, WHICHEVER IS LESS.
13. **NON-SOLICITATION.** Neither party will hire or retain the services of any employee of the other party during the term of this Agreement and for a one (1) year period thereafter without the prior written consent of the other party, such consent to be made at the discretion of the consenting party. Consent for hiring an employee may be conditioned on payment of a recruitment fee or other payment to compensate the consenting party for the expense of replacing the employee.
14. **INDEPENDENT CONTRACTOR.** The parties agree that Supplier and Customer will be independent contractors and neither Supplier nor its employees will be considered employees of Customer. It is understood and agreed that nothing herein is intended nor shall be construed to create an employer/employee, partnership or joint venture relationship between Supplier and Customer. Customer will not deduct from Supplier’s compensation income tax, FICA payments, or any other expenses, unless required by law. Payment of federal income tax, FICA payments, and state income taxes are the responsibility of Supplier. Customer agrees and acknowledges that neither it nor any of its employees, agents or representatives has any right or authorization, express or implied to act for Vendor or incur, assume or create any obligation, responsibility, or liability on behalf of Supplier or make any representations or warranties concerning Supplier or the Work in the name of or on behalf of Supplier or bind Vendor in any manner whatsoever.
15. **INSURANCE.** Each party shall maintain general liability insurance, including products liability coverage in a minimum amount of \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with deductibles not exceeding \$10,000 per occurrence covering the Products and Customer’s goods incorporating the Products.

16. **COMPLIANCE WITH LAWS AND REGULATIONS.** Each party agrees to comply with all federal, state, county and local laws, regulations, statutes, codes ordinances, or rules applicable to it.
17. **NOTICES.** Any notice required or permitted to be given under this Agreement shall be in writing and shall be hand-delivered or sent by registered or certified first-class mail, postage prepaid, or commercial overnight delivery service to the address listed above for the party to whom notice is to be given, and shall be effective upon delivery if hand-delivered, three (3) days after mailing if mailed or one (1) day after delivery to a commercial overnight delivery service.
18. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Minnesota, without reference to conflicts of law principles. Any legal suit, action or proceeding arising out of or relating to the Work or this Agreement shall be commenced in a federal or state court in Hennepin County, Minnesota, and each party hereto irrevocably submits to the exclusive jurisdiction and venue of any such court in any such suit, action or proceeding. The parties expressly waive any right they may have to a jury trial and agree that any such litigation shall be tried by a judge without a jury. In the event that litigation is instituted to interpret or enforce any term or provision hereof, the prevailing party shall be entitled to reasonable attorney's fees to be awarded by the court in the same action or in a separate action brought for that purpose.
19. **FORCE MAJEURE.** Supplier shall not be liable or responsible to Customer, or be deemed to be in breach under this Agreement, for any delay or failure in fulfilling or performing any of its duties or obligations of this Agreement, when and to the extent such failure or delay is caused by or results from events beyond its reasonable control, including: (a) acts of God; (b) snow, flood, fire, earthquake, or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect; (f) national or regional emergency; (g) strikes, labor stoppages or slowdowns, or other industrial disturbances; (gh) telecommunication breakdowns, power outages or shortages, lack of warehouse or storage space, inadequate transportation services, or inability or delay in obtaining supplies of adequate or suitable materials or components; (i) labor shortages or inability in obtaining or maintaining a sufficient work or labor force; (j) inability to secure raw materials at a commercially reasonable price; or (k) adverse changes in applicable laws or regulatory interpretation or enforcement policy of the same.
20. **SEVERABILITY.** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Agreement shall remain in full force and effect and will in no way be affected, impaired or invalidated.
21. **ENTIRE AGREEMENT.** This Agreement supersedes all prior agreements and constitutes a complete and exclusive statement of the terms of the agreement among the parties with respect to its subject matter. There have been and are no representations, warranties or covenants between the parties other than those set forth in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless executed in writing by all of the parties.
22. **WAIVER.** No waiver of any provisions of this Agreement will be deemed a waiver of any other provisions, nor will any waiver constitute a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver.