



## Terms and conditions

### STANDARD TERMS AND CONDITIONS OF SALE THAT SHALL AUTOMATICALLY APPLY TO ALL SALES

1. **AGREEMENT:** These Terms and Conditions shall be the sole terms and conditions governing the sale of goods by Granges Americas Inc. and Granges International Inc. ("Seller") or its affiliates to Buyer and shall supersede all prior oral, electronic or written agreements that conflict with or differ from these Terms and Conditions. Any document referred to or described as a written contract, a written, electronic or other form of order from Buyer, or a written acknowledgement from Seller (even if given in electronic form) may establish the identity and quantity of goods being purchased by Buyer, the time and destination of delivery and any other specific terms not conflicting with these Terms and Conditions. Any such contract related or contract styled documents issued by either party shall be subject to these Terms and Conditions.

These Terms and Conditions are incorporated into each and every sales contract or agreement with Seller and each sale of goods by Seller to any Buyer is expressly conditioned on these Terms and Conditions. Seller intends that these provisions control all sales made by it and to the extent that such conflicting contract provisions exist by virtue of Buyer's standard terms, any conflicting term shall be replaced by a term or condition that is recognized in the industry as commercially reasonable under the circumstances.

2. **PRICE:** The price for goods and other items covered by an agreement shall be invoiced at the prices and charges fixed by Seller at the time of and for each shipment under the order.

3. **SHIPMENT AND DELIVERY:** Any stated shipping date is a best estimate and will not operate to bind Seller to ship or make deliveries on the exact date set forth in any purchase order. Unless otherwise stated herein, transportation is F.O.B. Origin, freight prepaid to destination [Buyer's facility]. Title, risk of loss and other incidents of ownership, subject to Seller's security interest, shall pass to Buyer upon tender for shipment (i.e. F.O.B. Origin). If Buyer fails to give shipping instructions in a timely manner, Seller shall have the following options: shipping materials/goods to any of Buyer's historically recognized destinations; billing Buyer for the shipment and holding the materials/goods at Seller's facility pending instructions from Buyer or; cancelling the shipment/delivery and billing the Buyer for all charges incurred as a result of the cancellation.

4. **PAYMENT TERMS:** Unless otherwise provided by special agreement or specific terms, payment by Buyer to Seller shall be net thirty (30) days from date of invoice. If payment is not made when due, interest on the balance shall be charged at a rate of 1.5% per month or 18% per annum compounded

annually until the balance is paid in full. Seller shall have a purchase money security interest in goods furnished and proceeds thereof until payment is made for said goods and Buyer authorizes Seller to file financing statements indicating such security interest. Notwithstanding any language to the contrary on Buyer's check, draft or other order which is negotiated by Seller, Buyer's account shall not be deemed paid in full until finally paid and no attempt to make an accord and satisfaction shall be effective as to the invoice amount(s) or account balance. Seller may also declare a default of the security interest and invoke all the remedies available under the UCC and other applicable law including repossession if payment is not tendered in a timely fashion. Any payment discount period will commence on the date of delivery of the goods or services described in the invoice or the invoice date, whichever occurs first. Buyer shall pay all costs, including actual attorney's fees, incurred by Seller in order to obtain payment of any account balance or invoice that is unpaid.

5. **CREDIT:** No credit or agreement to allow an account balance to remain unpaid for any period of time is being granted by virtue of the execution of any sale contract. Payment is due in full as provided on any invoice. The decision to allow any amount invoiced to remain outstanding beyond the standard 30 days, creating an account and balance due, is in the sole discretion of Seller. The provisions of paragraph 4 above apply otherwise. Seller reserves the right, in its complete and unfettered discretion, to suspend credit or the allowance of any account balance, demand COD or to alter the terms of credit based on its assessment of Buyer's creditworthiness. If, at any time, Buyer makes an assignment for the benefit of creditors, a levy, execution or attachment is made of any material amount of Buyer's property, a receiver is appointed for Buyer or any material part of Buyer's property, and/or Buyer becomes subject to any proceeding or arrangement for the relief of debtors, including, without limitation, any voluntary or involuntary case under any provision of Title 11 of the United States Code (the Bankruptcy Act), or Buyer refuses to provide adequate assurance of payment or performance upon Seller's request, then, Seller shall have, the right to cancel this Agreement and any or all other agreements with Buyer, including work in process, or perform this Agreement and any or all other agreements with Buyer, including work in process, but refuse to make any shipments except upon the receipt of cash payment prior to shipment.

6. **FORCE MAJEURE:** Seller shall not be liable for failure to ship, or delays in any shipment, or other failure to perform occasioned by or due to (a) acts of God, fire, earthquake, hurricane, flood, pandemic, inability to obtain materials or shipping space, breakdowns, delays or unavailability of transportation or suppliers, including energy suppliers, labor troubles, whether or not labor demands could be met by that party, acts of war or terrorism, acts, regulations or requests

of any government or government agency, or (b) any other cause beyond Buyer's control. In the event of Seller's inability to fill Buyer's order, Seller may make partial shipment to Buyer, on such basis as Seller in its sole discretion may decide, without liability to Buyer for any failure to fully perform its contractual obligations. Seller shall have no obligation to purchase substitute goods or make other substitute arrangements in order to complete delivery to Buyer or to ship substitute goods from any other facility operated by Seller.

7. **EXPRESS WARRANTY, IMPLIED WARRANTY DISCLAIMER AND LIMITATION OF SELLER'S LIABILITY:** Seller expressly warrants good title to the goods sold to Buyer and that the goods shall be free from commercially unacceptable defects in material and workmanship and will conform, within the limits of standard commercial tolerances, to Buyer's specifications. All other warranties are disclaimed whether express or implied except as stated herein.

SELLER MAKES NO OTHER WARRANTY OR REPRESENTATION WHATSOEVER, EXPRESS OR IMPLIED INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL SUCH WARRANTIES, EXPRESS OR IMPLIED, ARE HEREBY EXPRESSLY EXCLUDED FROM THE TERMS OF ANY SALE BY SELLER TO BUYER AND ARE OTHERWISE DISCLAIMED.

8. Buyer agrees that its sole and exclusive remedy for any nonconforming or defective goods is repair or replacement of the goods and in no event shall Seller have any other liability. In any event, Buyer agrees to limit Seller's liability for damages to the amount of the cost of the goods. Seller may issue an account credit for any goods that are not repairable at its option. Only goods that are returned to Seller in same condition as when delivered to Buyer are eligible for warranty repair or return. All claims for replacement of alleged defective goods shall be deemed waived unless made in writing and delivered to Seller within 10 days after receipt of goods by Buyer. Buyer shall afford Seller prompt and reasonable opportunity to inspect all goods as to which any claim is made. Upon receipt of shipping instructions from Seller, Buyer shall return to Seller F.O.B. Seller's destination, all goods allegedly not conforming to specifications, or otherwise allegedly defective. Goods that are returned to Seller but are found by Seller to comply with the specifications are not defective and shall be returned to Buyer subject to the shipping options of Seller set forth in paragraph 3 above.

IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR ANY EXPENSES DIRECTLY ARISING FROM THE USE OR MISUSE OF THE GOODS INCLUDING BUT NOT LIMITED TO THE COSTS OF WAREHOUSING, LABOR

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AND HANDLING, SERVICE CHARGES AND DIE EQUIPMENT DAMAGE OR BREAKAGE. BUYER ACKNOWLEDGES AND AGREES THAT BUYER TAKES SOLE RESPONSIBILITY FOR THE SELECTION OF AND SPECIFICATIONS FOR THE GOODS, THEIR FITNESS FOR ANY PURPOSES INTENDED FOR THE USE OF THE GOODS BY BUYER OR ANY PERSON OR ENTITY WITH WHOM BUYER DIRECTLY OR INDIRECTLY DEALS AND FOR COMPLIANCE WITH ALL HEALTH, SAFETY AND/OR ENVIRONMENTAL LAWS, RULES, REGULATIONS AND STANDARDS OF PRACTICE THAT MAY BE APPLICABLE TO THE GOODS OR THEIR USE, INCLUDING, WITHOUT LIMITATION, THE USE OF THE GOODS AS CONTAINERS OR PACKAGING FOR FOOD OR BEVERAGES.

**9. PERFORMANCE AND COMPLIANCE WITH LAW:** Seller shall use its best efforts to perform in a reasonable manner consistent with any agreed upon delivery schedule. Seller represents that it has taken all reasonable steps to ensure that it is operating within the scope of all laws and applicable regulations governing its operations and the production of goods under these Terms and Conditions. Buyer agrees that it will comply with all laws and regulations governing this transaction and cooperate with Seller in avoiding, detecting and reporting any violations of any applicable law or regulation.

**10. INTELLECTUAL PROPERTY:** Seller warrants that goods sold hereunder shall not violate any third party intellectual property rights and further agrees to hold Buyer harmless from any and all damages, including reasonable attorneys' fees, arising from claims and demands for actual or alleged infringement of any third party intellectual property rights. If, however, any goods shall be manufactured or sold by Seller to meet Buyer's specifications or requirements and are not a part of Seller's standard line offered by it to the trade generally in the usual course of Seller's business, Buyer agrees to hold Seller harmless from any and all damages, including reasonable attorneys' fees, arising from claims and demands for actual or alleged infringement of any intellectual property rights, and to defend at Buyer's expense any suits or actions at law or in equity which may be brought against Seller for any actual or alleged infringement because of the manufacture or sale of any such goods. The sale of goods shall not grant Buyer any right or license of any kind under any intellectual property right owned or controlled by Seller or under which Seller is licensed.

**11. INDEMNITY:** To the fullest extent permitted by law, Buyer shall, at Buyer's sole expense, indemnify and hold Seller, its officers, directors, agents and employees harmless from any and all loss, liability, claims, suits and costs, including reasonable attorneys' fees, based in whole or in part on any third-party claim for damages or any other relief that faults Seller for damages caused by Buyer's breach of this agreement (i.e. harm caused by Buyer) as to the goods sold.

**12. TAXES:** Except for income taxes normally paid by Seller, Buyer shall pay or reimburse Seller for any tax which now or

hereafter may be imposed by any taxing authority in respect to the sale, manufacture, delivery, use and/or other handling of goods sold by Seller to Buyer.

**13. INSPECTION CHARGES:** Where Buyer requires tests or inspections not regularly provided by Seller, Seller may charge Buyer for the actual cost for such tests or inspections.

**14. CANCELLATION:** Buyer may cancel an order only upon Seller's agreement or consent in writing. Buyer agrees that Seller will charge or assess liquidated damages in the amount of 50% of the stated amount of any goods/materials subject to an order cancellation that is within 90 days of the scheduled delivery date based on the mutual recognition that actual damages are virtually impossible to calculate and that 50% of the order amount is reasonable under the circumstances. In the event of cancellation outside of 90 days, actual cancellation charges will be determined and assessed by Seller and paid by Buyer. Buyer agrees that orders or special manufactured goods are non-cancellable as are orders labeled "non-cancellable" by Seller.

**15. ASSIGNMENT:** This Agreement may not be assigned or transferred by either party without the other party's written consent; provided, however, that either party may assign, without the other's consent, this Agreement to any person or entity into which that entity has merged or which has otherwise succeeded to all or substantially all of its business and assets to which this Agreement pertains, by merger, consolidation, reorganization or otherwise. This Agreement will be binding on the successors and permitted assigns of the parties and the name of the party appearing herein will be deemed to include the names of such party's successors or permitted assigns to the extent necessary to carry out the intent of this Agreement.

**16. WAIVERS:** No change or waiver of any of these Terms and Conditions shall be valid unless in writing and signed by the party against whom such claimed change or waiver is sought to be enforced. No waiver by Seller of any term, condition or remedy shall be deemed a waiver of any other term, condition or remedy. Seller's failure to object to any provision contained in any communication from Buyer shall not be deemed an acceptance thereof or a waiver of any of the terms, condition or remedy.

**17. WORK ON SELLER'S PREMISES.** If the sale contract involves work by Buyer, its employees or agents, on the premises of Seller, the performance of such work shall be in accordance with Seller's published plant rules and general safety procedures, which are hereby incorporated herein by reference. Buyer shall obtain a copy of these rules and procedures from Seller's purchasing department prior to performing any work on Seller's premises. Buyer shall insure that all its employees and agents on Seller's premises are covered by a policy of workers compensation insurance and subject to the exclusive remedy of that coverage.

**18. ADVERTISING AND ANNOUNCEMENTS.** Buyer shall not advertise or publicly announce the fact that Buyer has contracted to purchase any material or services for Seller without obtaining the prior written permission of Seller.

**19. TERMINATION FOR MATERIAL BREACH OR DEFAULT:** Seller may terminate any sale contract in the event of any breach or default by the Buyer and pursue the remedies provided in this contract or at law.

**20. ARBITRATION OF DISPUTES AND CHOICE OF LAW:** An Agreement shall be deemed to be entered into and shall be governed by the laws of the State of Tennessee. All disputes between Buyer and Seller shall be resolved by binding arbitration administered by the American Arbitration Association in Nashville, TN and in accordance with its commercial rules within the state noted above. Judgment on any award shall be entered in a court of competent jurisdiction. Legal fees, including, without limitation, reasonable attorneys' fees and costs of arbitration, shall be awarded to the prevailing party in the arbitration. Any dispute, claim or controversy as to the arbitrability of a matter shall be decided by the arbitrator(s); however, the arbitrator(s) shall have no power to determine the class arbitrability of any dispute or the enforceability of the class action waiver set forth in Paragraph 21 of this Agreement. If the class action waiver set forth in Paragraph 21 is determined to be unenforceable, then all terms of this Paragraph 20 shall be null and void.

**21.** Claims may only be brought by a party in its individual capacity and not as a plaintiff or a class member in any purported class or representative proceeding, and the arbitrator or arbitrators may not consolidate more than one person's claims or otherwise preside over any class or representative proceeding.

**22.** Notwithstanding any provision to the contrary, Buyer agrees to bring any claim or dispute against Seller within one year after the occurrence of the event giving rise to such dispute or waive such claim.

#### **Miscellaneous**

**23.** Buyer agrees to refrain from taking any action that may cause a Seller's employee to violate Seller's Code of Conduct. Buyer should report any alleged violations by calling the Seller's legal department at 615-778-2000.

**24.** No terms or conditions other than those stated herein shall be binding on Seller unless such modifications or additional terms are made in writing and executed by an officer of Seller. The failure of either party to assert a right hereunder or to insist upon compliance with any term or condition will not constitute a waiver of that right or excuse any subsequent non-performance of any such term or condition by the other party. No terms or conditions contained herein shall be deemed affected by Buyer's documents containing other or different terms and conditions. These terms and conditions shall take precedence over any different or conflicting terms in Buyer's order or other Buyer documents. Acceptance by Seller

of the order is expressly limited to the terms and conditions contained herein. In the event an order shall be deemed an acceptance of Buyer's offer, the order is expressly conditioned upon Buyer's assent of these terms and conditions and Seller's fulfillment of any such order shall not be construed as assent of any of the terms and conditions proposed by Buyer and will not constitute a waiver by Seller of any of these terms and conditions or in Seller's acknowledgement. Seller retains the right to alter these Terms and Conditions at any time. In the interpretation and construction of these Terms and Conditions, the parties acknowledge that the terms of these Terms and Conditions shall not be deemed, for the purpose of construction and interpretation, to have been drafted by either party hereto.

25. If any portion of these Terms and Conditions is found to be invalid or unenforceable by a court of competent jurisdiction, the invalid or unenforceable term shall be severed from these Terms and Conditions, and the remaining terms and conditions shall be valid and fully enforceable as written.

26. If Seller and Buyer mutually agree to use an Electronic Data Interchange ("EDI") system to facilitate purchase and sale transactions, Buyer agrees that it will not contest (i) any contract of sale resulting from an EDI transaction under the provisions of any law relating to whether agreements must be in writing or signed by the party to be bound thereby; or (ii) the admissibility of copies of EDI records under the business records exception to the hearsay rule, the best evidence rule or any other similar rule, on the basis that such records were not originated or maintained in documentary form. Seller and Buyer will negotiate and agree on technical standards and methods to use in making EDI purchases, and will use reasonable security procedures to protect EDI records from improper access. In the event of a conflict, the business records maintained by Seller regarding EDI purchases made by Buyer shall be deemed to be conclusive.

27. If Buyer elects to use a third-party payment system provider or invoicing system ("Third Party Provider") and Seller is charged fees by the Third-Party Provider, Seller reserves the right to seek reimbursement from Buyer for any and all costs paid to the Third Party Provider for the transfer of funds, retrieval of payment detail, or any other purpose from the Third Party Provider.

28. Buyer represents and warrants that it is not designated on, or associated with, any party designated on any of the U.S. government restricted parties lists, including without limitation, the U.S. Commerce Department Bureau of Industry and Security ("BIS") Denied Persons List; Entity List or Unverified List; the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons List; or the U.S. State Department Directorate of Defense Trade Controls ("DDTC") Debarred Parties List, and Buyer agrees that it will not sell or transfer any Goods to such persons. Buyer shall comply with all

applicable U.S. economic sanctions and export control laws and regulations, including without limitation, the regulations administered by OFAC, the Export Administration Regulations administered by BIS, and the International Traffic in Arms Regulations administered by DDTC.

29. Neither Buyer nor any director, manager, officer, agent, employee or affiliate of Buyer has violated or is in violation of any anti-corruption law, rule or regulation applicable to Buyer, including the U.S. Foreign Corrupt Practices Act. Without limiting the foregoing, in connection with the performance of this Agreement, neither Buyer nor any person acting on its behalf shall: (i) take any action in furtherance of an offer, payment, promise to pay, or authorization or approval of the payment or giving of money, property, gifts or anything else of value, directly or indirectly, to any government official for the purpose of obtaining or retaining business for or with, or directing business to, Seller or Buyer; (ii) make any bribe, rebate, payoff, influence payment, kickback or other unlawful payment; or (iii) use any corporate funds for any unlawful contribution, gift, entertainment or other unlawful expense relating to political activity.

These terms and conditions apply as of January 1, 2020.