

SORBSTER INC ("Seller")
TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** Until rescinded or modified in writing by Seller, this writing shall govern and control all sales of goods or services by Seller to any party receiving this writing ("Buyer"). If this writing differs in any way from the terms and conditions of Buyer's order or if this writing is construed as an acceptance or as a confirmation acting as an acceptance, then Seller's acceptance is **EXPRESSLY MADE CONDITIONAL ON BUYER'S ASSENT TO ANY TERMS AND CONDITIONS CONTAINED HEREIN THAT ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED IN BUYER'S WRITING.** Further, this writing shall be deemed notice of objection to such terms and conditions of Buyer. If this writing is construed as the offer or as a part of the offer, acceptance hereof is **EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS CONTAINED HEREIN.** In any event, Buyer's acceptance of the goods or services shall manifest Buyer's assent to Seller's terms and conditions.

2. **PRICES.**

a. **General.** Unless otherwise agreed to by Seller in writing, Seller's prices for the goods or services will be the prices stated on the face of any purchase order or other document issued and executed by Seller or accepted by Seller in writing or Seller's standard prices for such goods or services as of the date of an order accepted by Seller in writing.

b. **Payment Terms:** Except as agreed by Seller in a purchase order or other document signed by Seller, terms are net 30 days from shipment, 1.5% interest monthly on outstanding balances.

c. **Confidentiality.** The prices of any and all goods and services of Seller will be confidential, and Buyer will not disclose such prices to any unrelated third party. Seller and Buyer acknowledge and agree that money damages for any and all breaches of Buyer's obligation not to disclose the price of any goods or services is both incalculable and insufficient and that any such breach would irreparably harm Seller and that in the event of an actual or prospective breach of the obligation of Buyer not to disclose the prices of any goods or services, Seller will be entitled to injunctive or other equitable relief against Buyer in addition to any other remedies to which Seller may be entitled at law or in equity.

3. **SHIPMENT OF GOODS; PERFORMANCE OF SERVICES.**

a. **General.** Unless otherwise agreed in writing by Seller, shipment of all goods will be made F.O.B. Seller's facility.

b. **Estimated Shipping or Service Performance Dates.** Any shipping dates for goods or service performance dates for services given in advance of actual shipment of goods or performance of services are Seller's best estimates for informational purposes only, and deliveries of goods and performance of services will be made subject to prior orders on file with Seller.

c. **Inspection.** Buyer immediately will inspect all goods upon its receipt of them and will be deemed to accept the goods upon receipt. Any claims for shortages or discrepancies will be waived by Buyer unless made in writing to Seller within five days of receipt of the goods.

d. **Title Matters.** Until Buyer has fully and finally paid all amounts owed to Seller for any goods, Buyer will hold such goods in trust for Seller, and Seller may repossess them if Buyer fails to pay for them in a timely fashion. Additionally, Seller may file a UCC financing statement giving notice of its ownership in any goods for which it has not received complete payment.

e. **Insurance; Risk of Loss.** Buyer will assume risk of loss to any goods covered hereby upon delivery thereof to the carrier. Unless otherwise agreed to by Seller in writing, Buyer will pay all insurance costs in connection with delivery of goods, if any, and be responsible for filing and pursuing claims with carriers for loss of, or damage to, goods in transit.

f. **Licenses and Permits.** Buyer is responsible for obtaining at its sole cost and expense any and all necessary licenses and permits for the goods and services provided by Seller to Buyer, including, without limitation, any licenses and permits for transportation.

g. **Delay.** If Buyer is unable to receive any goods or performance of services provided by Seller when they are tendered, Buyer will be liable to Seller for any losses, damages, or additional expenses incurred or suffered by Seller as a result of Buyer's inability to receive the goods or services.

h. **Demonstration and Leased Equipment.** To the extent any equipment ("Leased Equipment") is provided by Seller to Buyer as demonstration equipment or on a temporary or lease basis then these terms are supplemented by the Seller's Leasing Addendum attached to these Terms or otherwise provided to Buyer contemporaneously with these Terms ("Licensing Addendum") and which are incorporated herein by reference. In the event of a conflict between these terms and those set forth in the Leasing Addendum or in any other agreement relating to the disposition of Leased Equipment, the provisions of the Leasing Addendum shall control with respect to such equipment.

4. **WARRANTIES AND REMEDIES**

a. **Warranty of Title.** Seller warrants to Buyer that it holds and will pass good title to any goods sold subject these terms.

b. **Warranty of Quality.** Seller warrants to Buyer that any goods sold by Seller to Buyer shall conform to the description and specifications of Seller provided by Seller to Buyer or, if no description or specification is provided to Buyer, the specifications of Seller generally in effect for the goods sold by Seller to Buyer. Seller warrants that any services provided by Seller to Buyer will be performed in conformity with the standards provided to Buyer or if no standards are provided with those generally in effect in the industry for the services provided. Due to the unique formulations of the medias sold for remediation of the BUYER'S water streams and other conditions unique to those water streams, the SELLER maintains a NO RETURNS, NO REFUND POLICY-

5. **DISCLAIMER OF IMPLIED WARRANTIES.** SELLER GIVES NO WARRANTIES EXCEPT THOSE EXPRESSLY CONTAINED HEREIN. SELLER DISCLAIMS ALL OTHER WARRANTIES IMPLIED BY LAW, USAGE OF THE TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **LIMITATIONS OF LIABILITY.** The following limitations of Seller's liability are acknowledged by the parties to be fair and reasonable and shall apply to any act or omission subject hereto, and to any breach of any contract to which these terms and conditions apply:

a. **Disclaimer of Damages. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES WHETHER ARISING UNDER CONTRACT, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER THEORY OF LIABILITY.** Such damages include but are not limited to loss of profits, loss of use of the goods, damage to property, and claims of third parties.

7. **SELLER'S CANCELLATION/ RESCHEDULING POLICY**

a. If Buyer cancels an accepted order, in advance of shipping from the Seller's location, Seller shall be entitled to receive from Buyer as a cancellation charge (a) Seller's total costs incurred in processing the cancelled order, including, without limitation, the costs of any goods or materials purchased by Seller to satisfy the order and any production or labor costs incurred by Seller in connection with the order or to finish materials or goods purchased before the cancellation; and (b) an additional sum which would make the profit on the transaction equal to the average profit margin on the pertinent product or service during the preceding calendar year.

b. Due to the unique, custom formulations of the Sorbster® medias sold for remediation of the BUYER'S contaminated water streams and other conditions unique to the BUYER'S water streams, the SELLER maintains a NO RETURNS, NO REFUND POLICY on shipments to BUYER once the shipment has left the SELLER'S location.

c. Requests by Buyer for either earlier or later delivery of goods will be accommodated, if possible, at the sole discretion of Seller; however, a rescheduling request by Buyer that extends thirty (30) days past the originally scheduled shipment date will accrue a charge equaling two percent (2%) of total order value per month for a maximum of six (6) months. After six (6) months, Seller shall have the option of either selling the goods to other parties or proceeding with final production processing and shipment to Buyer at full order value.

d. The words "cancel" or "cancellation" as used herein are intended to include, in addition to an express cancellation, any conduct constituting a breach or repudiation of the sales contract.

8. **FORCE MAJEURE.** Seller shall not be liable for any delay in delivery or performance, or failure to deliver or perform, due to any cause beyond the Seller's control, including, but not limited to, fires, floods, or other forces of the elements; strikes or other labor disputes; accidents to machinery, acts of sabotage, riots, precedence or priorities granted at the request or for the benefit, directly or indirectly, of the federal or any state or local government or any subdivision or agency thereof; delay in transportation or lack of transportation facilities; restrictions imposed by federal, state or other governmental legislation or rules or regulations thereof; or substantial increases in Seller's cost. For purposes of this document, a substantial increase in Seller's cost shall occur if Seller's performance hereunder would result in a loss to Seller on a sale as computed under Seller's normal accounting procedures, in which case Seller may terminate the agreement in whole or in part without liability for any delay in the delivery of, or failure to deliver, the goods sold.

9. **TAXES AND OTHER CHARGES.** The Buyer will pay, or reimburse Seller if it pays, any and all taxes or tariffs or any other similar charges imposed upon this contract, the goods covered hereby or the delivery or use thereof or upon any act done or document of title or instrument used in connection with the transaction, and any and all taxes, tariffs or charges imposed upon or measured by the sales contemplated herein or the purchase price payable hereunder.

10. **FREIGHT CHARGES.** If a sale of goods to Buyer is other than F.O.B. Seller's facility, the price of the goods is based upon the freight charges now in effect. In the event of an increase or decrease in applicable freight charges before the goods are shipped, such change in freight will be for the Buyer's account.

11. **USE OF GOODS BY BUYER.** Buyer will not use goods sold to it by Seller in combination with other active ingredients without the prior written consent of Seller and will use the goods strictly in accordance with all of Seller's specifications, manuals and instructions for use. Buyer shall under no circumstances attempt to adjust, modify, re-engineer, re-sell or customize the goods, prepare any derivative work based upon the goods or attempt to analyze, disassemble, decompile, decipher or reverse engineer the goods or apply any procedure or process to the goods in order to ascertain, derive, and/or appropriate for any reason or purpose, the composition or components of the goods. Information regarding the manufacture and composition of the goods is proprietary and confidential information of, and belongs to, Seller, and Buyer will not, and will assure that its employees do not, disclose any such information, to the extent Seller or its employees have knowledge of it, to any party.

12. **SAMPLES.** Seller may perform and retain tests of any samples or substances provided to Seller by Buyer or obtained by Seller from Buyer or any facility of Buyer and except as otherwise agreed by Buyer, results of and data derived from any tests or analysis performed by Seller on those samples or substances belong to Seller. In any case, Seller shall be entitled to retain and disclose the unattributed results of any tests or analysis performed by Seller on any sample or substances of Buyer or provided to Seller by Buyer.

13. **SHORTAGES; DELIVERY DATES.** In the event of a shortage of goods, Seller, in its own discretion, may allocate goods among all buyers of the goods.

14. **NON-WAIVER.** The terms and conditions contained herein may not be modified, altered or waived either orally, by usage of trade, course of performance or course of dealing. Any change or deviation herefrom shall be by a writing signed by the party to be bound.

15. **CURRENCY.** All invoices rendered are due and payable in United States dollars.

16. **SEVERABILITY.** A holding that any term or condition hereof is void and unenforceable shall not render void or unenforceable any other term or condition.

17. **JURISDICTION.** All disputes shall be resolved in a court of competent jurisdiction in Cuyahoga County, Ohio. Buyer hereby consents to the jurisdiction of the State and Federal Courts sitting in Cuyahoga County, appoints the Secretary of State of Ohio as its agent for service of process and agrees to appear in any such proceeding upon notice thereof.

18. **APPLICABLE LAW.** All questions arising hereunder or in connection with a quotation or any order subject hereto shall be interpreted and resolved in accordance with the laws of the State of Ohio without regard to its conflict of law provisions and excluding the United Nations Convention on the International Sale of goods.