

**XYPEX (USA) CHEMICAL CORPORATION
GENERAL TERMS AND CONDITIONS OF SALE**

1. APPLICABILITY

1.1 These Terms and Conditions ("Terms") are the only terms that govern the sale of Xypex (USA) Chemical Corporation and its affiliates, successors and assigns ("Xypex") products ("Xypex Products") to the entity or person purchasing Xypex Products who received and/or are named in a Sales Confirmation ("Buyer"). Notwithstanding anything herein to the contrary, if a written contract signed by both parties is in existence covering the sale of the Xypex Products covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.

1.2 The accompanying proposal and/or purchase order and/or Xypex Price List and/or Order Acknowledgement and/or invoice, as applicable, (each a "Sales Confirmation" and these Terms (collectively, this "Agreement")) comprise the entire agreement between the parties and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment of Buyer's order for Xypex Products (each an "Order") does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

1.3 Xypex reserves the right to correct all typographical and clerical errors in any Sales Confirmation.

2. ORDER ACKNOWLEDGEMENT; MODIFICATIONS AND CANCELLATION

2.1 All Orders received by Xypex if accepted shall be confirmed in writing by an Order Acknowledgement issued by Xypex ("Order Acknowledgement") that is delivered to Buyer. Once an Order Acknowledgement is issued by Xypex the applicable Order to which it relates is deemed to be final and it cannot be cancelled or modified by Buyer without the written consent of Xypex.

3. PRICES

3.1 Buyer shall purchase the Xypex Products from Xypex at the price(s) (the "Price(s)") set forth in Xypex's price list that is in force as of the date that Xypex accepts the Order by issuing the Order Acknowledgement and such Price(s) shall be binding on the parties. Unless otherwise agreed in writing, the Price(s) shall be in the currency set out in the Order Acknowledgement.

3.2 All Prices are exclusive of all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs, and taxes; *provided that*, Buyer shall not be responsible for any taxes imposed on, or with respect to, Xypex's income, revenues, gross receipts, personnel, or real or personal property or other assets.

4. PAYMENTS

4.1 Unless otherwise agreed to in writing between the parties, Buyer shall pay all invoiced amounts due to Xypex within thirty (30) days from Xypex's invoice. Buyer's obligation to make the payments provided for in these Terms shall not be affected by any circumstances, including, without limitation, any set-off, counterclaim, recoupment, defense, or other right which the Buyer may have against Xypex. Xypex may, at its sole discretion, suspend or terminate deliveries of any Xypex Products until all payment defaults have been cured by Buyer.

4.2 All late payments shall bear interest at the higher of (at the discretion of Xypex) one and a half percent (1.5%) per annum or the highest rate permissible under applicable law, calculated daily and compounded monthly ("Late Charge"). Such Late Charge shall be in addition to, and not in lieu of, Xypex's other rights and remedies for Buyer's default or non-performance.

5. WARNINGS; ASSUMPTION OF RISK

5.1 Prior to each use of any Xypex Products, the Buyer or user must always read and follow the warnings and instructions on the Xypex Product's most current product label, Product Data Sheet ("PDS"), and Safety Data Sheet ("SDS") which are available on Xypex's website (www.Xypex.com) or by contacting Xypex's Technical Service Department. Nothing contained in any Xypex literature or materials relieve the user or the Buyer of the obligation to read and follow the warnings and instructions for each Xypex Products as set forth in the current Xypex Product label, PDS and SDS prior to use of the Xypex Products.

6. DELIVERY, TRANSFER OF TITLE & RISK, STORAGE

6.1 Unless otherwise agreed in the Order Acknowledgement (i) any delivery or shipment dates are estimates only and Xypex is not liable for any loss, damage, cost or expense for any failure to deliver the Xypex Products in accordance with the delivery or shipment date, and (ii) delivery terms for the Xypex Products shall be Ex-Works (Incoterm 2020) from the applicable Xypex facility (the "Delivery Point").

6.2 Unless otherwise agreed in the Order Acknowledgement, title and risk of loss to Xypex Products shall pass upon Delivery at the Delivery Point or upon delivery to Buyer's designated carrier. Upon Xypex Products being delivered at Delivery Point, Buyer shall be the sole responsible for all transport, storage, and use of the Xypex Products. Buyer shall refer to the PDS and SDS.

7. LIMITED WARRANTY

7.1 All Xypex Products only carry the warranty as set out in Xypex's Product / Technical Data Sheet (<https://www.xypex.com/technical-resources/product-data/>) and in the event no warranty is set out therein or is otherwise expressly confirmed in writing to Buyer by Xypex, the Xypex Products are sold on an AS-IS basis.

7.2 EXCEPT FOR THE WARRANTIES SET OUT IN SECTION 7.1 NO OTHER WARRANTIES EXPRESS OR IMPLIED SHALL APPLY INCLUDING WITHOUT LIMITATION (A) ANY WARRANTY OF MERCHANTABILITY; (B) FITNESS FOR A PARTICULAR PURPOSE; (C) WARRANTY OF TITLE; OR (D) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OF IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE; PROVIDED ALWAYS XYPEX SHALL NOT BE LIABLE UNDER ANY LEGAL THEORY FOR SPECIAL OR CONSEQUENTIAL DAMAGES.

8. LIMITATION OF LIABILITY

8.1 IN NO EVENT WILL XYPEX BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT *INCLUDING NEGLIGENCE), PRODUCT LIABILITY, CONTRIBUTION, ANY LEGAL THEORY OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORSEEABLE AND WHERE OR NOT XYPEX HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

8.2 IN NO EVENT WILL XYPEX BE LIABLE FOR LOST PROFITS, COSTS OR LOSSES NOT ASSOCIATED WITH DIRECT PHYSICAL DAMAGE TO PROPERTY FOR ANY CLAIMS MADE UNDER OR RELATED TO THIS AGREEMENT.

8.3 IN NO EVENT SHALL XYPEX'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO XYPEX FOR THE XYPEX PRODUCTS SOLD UNDER THE SALES CONFIRMATION WHICH GAVE RISE TO THE LIABILITY.

9. PRODUCT AVAILABILITY

9.1 All Orders are subject to Xypex Product availability. Xypex shall not be liable to the Buyer or Buyer's customers for damages of any kind arising out of any delay in the performance of an Order. Subject to availability and additional fees, rush shipments or pick ups may be authorized by Xypex at its sole discretion.

10. RETURNS

10.1 Xypex Products are classified into two (2) distinct groups: (i) Xypex Products Made to Stock ("MTS") that are maintained in inventory at select locations (ii) Xypex Products Made to Order ("MTO") that are made to order only.

10.2 Buyer can not return MTO products for credit or refund under any circumstances.

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10.3 Buyer may only return MTS products for credit or refund within thirty (30) days from the date of receipt by Buyer and with the prior written approval of Xypex. All MTS products eligible for return in accordance with these Terms must be in their original unopened packaging and in a readily saleable condition as determined by Xypex at its sole discretion. All returned MTS products that are accepted by Xypex in accordance with these Terms shall be subject to a restocking fee of up to 40% of the original invoice value of the returned Xypex Products as determined by Xypex at its sole discretion.

11. INDEMNIFICATION

Buyer shall indemnify, defend, and hold harmless Xypex and its affiliates and each of their respective officers, directors, employees, agents, successors and assigns, from and against, any and all losses, damages, liabilities, claims, tax, liens, judgments, awards, penalties, fines, costs or expenses of whatever kind, including reasonable legal fees and the cost of enforcing any right to indemnification hereunder ("Losses") including, but not limited to, Losses incurred in connection with or alleged with regard to, or otherwise relating to any claim, demand, proceeding, action, or suit by any third party (collectively, "Claims"), in each case arising out of or occurring in connection with (i) the Buyer's or its affiliates and their respective customers, clients, officers, directors, employees, agents, successors and assigns or any third party's (as the case may be) application, use or installation of Xypex Products purchased hereunder; (ii) Buyer's and its affiliates and their respective personnel's negligence, willful misconduct or breach of the Agreement; or (iii) otherwise relating to Buyer's obligations under these Terms.

12. FORCE MAJEURE

Notwithstanding anything to the contrary, Xypex shall not be liable for any failure to perform or delay to the extent caused by any event or circumstance which is beyond the control of Xypex, including without limitation, Acts of God, fires, floods, hurricanes, earthquakes, accidents, explosions, wars, acts of terrorism, embargoes, delays of carriers, sabotage, strikes, labour disturbances, act of governmental authority, state of emergency, pandemics, epidemics, shortages of power, or lack of, or inability to obtain, sources of materials, fuel, supplies, or equipment.

13. PRODUCT STEWARDSHIP

Buyer agrees that Xypex Products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with Xypex's recommendations, instructions, and all applicable laws and regulations. Buyer shall (i) be responsible for its own and its employees, contractors, subcontractors, customers, and those other persons who the Buyer is responsible for at law, handling, storage, transportation and disposal of any Xypex Products; (ii) make certain that such persons know and understand the procedures necessary to enable them to comply with the requirements set forth herein and otherwise as required by all applicable laws; and (iii) make certain that such persons are adequately trained in the use, handling, storage, transportation and disposition of the Xypex Products. Buyer further agrees to deliver the most recent edition of Xypex Product literature, including SDSs, to all such noted persons and to maintain a written record of such deliveries. Buyer shall only re-sell to those who can handle, use, store, transport and dispose of Products safely.

14. COMPLIANCE WITH LAWS

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Xypex Products under this Agreement or any resale of the Xypex Products by the Buyer. Buyer assumes all responsibility for shipments of Xypex Products requiring any government import clearance. Xypex may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Xypex Products.

15. FRAUDULENT ACTIVITIES

Detection of fraud is critical in preventing business Losses. To prevent Losses from fraudulent activities, including unauthorized communications and/or unauthorized access to financial, account, or other sensitive information ("Fraudulent Activities"), Xypex encourages Buyer to implement measures within its systems and processes to detect Fraudulent Activities. For any investigation relating to Fraudulent Activities, Buyer shall cooperate in such investigation and take all appropriate corrective measures. To the extent that

Buyer incurs any Losses relating to Fraudulent Activities, Buyer assumes responsibility and Xypex shall not be liable for any such losses, including financial or reputational.

16. TERMINATION

In addition to any remedies that may be provided under these Terms, Xypex may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, liquidation, reorganization, or assignment for the benefit of creditors.

17. CONFIDENTIAL INFORMATION

All non-public, confidential or proprietary information of Xypex, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Xypex to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Xypex in writing. Upon Xypex's request, Buyer shall promptly return all documents and other materials received from Xypex. Xypex shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

18. ENFORCEABILITY

The invalidity in whole or in part of any part of these Terms shall not affect the validity of the remainder of these Terms. In the event any provision of these Terms is held invalid or unenforceable, only the invalid or unenforceable part of the provision shall be severed, leaving intact and in full force and effect the remainder of the sentence, clause and provision to the extent not held invalid or unenforceable.

19. CONFLICT OF TERMS

These Terms shall be applicable to, and incorporated by reference into, any sale and distribution, or documentation relating to the sale or distribution, of any Xypex Products. To the extent there is an ambiguity, inconsistency or a conflict between these Terms, and the terms and conditions of any other documentation, including without limitation, a purchase order, request for quotation, Order Acknowledgement or Sales Confirmation, these Terms shall control and supersede any such inconsistency, conflict, or ambiguity.

20. MODIFICATIONS BY XYPEX

Xypex reserves the right to revise or otherwise modify these Terms from time to time. Any revised Terms will be posted on Xypex's website (www.Xypex.com) and will thereafter be immediately effective for sales of Xypex Products.

21. GOVERNING LAW AND DISPUTE RESOLUTION

21.1 This Agreement and all matters arising out of or relating to the Agreement, including without limitation the sale of Xypex Products, shall be governed by and construed and enforced in accordance with the laws in force in of the State of Delaware, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than Delaware.

21.2 In the event of a dispute, disagreement or claim arising out of or relating to the Agreement, or the negotiation, execution, performance, breach, termination, existence, or invalidity hereof ("Dispute"), the parties shall first attempt in good faith to resolve by negotiation and consultation between themselves. If the parties cannot resolve for any reason, the Dispute will be referred submitted to and exclusively resolved with finality by arbitration before a single arbitrator of the American Arbitration Association administered under the American Arbitration Association's Commercial Arbitration Rules (the "Arbitration Rules"). The arbitrator shall be selected by application of the Arbitration Rules, or by mutual agreement of the parties. The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify the terms of this Agreement. The prevailing party is entitled to an award of reasonable attorney fees. The place of arbitration will be Seattle, Washington.