



## UNITED REFRACTORIES CO.

### TERMS AND CONDITIONS OF SALE

These terms and conditions of sale (these "Terms and Conditions") apply to all sales of Products (as defined herein) to you, the buyer ("Buyer"), by United Refractories Co. ("Seller") unless superseded by the terms of a separate written agreement between Buyer and Seller.

1. **SCOPE AND APPLICABILITY.** All products, materials, supplies or other goods (the "Products") sold by Seller to Buyer shall be made in accordance with these Terms and Conditions. These Terms and Conditions (a) constitute an offer by Seller to Buyer to sell the Products for the Price (as defined herein) and pursuant to the terms set forth herein and (b) are not an acceptance of the terms or conditions of any offer of Buyer. Acceptance of this offer is expressly conditioned upon and limited to the provisions of these Terms and Conditions. Acceptance of this offer shall be deemed to occur on the earlier of (A) the mailing or delivery of Seller's order acknowledgment to Buyer, (B) the commencement of the production or manufacturing of all or any portion of the Products, (C) or the shipment of all or any portion of the Products to Buyer. In the event of any additional, different or conflicting provision contained in any document of Buyer relating to the Products, including, but not limited to, any purchase order of Buyer, the Buyer expressly agrees that (i) these Terms and Conditions shall apply and (ii) that the Buyer's additional, different and/or conflicting provisions shall not become a part of these Terms and Conditions or Seller's offer to sell the Products to Buyer.

2. **PRICE.** The purchase price (the "Price") for the Products shall be the total, gross amount that is set forth on Seller's sales invoice that relates to the Products (the "Invoice"), plus any taxes (as described in Section 10). Buyer hereby grants to Seller a security interest in all Products as security for the prompt and full payment of the Price. All price quotes and sales offers from Seller to Buyer will be in writing and will be valid for a period of 60 days from the date of such quote or offer.

3. **SHIPMENTS.** Every reasonable effort will be made by Seller to respect Buyer's request as to shipping dates preferred and delivery lines; provided, however, that Buyer expressly agrees and acknowledges that Seller shall have the sole and exclusive right, exercisable from time to time and at any time, to determine the carrier(s) (the "Carrier") that will be used to ship from any factory or intermediate storage point and to select the routing of shipments.

4. **PAYMENT TERMS.** Unless otherwise stated in Seller's Invoice, Buyer shall pay the Price in full to Seller within thirty (30) days after the date of the Invoice.

5. **TITLE AND RISK OF LOSS.** Seller shall have title to the Products and bear the risk of the loss of the Products at all times until the Products are delivered to the Carrier. Title to the Products and risk of loss of the Products shall be in and remain with Buyer from the date and time that the Products are delivered to the Carrier.

6. **FORCE MAJEURE.** Neither party shall be liable for damages arising from his/its failure to perform hereunder because of government actions (including but not limited to priorities,

requisitions, allocations and price adjustment restrictions), fire, flood, labor disputes or strikes, riots, car shortage, unavoidable cause beyond the party's control. Upon the occurrence of any such contingency, the party shall have the right to suspend or reduce deliveries during the period of such contingency, and the total quantity deliverable shall be reduced by the quantity of the deliveries so omitted. If, due to any such contingency, Seller is unable to supply the total demands for any Products, Seller may allocate its available supply among any or all purchasers, as well as departments and divisions of Seller. Any such reduction by allocation in the quantity deliverable hereunder shall not be greater than the percentage reduction to other customers, or departments and division of Seller, taken in the aggregate. In no case shall Seller be responsible for any liability, loss in deliveries or damage after delivery of the Products to the Carrier.

7. **INSPECTION; CLAIMS; BUYER'S REMEDIES.** Buyer must promptly inspect the Products upon delivery. Unless Buyer provides to Seller a written notice of claim of nonconformity within thirty days after such delivery, Buyer's receipt of any Products delivered hereunder shall be an unqualified acceptance of, and a waiver by Buyer of any claims with respect to, such Products. Buyer assumes all risk and liability for the results obtained by the use of Products delivered hereunder in the manufacturing processes of Buyer or in combinations with other substances. The sole and exclusive remedies of Buyer, any user of the Products or any third party are: (a) in any case other than Seller's delivery of nonconforming Products, to receive repayment of the amount paid by Seller to Buyer, provided that such amount is not in excess of the Price; and (b) in the case of Seller's delivery of nonconforming Products, to return the Products and at Seller's sole and exclusive option, to (i) receive repaired or replaced Products or (ii) receive repayment of the amount paid by Seller to Buyer, provided that such amount is not in excess of the Price. No cause of action of Buyer, any user of the Product(s) or any third party concerning, relating to, or arising from the Products may be commenced later than one year after the cause of action has accrued.

8. **INTEGRATION, AMENDMENT.** These Terms and Conditions constitute the entire agreement between the parties with respect to the matters set forth herein, superseding all other terms, promises, warranties, and conditions. Salesmen and local brokers are not empowered to make or modify these Terms and Conditions. In no event shall these Terms and Conditions be deemed to be amended, modified or changed in any manner whatsoever (including by reason of trade usage or course of dealing) except and unless Seller provides its written agreement to such amendment, modification or change. Buyer may not assign any portion or all of these Terms and Conditions without receiving the prior written consent of Seller. These Terms and Conditions are governed in all respects, including integration, interpretation, construction and performance, in accordance with the laws of the Commonwealth of Pennsylvania,

without regard to any choice of law principles that may cause the substantive law of another jurisdiction to govern.

9. **WARRANTIES.** Seller does not warrant the adaptability or fitness for any particular of the goods sold hereunder. THE PRODUCTS ARE PROVIDED ON AN "AS-IS" BASIS. SELLER EXTENDS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, CONCERNING THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, ANY USER OF THE PRODUCTS, OR ANY THIRD PARTY FOR LOST PROFITS, LOSS OF BUSINESS, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER DAMAGES WHATSOEVER ARISING FROM THE USE OR PERFORMANCE OF THE PRODUCTS, OR FROM THE NON-DELIVERY, DELAYED DELIVERY, DAMAGE OF PRODUCTS OR OTHERWISE. IN NO EVENT WILL SELLER'S LIABILITY EXCEED THE ACTUAL PRICE PAID BY BUYER FOR THE PRODUCTS. BUYER EXPRESSLY ASSUMES ALL RESPONSIBILITY FOR DETERMINING THE FITNESS OF SUCH PRODUCTS FOR BUYER'S INTENDED USE. ANY TECHNICAL INFORMATION, PRODUCT LITERATURE, SELLER TECHNICAL ASSISTANCE OR OTHER INFORMATION IS GIVEN TO AND ACCEPTED BY BUYER AT ITS OWN RISK AND IS NOT A WARRANTY BY SELLER TO BUYER.

10. **TAXES.** In addition to the Price, Buyer shall pay Seller the amount of all taxes, excises or other governmental charges that Seller may be required to pay on the manufacturing, refining, production, packaging, sale or transportation of any Products sold hereunder.

11. **GENERAL.** Upon the commencement of the production or manufacturing of all or any portion of the Products, no cancellations by Buyer will be allowed unless Seller, in its sole discretion, determines otherwise. Invoices to be rendered on the basis of factory weights.

12. **SELLER'S REMEDIES.** In case of failure of Buyer to accept any proper shipment or delivery hereunder, or failure of Buyer to make prompt payment when due for any Products covered by these Terms and Conditions, or in case of the bankruptcy or insolvency of Buyer or the appointment of a receiver for Buyer or in the event that a petition in bankruptcy is filed by or against Buyer, then Seller shall be excused from tendering any Products not already delivered hereunder and Seller at its sole option and without prejudice to any other legal rights and remedies may (a) invoice any or all undelivered Products to Buyer at Sellers' convenience and recover from Buyer the full price thereof plus interest at the highest legal rate from the date on which such Products should have been delivered hereunder, together with all carrying charges, and Seller shall not be obligated to deliver such Products until full payment, including interest and carrying charges shall have been made, (b) cancel all obligations of Seller, (c) dispose of any or all undelivered Products, with or without notice, with Buyer paying all damages and expenses resulting to Seller therefrom, and/or (d) stop shipments and deliveries of any or all Products which may then be in transit and retake title and possession thereof and dispose of the same with or without notice in any market at the best price obtainable and hold Buyer liable for all damages and loss resulting therefrom. Seller may also refuse to ship or deliver any or all installments if Buyer is in default on any

obligation to Seller or if Buyer has failed to fulfill any of his/its agreements with Seller.

13. **INDEMNIFICATION.** Buyer agrees to indemnify, defend and hold harmless Seller and its owners, officers, directors, employees, and representatives from and against any and all damages, claims, expenses (including reasonable attorneys' fees), losses or liabilities of any nature whatsoever, and whether involving injury or damage to person or property, and any and all suits, causes of action and proceedings thereon arising or allegedly arising out of, based upon or attributable to the Product(s) sold hereunder or from the use thereof.

14. **CIVIL RIGHTS ACT.** "Seller will comply with all provisions of the Civil Rights Act of 1964, all pertinent rules, regulations and orders of the Secretary of Labor and the provisions of Executive Order 11246 to the extent they are applicable."

15. **NO WAIVER.** Except as otherwise set forth herein, no failure to exercise any right of either party hereunder shall constitute a waiver of said right, nor shall any waiver of any right hereunder constitute a waiver of any other right, nor shall any waiver constitute a continuing waiver. Except as otherwise set forth herein, no waiver shall be binding unless executed in writing by the party making the waiver.

16. **COLLECTION COSTS.** If Seller retains the services of counsel in connection with enforcing Buyer's obligations hereunder, reasonable attorneys' fees shall be paid by Buyer to Seller. Buyer shall pay all costs, including such attorneys' fees, incurred by Seller in connection with any proceeding to enforce Buyer's obligations hereunder.

17. **SEVERANCE CLAUSE.** In case one or more of the provisions contained in these Terms and Conditions shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision, and these Terms and Conditions shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.