

TERMS AND CONDITIONS of SALE and DELIVERY of NEDSPICE US INC.**1. Applicability**

1.1 These terms and conditions apply to all offers, legal acts and contracts of sale between NEDSPICE US INC ("NEDSPICE") in relation to its buyer and any other party as buyer ("**the Buyer**") regardless of whether Buyer purchases goods through the medium of a written sales contract, or through written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from NEDSPICE and/or Buyer relating to the goods (collectively or individually, an "**Order**"). If the Order or other correspondence contains terms or conditions contrary to or in addition to these terms and conditions, acceptance of any Order by NEDSPICE shall not be construed as assent to such contrary or additional terms and conditions, or constitute a waiver by NEDSPICE of any of the terms and conditions contained herein and NEDSPICE expressly rejects the applicability of any such contrary or different terms or conditions. Any variations from these terms and conditions or any part thereof must be accepted expressly in writing by NEDSPICE. Without limiting the generality of the foregoing, NEDSPICE expressly rejects applicability of any standard terms and conditions invoked or used by the Buyer.

1.2 These terms and conditions may be invoked also by NEDSPICE's directors, employees, agents and subcontractors. These terms and conditions apply also to non-contractual claims.

1.3 If any or several provisions of these terms prove(s) invalid or unenforceable, the invalid or unenforceable provision(s) will be interpreted as much as possible in accordance with the applicable rules of law to approximate the original purport of the provision(s) as closely as possible and the other provisions of these terms and conditions will remain fully effective.

2. Offer and Acceptance

2.1 All offers by NEDSPICE, regardless of their form, will be without obligation and merely constitute an invitation to the Buyer to request an order.

2.2 The above mentioned in Article 2.1 applies to quotations in particular. They are without obligation and shall only be binding on NEDSPICE if and as far as NEDSPICE confirms same in writing, by fax or email.

2.3 An Order will take effect only upon written acceptance or upon actual execution by NEDSPICE of the Buyer's request for an order.

2.4 Any statement or act by the Buyer, implicit or explicit, confirming an Order for the supply of goods, will constitute unconditional acceptance by the Buyer of these terms and conditions.

3. Prices

3.1 NEDSPICE's prices will be exclusive of VAT and other taxes, duties or levies. The costs of packaging, transportation, import and export duties, excise duties and other levies or taxes will be paid by the Buyer, unless agreed otherwise in writing.

3.2 NEDSPICE may pass on to the Buyer changes in factors affecting the cost price and the additional costs referred to in Article 3.1.

3.3 Any changes in customs duty is for account of the Buyer

3.4 Complaints about invoices must be filed with NEDSPICE in writing, which shall mean either by registered letter or by email only, within eight (8) days of invoice. After that period the Buyer will be deemed to have consented to the invoice.

4. Delivery

4.1 Unless NEDSPICE has expressly stated otherwise in writing, all deliveries of goods are *ex works* NEDSPICE's production or storage facility. The term *ex works* has the meaning defined in the latest version of the INCOTERMS, as published by the International Chamber of Commerce in Paris, France, at the time of conclusion of the Order in question, as referred to in Article 2.

4.2 The place of delivery is the delivery location as per the Order.

4.3 The delivery times are estimates and are not binding on NEDSPICE. NEDSPICE will respect these times as much as possible.

4.4 Non-compliance with delivery times does not entitle the Buyer to compensation, dissolution or termination of (part of) the Order.

4.5 NEDSPICE may deliver the goods in installments.

4.6 Manner and means of dispatch shall be at the discretion of NEDSPICE. The Buyer's requests shall be taken into consideration as far as possible; any extra costs thus incurred shall be borne by the Buyer.

4.7 Unless agreed otherwise in writing, deliveries of goods will follow call-offs approximately equally spread over the contracted period

4.8 If the Buyer does not take delivery of the goods (in time) the Buyer will be in default without any further notice being required. In that event NEDSPICE has the right to store the goods at the risk and expense of the Buyer or to sell the same to a third party. The Buyer will then owe the purchase price increased by interest and costs by way of compensation.

4.9 Any defects in the goods supplied or part thereof do not entitle the Buyer to refuse the entire delivery of goods or other deliveries of goods.

4.10 NEDSPICE will arrange for insurance of the goods during transportation and/or storage only if expressly agreed in writing in advance.

5. Quality Standards

5.1 NEDSPICE bears no responsibility whatsoever for the goods meeting quality standards other than those explicitly specified in the product specification provided by NEDSPICE. The product specification is considered to be part of the Order. The Buyer assumes all risks and liability in connection with all further handling and processing after transfer of risk in respect of the goods as per the delivery terms set out in the Order and when using the delivered material, irrespective whether the material was used independently or in combination with other products.

5.2 NEDSPICE does not guarantee or represent the goods being suitable for any processing purpose and/or use, of whatever nature, by the Buyer, unless explicitly agreed by NEDSPICE in writing.

5.3 The provision of samples does not constitute a guarantee, unless agreed explicitly by NEDSPICE in writing.

5.4 Results mentioned in the Certificate of Analysis refer to the sample only and do not imply any guarantee for the entire quantity of goods delivered

5.5 The foregoing warranties are exclusive and in lieu of any other warranties of any kind (whether arising by implication or by operation of law) with respect to the products. NEDSPICE hereby disclaims any and all warranties of merchantability, fitness for a particular purpose and all other warranties, express or implied.

6. Force Majeure

6.1 Force majeure on the part of NEDSPICE means that NEDSPICE cannot comply with its obligations adequately and in time due to a foreseeable or unforeseeable circumstance beyond NEDSPICE's control, including but not limited to: (a) acts of God, war, war risk, terror attacks, riots, disturbances; (b) delays in the supply of raw materials or dispatch of a finished product; (c) sickness of a number of employees such that compliance is reasonably not possible; (d) strikes, industrial conflicts, lockout or similar actions within or against NEDSPICE, its suppliers or non-employees; (e) other problems with production or supply on the part of NEDSPICE or its suppliers and/or problems with transport by NEDSPICE or by third parties, such as, but not limited to operational breakdowns, delayed deliveries/shipments on the part of NEDSPICE's suppliers (including intra-group suppliers), shortages of energy supplies or raw materials, and traffic disruptions to the extent that the events were unforeseeable, as well as strikes, legal blockades/seizures/arrests, government orders, default of supplies or inability to obtain raw materials and all instances of force majeure; (f) damage to the production due to fire, storm or any other extreme unforeseen cause; (g) any action taken by a national or international person in authority.

6.2 NEDSPICE shall notify the Buyer as soon as reasonably possible of (potential) force majeure situations.

6.3 In the event of force majeure as defined in Article 6.1 NEDSPICE will be released from its obligation to deliver goods for the duration of such force majeure situation and to the extent of its effects. If making or taking delivery is thus delayed by more than thirty calendar days, the Buyer's sole remedy shall be to withdraw from the Order in respect of the quantity affected without being entitled to any other remedies and/or claims against NEDSPICE.

6.4 Further, in the event of force majeure as defined in Article 6.1 NEDSPICE will have the right to terminate the Order(s) affected by the force majeure situation with immediate effect by written notice without any compensation being due.

7. Terms of Payment

7.1 The Buyer shall pay NEDSPICE, which payment shall be received by NEDSPICE within eight (8) days of invoice, unless agreed otherwise by NEDSPICE in writing.

7.2 Payments shall be made to NEDSPICE directly; payments to sales representatives, brokers or similar agents will never discharge the Buyer from its payment obligations.

7.3 All taxes, levies and other costs related to payments shall be paid by the Buyer.

7.4 The place of performance for payment is Myrtle Beach, South Carolina, USA.

8. Default of Payment, set-off, liens

8.1 In the event of excess of payment or credit terms, the Buyer will be in default without any further notice being required.

8.2 All Orders are subject to the approval of NEDSPICE's credit department. NEDSPICE may at any time refuse to make shipment or delivery if Buyer fails to fulfil the terms and conditions of payment or fails to provide security in compliance with NEDSPICE's credit policies. NEDSPICE policies or practices may be changed at any time.

8.3 In the event of any reasonable grounds for doubt as to the Buyer's solvency or creditworthiness, NEDSPICE shall be entitled to demand payment in advance for outstanding deliveries and to call for immediate payment of all other claims arising from any other contracts between NEDSPICE and the Buyer.

8.4 Without limiting the generality of the foregoing, if Buyer becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay NEDSPICE's invoices as they become due, or in the event of any other reasonable grounds for doubt as to the Buyer's solvency or creditworthiness NEDSPICE reserves the right to: (a) cancel all or any part of an Order; (b) modify the terms of payment prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any shipment of goods.

8.5 All of NEDSPICE's obligations, including but not limited to obligations to deliver or ship any goods ordered shall be suspended as long as the Buyer is in default of payment of any amount due to NEDSPICE.

8.6 NEDSPICE will have the right to charge interest at a rate of interest equal to the lower of (i) 1.5% per month or (ii) the highest rate of interest permitted under applicable law with respect to any amounts which are not paid when due.

8.7 The filing of a claim on account of defective quality or other complaints will not suspend the Buyer's payment obligation and other obligations on the part of the Buyer and does not alter or annul such obligations, regardless whether the claim or complaint will be honored.

8.8 NEDSPICE is entitled to pursue further claims for damages due to delayed payment.

8.9 In the event of judicial or extrajudicial collection because of delayed payment the amount of the claim will be increased by 10% handling fee while the judicial and extrajudicial costs will be charged to the Buyer up to the amount paid or owed by NEDSPICE, with a minimum of US\$ 300 plus VAT, or its equivalent in another currency as per the date of payment.

8.10 The Buyer is not entitled to set off any claims it may have against NEDSPICE with any payments or other obligations due by the Buyer to NEDSPICE.

8.11 NEDSPICE shall at all times be entitled to set off all of its claims against the Buyer with any payments and/or obligations due to the Buyer.

8.12 The Buyer is not entitled to exercise any liens and/or similar rights on any goods, funds documents and/or other goods or monies to be provided by the Buyer to NEDSPICE.

9. Termination

9.1 The Buyer may not terminate any Order without the consent of NEDSPICE.

9.2 In the event of (provisional) suspension of payments or (petition for) bankruptcy or winding-up of the Buyer or its business, NEDSPICE will not be required to fulfil any obligations it may have under any Order with the Buyer, unless the corresponding payment has been made in advance or appropriate security has been provided.

9.3 If the Buyer is in default, has been granted suspension of payments, is bankrupt, has been wound up (or a petition has been filed to that effect) all of NEDSPICE's claims against the Buyer will become fully payable forthwith and NEDSPICE will have the right to take back the products in question. The Buyer shall enable NEDSPICE to exercise its rights.

10. Complaints

10.1 Upon delivery the Buyer must inspect the goods immediately and retain an additional sealed copy of each sample for NEDSPICE and notify NEDSPICE in writing of any defect or discrepancy (in terms of quantity, quality or otherwise) immediately but at any rate within two (2) business days of delivery.

10.2 Notwithstanding Article 10.1, hidden defects shall be deemed accepted unless NEDSPICE is immediately notified in writing of such defects upon discovery of same, but not later than thirty (30) calendar days from the date of delivery of the goods at the latest, failing which NEDSPICE shall not be liable for such defects and/or their consequences.

10.3 All complaints must be made to NEDSPICE's place of business. Complaints shall be accompanied by the corresponding documents and samples as well as, if necessary, photographs, surveyors' reports and/or any other relevant documents and complaints, failing which NEDSPICE shall not be obliged to consider incomplete complaints.

10.4 Any goods in respect of which the Buyer gave notice of a defect or discrepancy must be kept for NEDSPICE in an appropriate location without being used, mixed or processed. Upon request NEDSPICE, its insurer, or a designated

representative of NEDSPICE or its insurer, must be granted immediate access to the goods as well as any assistance required to inspect the reported defect.

10.5 In the event of non-compliance with the provisions contained in Articles 10.1 to 10.4 the Buyer will irrevocably forfeit the right to complain about the goods delivered.

10.6 The Buyer may not file any complaints about the goods delivered if Buyer has failed to comply with any obligation towards NEDSPICE in connection with the delivery.

10.7 If the complaint has been submitted to NEDSPICE correctly and the defect or discrepancy in respect of the goods has been properly demonstrated, NEDSPICE shall replace the goods free of charge against return of the defective or discrepant goods or provide a discount or partial refund with respect to the affected goods; any further compensation is precluded. Such replacement or discount/refund are the sole liabilities of NEDSPICE and the exclusive remedy of Buyer for any defect or discrepancy in respect of the goods or any breach of the express limited warranty set forth herein. Any complaints settled is without prejudice and in full and final settlement.

10.8 Notwithstanding Article 10.1, all disputes regarding the quality of a product shall be settled through analysis of a representative sample, taken by an independent, professional third party. Samples shall only be taken from sealed packages. Samples shall be analyzed by an independent expert laboratory. The costs incurred with respect to sampling and analysis shall be borne by the party found to be in the wrong.

11. **Liability**

11.1 NEDSPICE shall never be liable for loss sustained by third parties (not being the Buyer or its employees) in connection with the goods delivered by NEDSPICE, their use or otherwise. The Buyer will indemnify, defend and hold harmless NEDSPICE and its affiliates, and their respective officers, directors, employees, shareholders, agents and authorized contractors from and against such claims and/or demands, damages, liabilities, costs and expenses.

11.2 Under no circumstances shall NEDSPICE be liable towards the Buyer or any other person for special, additional or consequential damage or punitive damages, costs or expenses including but not limited to loss or damage in the form of loss of goodwill, loss of sales, loss of profits, work interruption, disruption to production, unspecified lump sum claims, penalties, fines, damage to other goods or otherwise, regardless whether the loss or damage in question arises from or is related to a violation of a warranty, breach of contract, misrepresentation, negligence or otherwise.

11.3 NEDSPICE's liability per incident or series of related incidents, as long as they result from one and the same cause, shall at all times, regardless of the cause of action (whether in contract, negligence, tort or otherwise), be limited to the net invoice amount of the delivery in question up to \$ 35,000 maximum, or its equivalent in another currency as per the date of payment.

11.4 Any right of action towards NEDSPICE will expire one year after the (intended) date of delivery.

11.5 Any tax which NEDSPICE may be required to pay or collect through assessment or otherwise under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any goods described herein, including without limitation, taxes upon or measured by receipts from sales, shall be for the account of Buyer and may be added to the price of such goods. Buyer shall promptly pay the amount thereof to NEDSPICE upon demand but may, in lieu of such payment, furnish tax exemption certificates acceptable to the appropriate taxing authorities to NEDSPICE.

12. **Purchase Money Security Interest**

12.1 To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Buyer to NEDSPICE, Buyer hereby grants NEDSPICE a security interest, with priority over all other liens, claims and encumbrances, in all inventory of goods purchased by Buyer from NEDSPICE, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

12.2 NEDSPICE's security interest shall also extend to cover the new products created when NEDSPICE's goods are processed.

12.3 Buyer acknowledges that the security interest granted hereunder is a purchase-money security interest under South Carolina law. NEDSPICE may file a financing statement for such security interest and Buyer shall execute such statements or other documentation necessary to perfect NEDSPICE's security interest in such goods. Buyer also authorizes NEDSPICE to execute, on Buyer's behalf, such statements or other documentation necessary to perfect NEDSPICE's security interest in such goods. NEDSPICE shall be entitled to all applicable rights and remedies of a secured party under applicable law.

12.4 When the Buyer fails to meet any of his obligations towards NEDSPICE, NEDSPICE shall be entitled to exercise all rights of a secured party under the Uniform Commercial Code as adopted in South Carolina.

12.5 The Buyer shall be obliged to take good care of the goods to which NEDSPICE has security interest and to have them insured to a due and proper extent against loss and damage at his own expense. Buyer assigns herewith to NEDSPICE any claims arising from insurance policies and insurance proceeds with respect to such goods.

12.6 The Buyer shall not be entitled to pledge such goods or to assign them as security or to encumber them in any other way for the benefit of any other party. When reselling the goods, the Buyer shall stipulate that the transfer of ownership be subjected to full payment for the goods by Buyer's customers.

12.7 If it appears to NEDSPICE that the fulfilment of any obligation of the Buyer to NEDSPICE's claim is in jeopardy the Buyer shall be obliged, at the request of NEDSPICE, to inform Buyer's customers of NEDSPICE's security interest in the goods and proceeds and furnish them with any information and documents required. The Buyer shall inform NEDSPICE immediately of any acts by third parties affecting the collateral.

12.8 In the event of attachment, (provisional) suspension of payments, bankruptcy or winding-up, the Buyer must inform the process server executing the attachment, the administrator or liquidator immediately of NEDSPICE's (security interest)rights and notify NEDSPICE immediately in writing.

13. **Assignment**

13.1 Without the prior written consent of NEDSPICE, the Buyer may not transfer its rights and/or obligations arising from an Order with NEDSPICE – from warranties given by NEDSPICE or otherwise – not even if the third party acquires the goods delivered by NEDSPICE from the Buyer by particular title.

14. **Governing Law and Disputes**

14.1 Orders between NEDSPICE and the Buyer, including these terms and conditions, shall be exclusively governed and construed by the laws of the State of South Carolina. The 1980 UN Convention on the International Sale of Goods (CISG) shall not apply.

14.2 The state and federal courts sitting in Charleston, South Carolina, shall have sole jurisdiction in respect of any and all disputes arising between NEDSPICE and the Buyer.

14.3 Alternatively, disputes arising between NEDSPICE and the Buyer may, upon either NEDSPICE's or the Buyer's wish, be settled in accordance with the Commercial Arbitration Rules and Mediation Procedures of the American Arbitration Association. The place of arbitration shall be Charleston, South Carolina or any other place to be agreed upon between NEDSPICE and the Buyer. The proceedings shall be conducted in the English language.

15. **Severability**

15.1 If any provisions of the Terms and Conditions of Sale are or will become invalid this shall not affect the validity of any other provisions.

16. **Miscellaneous**

16.1 All orders are subject to acceptance by NEDSPICE and satisfaction by the Buyer of NEDSPICE's credit requirements.

16.2 Stenographical, typographical and clerical errors are subject to unilateral correction by NEDSPICE.