

## **ACKNOWLEDGEMENT OF ORDER AND TERMS AND CONDITIONS OF SALE**

This is to acknowledge receipt of your ("Buyer") purchase order for the specified products (the "Products") of ELANTAS PDG, INC. ("Seller") and to set forth the terms and conditions ("Terms and Conditions") of sale for this order. If the Terms and Conditions of this acknowledgment differ in any way from the terms and conditions of Buyer's order, this acknowledgment shall be construed as a counteroffer and shall not be effective as an acceptance of such order unless Buyer assents to the Terms and Conditions contained herein, which shall constitute the entire agreement between the parties. Buyer's assent to the Terms and Conditions contained herein shall be deemed given upon Buyer's execution of this acknowledgment below or upon Buyer's failure to object to these Terms and Conditions in writing within ten (10) days from the date of receipt of this acknowledgment. Buyer's receipt of delivery of the Products without immediate return will further manifest Buyer's assent to these Terms and Conditions. No additions to or modifications of any of the Terms and Conditions hereof shall be effective unless made in writing and signed by both parties.

**1. APPLICATION.** THESE GENERAL SALES TERMS AND CONDITIONS APPLY TO ALL SALE AGREEMENTS, ORDERS, ACKNOWLEDGEMENTS OR CONFIRMATIONS WHICH REFERENCE THESE TERMS AND ALL OTHER SALES MADE BY ELANTAS PDG, INC. UNLESS OTHERWISE AGREED UPON IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF ELANTAS PDG, INC. and are referenced below as the "Terms". Each contract document, order, order acknowledgement or confirmation that references or incorporates these Terms, together with any schedules, exhibits or other documents incorporated by reference in such documents, is referenced below collectively as the "Contract". The term "Material(s)" used below refers to the products or materials sold by Seller and identified in the Contract. The Contract constitutes the complete and exclusive statement of the terms of the contract between the parties regarding the sale and purchase of the Material(s). No additional terms or any rescission, waiver, alteration or modification of the Contract shall be valid unless it is made in a writing signed by an authorized representative of each party and specifically references the Contract. None of Buyer's inconsistent and/or additional terms and conditions submitted in acknowledging or accepting this Contract or in issuing purchase orders, releases, shipping instructions or other documents shall apply. Unless expressly provided in a Contract document signed by both parties, if any term, condition or other provision contained in any schedule, exhibit or other document expressly incorporated by reference into the Contract is in any way inconsistent with or creates any ambiguity concerning these Terms, these Terms shall control.

Buyer's acceptance or use of any shipment of Material after Seller's offer of sale referencing or incorporating these Terms but before the Contract is signed by either party or before Buyer otherwise makes a definite and timely act or expression of acceptance, shall constitute acceptance of the terms of the Contract as to that shipment only but shall not in itself constitute an acceptance of the final written expression of the Contract with respect to future shipments.

**2. TAXES.** Any tax or governmental charge (or increase in same) affecting Seller's costs of production, including costs of materials used therein, sale, delivery, storage, processing, use, consumption or transportation shall be for Buyer's account and shall be added to the price.

**3. TERMS OF PAYMENT.** Terms are net thirty (30) days from the date of Seller's invoice in U.S. currency, or as printed on the face of the document. Seller shall have the right, among other remedies, either to terminate this agreement or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest, at a rate to be determined by Seller, which shall not exceed the maximum rate permitted by law, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory

to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Products theretofore delivered. If Seller desires to revise the applicable price, discount or terms of payment for the Products hereunder, but is restricted to any extent against so doing by reason of any governmental law, regulation, order or action or if the price, discount or terms of payment in effect under this agreement are altered by reason of any government, law, regulation, order or action, Seller shall have the right to terminate this order with respect to any Products not then delivered by written notice to Buyer.

**4. SHIPMENT AND DELIVERY.** Deliveries are made F.O.B. Seller's shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by a common carrier. Any claims for shortages or damages suffered in transit shall be submitted by Buyer directly to the carrier. While Seller will use commercially reasonable efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. If Seller desires to revise the point of shipment for the Products hereunder, but is restricted to any extent against so doing by reason of any governmental law, regulation, order or action or if the point or delivery in effect under this agreement is altered by reason of any government, law regulation, order or action, Seller shall have the right to terminate this then delivered by written notice to Buyer.

**5. CONTAINERS.** Returnable drums and other containers, which can be billed extra at Seller's current schedule of prices, remain Seller's property. Buyer shall protect them and be responsible for any loss of or damage to any of them from whatever while in Buyer's possession; and shall return them in good condition in accordance with the terms shown on the face of the invoice, for full credit or refund at the price billed.

**6. LIMITED WARRANTY, LIMITATION OF REMEDY AND LIABILITY.** Subject to the limitations on remedies and liabilities set forth below, Seller warrants, at the time of shipment from Seller the chemical composition of its Products within stated tolerances, but does not guarantee that a Product will be appropriate for any particular application. Any recommendation, performance of tests or suggestion is offered merely as a guide and is not a substitute or a thorough evaluation by the manufacturer. No representative of Seller has the authority to offer a warranty that a Product will perform satisfactorily in manufacturing the Buyer's product and no such representation should be relied upon. Determination of the suitability of the Products for the use contemplated by Buyer is the sole responsibility of Buyer, and Seller shall have no responsibility in connection with such determination. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT OF ANY THIRD PART'S INTELLECTUAL PROPERTY RIGHTS; AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED FROM THIS AGREEMENT. Buyer agrees to examine and inspect the Products at once upon arrival at their destination, and if the Products fail to comply with the warranty provided hereunder, Buyer shall promptly give detailed written notice of such failure to Seller. Any claim under this warranty shall conclusively be deemed waived by Buyer unless written notice thereof is given to Seller within fifteen days after discovery, but in no event later than ninety days from the date of sale. Additionally, no claims shall be allowed for any cause as to Products which have been treated or processed in any way, except for such quantity necessarily processed to determine the existence of an inferior quality or defective condition. Seller's responsibility and Buyer's exclusive remedy under this warranty is limited to the replacement of the Products or the refund of the amount of the purchase price paid by Buyer, at Seller's option, upon the return of any nonconforming Products to Seller at Buyer's expense, except such part, if any, as cannot be returned due to its necessary use in processing; and Buyer shall also return, if possible, the said Products used in processing.

This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, Buyer's negligence or intentional conduct, unauthorized modification or alteration, use beyond rated capacity, or improper storage, maintenance or application. IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY HEREUNDER OR IN CONNECTION WITH THE MANUFACTURE OR SALE OF THE PRODUCTS DESCRIBED HEREIN, WHETHER IN CONTRACT, IN TORT, FOR INFRINGEMENT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS INCURRED BY BUYER). THE PRICE STATED FOR THE PRODUCTS IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY.

**7. EXCUSE OF PERFORMANCE (FORCE MAJEURE).** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; terrorism or other criminal conduct; flood; weather; sabotage; strikes, or labor or civil disturbances; governmental requests, restrictions, laws, regulations, orders or actions; unavailability of or delays in utilities or transportation; default of suppliers; or unforeseen circumstances or any other events or causes beyond Seller's reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Seller upon notice to Buyer in the event of any of the foregoing, but the remainder of the agreement shall otherwise remain unaffected as a result of the foregoing. If Seller determines that its ability to supply the total demand for the Products, or to obtain material used directly or indirectly in the manufacture of the Products, is hindered, limited or made impracticable, Seller may allocate its available supply of the Products or such material (without obligation to acquire other supplies of any such Products or material) among its purchasers on such basis as Seller determines to be equitable without liability for any failure of performance which may result therefrom.

**8. CANCELLATION.** Buyer may cancel orders only upon ten (10) days written notice prior to the ship date quoted or acknowledged by Seller and upon payment to Seller of its cancellation charges which include, among other things, all costs and expenses incurred to cover commitments made by Seller, and a reasonable profit thereon. Seller's determination of such termination charges shall be conclusive.

**9. EXPORT-IMPORT COSTS AND DOCUMENTS.** Unless otherwise specifically stated, prices do not include the cost of special preparation for export, export packaging, consular invoices, export declarations, certificates of origin or other documents, insurance in transit or similar items, and any cost incurred for such items shall be added to the prices as shown. It shall be the responsibility of Buyer to provide all import licenses, foreign exchange approvals and similar documents required in connection with the purchase, delivery and payment for the Products covered hereby.

**10. ACCOMPANYING DOCUMENT.** Buyer acknowledges that a pro forma invoice is intended to provide an indication of product value and/or quantity and that the actual invoice is the billing document containing the applicable charges related to the shipment. Buyer will remit payment based upon the actual invoice amounts.

**11. CUSTOM MADE PRODUCTS.** Because of the conditions involved in the manufacture of custom made Products, where an order calls for a Product to be made-to-order specifically for Buyer: (1) a delivery of not less than 90% of the order will be considered a complete fulfillment of the order; and (2) in case of an overrun, Seller may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds.

**12. CHANGES.** Buyer may request changes or additions to the Products consistent with Seller's specifications and criteria upon ten (10) days written notice prior to the ship date quoted or acknowledged by Seller. In the

event such changes or additions are accepted by Seller, Seller may revise the price(s) and date(s) of delivery. Seller reserves the right to change the specifications for the Products without prior notice to Buyer, except with respect to Products being made-to-order for Buyer.

**13. TECHNICAL ADVICE.** Seller, upon Buyer's request, may furnish technical advice with reference to the use of the Products sold hereunder, if and to such extent as Seller has such advice conveniently available, but it is expressly agreed that there is no obligation to furnish any such advice, and that if any advice or assistance is furnished, which will be without charge, it shall be given and accepted at Buyer's risk, and Seller shall not be responsible or liable for the advice or assistance given or the results thereof.

**14. ASSIGNMENT.** Buyer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

**15. PRODUCT HANDLING.** Buyer shall be responsible for receiving, inspecting, testing, storing, maintaining, applying and disposing of (in accordance with all applicable governmental laws, regulations, orders or actions) all Products.

**16. GENERAL PROVISIONS.** These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions shall be binding upon Seller unless made in writing and signed on its behalf by an officer or other duly authorized representative of Seller (sales representatives are not an authorized representative). No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement these terms and conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation, acknowledgment or publication are subject to correction. The validity, performance, and all other matters relating to the interpretation and effect of this agreement shall be governed by the laws of the state of Missouri, without giving effect to its conflict of laws and rules. The application of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods to this agreement are expressly excluded. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in St. Louis County, Missouri and the parties agree to submit to such jurisdiction. This acknowledgment and the Terms and Conditions specified herein are hereby accepted by Buyer. DEEMED TO BE EXECUTED, AND THE TERMS AND CONDITIONS HEREOF ACCEPTED, IF NOT OBJECTED TO IN WRITING WITHIN TEN DAYS FROM THE DATE OF RECEIPT OF THIS ACKNOWLEDGMENT.

**17. EXPORT CONTROL.** Any and all obligations of Seller to provide the Materials, as well as any technical data, shall be subject in all respects to all applicable laws and regulations pertaining to export control. Buyer represents and warrants that it will not export or re-export the Materials or technical data related thereto except in conformity with such laws and regulations. If the material being ordered is for export, upon the request of Seller, the Buyer must provide Seller with the name of the ultimate end-user of the material and any intermediate consignees or export agents together with a detailed description of the end-use.

**18. FAIR LABOR STANDARDS ACT.** Seller represents that the Materials have been produced in compliance with the requirements of Section 6, 7 and 12 of the Fair Labor Standards Act of 1938, as amended.