

Terms and Conditions of Sale of Rochester Midland Canada Corporation **(hereinafter, the "Seller")**

1. **Applicability and Acceptance.** All sales by Seller to a purchaser of the goods and services provided by Seller (the "**Buyer**"), are governed exclusively by the terms and conditions contained herein (the "**Terms**" and "**Agreement**"). Any additional or different terms offered by Buyer at any time and through any medium, including but not limited to a written or electronic purchase order, the provision of contradicting or additional terms and conditions or the submission of an electronic signature, "clicking" on an "I agree" icon, or other indication of assent to such additional or conflicting terms and conditions of Buyer, shall be deemed rejected and of no effect unless expressly approved in writing by Seller. If these Terms are not acceptable, Buyer shall notify Seller in writing within three (3) business days. Buyer's (a) failure to provide such timely disaffirmance and/or (b) acceptance of shall constitute an unqualified acceptance by Buyer of the Terms contained herein.

This Agreement comprises the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. This Agreement prevails 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. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

Notwithstanding anything to the contrary contained in this Agreement, Seller may, from time to time, change the services without the consent of Buyer provided that such changes do not materially affect the nature or scope of the services, of the fees, or any performance dates set forth in the Agreement.

2. **Orders.** Each of Buyer's orders must identify the goods or services, unit pricing, extended pricing and proposed delivery dates (not more than one year from the order date). All orders placed by Buyer are subject to acceptance by Seller. Once accepted by Seller, Buyer may not cancel or reschedule orders without Seller's prior written consent.

3. **Payment and Price.** Buyer shall purchase the goods and services from Seller at the price(s) set forth in the accepted purchase order. Unless otherwise indicated on the face hereof, terms of payment are net thirty (30) days from date of invoice. The purchase price shall be payable in Canadian dollars (unless otherwise specified in an order accepted by Seller) and Buyer agrees to reimburse Seller for all reasonable travel and out-of-pocket expenses incurred by Seller in connection with the performance of Services. If Buyer fails to pay any amount when due, Seller shall also be entitled to (a) interest thereon from the invoice date to the date of payment at the lesser of two percent (2%) per month or the maximum permitted by law and (b) be reimbursed by Buyer for all of Seller's costs of collection, including reasonable attorney fees and costs. Seller reserves the right to modify, change or withdraw credit terms at any time without notice and to require guarantees, security or payment in advance of the amount of credit involved. Except with Seller's express, written consent, Buyer shall not set-off or withhold any amounts due or alleged to be due by Seller to Buyer. At any time, Seller may increase the purchase price of undelivered goods by giving Buyer notice of any such increase. Any such price increase shall be binding upon Buyer unless objected to within five (5) business days after receipt of the notice. If Buyer notifies Seller of its objection, Seller shall have the right to cancel the order as to undelivered goods affected by the price increase. In such event, Seller's only obligation shall be to refund any amount previously paid by Buyer. Seller reserves the right to make changes to goods provided the foregoing does not adversely affect the goods. The purchase price includes standard packing for normal shipment. Special packing shall be undertaken at Buyer's expense. Any tax which Seller may be required to pay or collect, and any shipping costs, shall be for the account of Buyer and shall be added to the purchase price. All prices are exclusive of all harmonized sales tax, goods and services tax, sales tax, value added tax, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by 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, Seller's income, revenues, gross receipts, personnel or real or personal property, or other assets.

4. **Shipment and Delivery; Title; Risk of Loss.** Seller may allocate its goods among its customers in Seller's sole discretion. All shipping dates are approximate, and Seller does not guarantee the date of shipment. Seller shall not be liable for any delays, loss, or damage in transit. Delivery shall be F.O.B. Origin shipping point. Shipments will be made via standard commercial freight carriers to destinations within the normal service areas of such carriers. Deliveries to locations outside these areas may require special arrangements and may be subject to additional freight charges and extended delivery times. Buyer shall contact Seller for details of special freight terms.

Seller may, in its sole discretion, without liability or penalty, make partial shipments of goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfilment of Buyer's purchase order.

Notwithstanding title to or ownership of the goods or the method of shipment, the risk of loss shall pass to Buyer as soon as the goods have been delivered to the carrier for shipment by Seller. Passage of title shall not be affected by delivery terms or shipping instructions. If for any reason Buyer fails to accept delivery of any of the goods on the date fixed pursuant to Seller's notice that the goods have been delivered to the delivery point, or if Seller is unable to deliver the goods at the delivery point on such date because Buyer has not provided appropriate instructions, documents, licenses, or authorizations: (i) the risk of loss to the goods shall pass to the Buyer; (ii) the goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage, and insurance).

As collateral security for the payment of the purchase price of the goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title, and interest of Buyer in, to and under the goods, 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. The security interest granted under this provision constitutes a purchase money security interest under the Ontario *Personal Property Security Act*.

5. **Performance of Services.** Buyer shall (i) cooperate with Seller in all matters relating to the services and provide access to Buyer's premises, and such office accommodation and other facilities as may reasonably be requested by Seller, for the purposes of performing the services; (ii) respond promptly to any Seller request to provide direction, information, approvals, authorizations, or decisions that are reasonably necessary for Seller to perform services in accordance with the requirements of this Agreement; (iii) provide such customer materials or information as Seller may reasonably request to carry out the services in a timely manner and ensure that such customer materials or information are complete and accurate in all material respects; and (iv) obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the services before the date on which the services are to start.

6. **Non-Delivery and Quantity.** The quantity of any instalment of goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. Seller shall not be liable for any non-delivery of goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within ninety (90) days of the date when the goods would in the ordinary course of events have been received. Any liability of Seller for non-delivery of the goods shall be limited to replacing the goods within a reasonable time or adjusting the invoice respecting such goods to reflect the actual quantity delivered. Buyer acknowledges and agrees that the remedies set forth in this Section 6 are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under this Section 6, all sales of goods to Buyer are made on a one-way basis and Buyer has no right to return goods purchased under this Agreement to Seller.

If Seller delivers to Buyer a quantity of goods up to five percent (5%) more or less than the quantity set forth in the purchase order, Buyer shall not be entitled to object or reject the goods or any portion of them by reason of the surplus or shortfall and shall pay for such goods the price set forth in the purchase order adjusted pro rata.

7. **Buyer's Acts or Omissions.** If Seller's performance of its obligations under this Agreement is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations under this Agreement or otherwise liability for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

8. **Inspection and Rejection of Non-Conforming Goods.** Buyer shall inspect the goods within ninety (90) days of receipt ("**Inspection Period**"). Buyer will be deemed to have accepted the goods unless it notifies Seller in writing of any Non-Conforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. "**Non-Conforming Goods**" means only the following: (i) product shipped is different than identified in Buyer's purchase order; or (ii) product's label or packaging incorrectly identifies its contents.

If Buyer timely notifies Seller of any Non-Conforming Goods, Seller shall, in its sole discretion, (i) replace such Non-Conforming Goods with conforming Goods, or (ii) credit or refund the Price for such Non-Conforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Non-Conforming Goods to Seller's facility located at 2470 Milltower Court, Mississauga, ON L5N 7W5, Canada. If Seller exercises its option to replace Non-Conforming Goods, Seller shall, after receiving Buyer's shipment of Non-Conforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced goods to the original delivery point.

Buyer acknowledges and agrees that the remedies set forth in this Section 8 are Buyer's exclusive remedies for the delivery of Non-Conforming Goods. Except as provided under this Section 8, all sales of goods to Buyer are made on a one-way basis and Buyer has no right to return goods purchased under this Agreement to Seller.

9. **Confidentiality and Non-Analysis.** Buyer shall keep confidential and not disclose or make available to any third party any confidential and/or proprietary information of Seller (including goods and/or samples thereof). Buyer shall not, nor permit a third party to, chemically analyze, reverse engineer, duplicate, disassemble, decompile, or otherwise attempt to determine the compositional makeup of any goods, samples thereof, and/or other tangible materials that embody Seller's confidential information. Buyer shall not use the Seller's confidential information to obtain intellectual property rights (including patents) incorporating, or relating to, such confidential information. Seller shall remain the owner of any formula for any goods provided by Seller. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief of any violation of this Section 9.

10. **Limited Warranty.** Seller warrants to Buyer that the goods and services shall conform to Seller's standard specifications and will conform to all information on any label or instructions provided therewith. For a period of ninety (90) days commencing with delivery of the goods or

services to Buyer and provided that Buyer uses goods during such ninety (90) day period in accordance with all directions provided to it, should Buyer in good faith timely provide Seller with written notice that the performance of goods or services does not meet the applicable specifications, Seller, at its sole and exclusive obligation under this warranty, shall provide Buyer with a credit for same.

THE FOREGOING COMPRISES THE SOLE AND ENTIRE WARRANTY OF SELLER. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED.

SELLER MAKES NO WARRANTIES AS TO ANY PRODUCTS NOT MANUFACTURED BY IT, CONDITION OR WARRANTY OF TITLE, OR WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, and, to the extent permitted, warranties of the original manufacturer are passed through to Buyer. Seller makes no warranties for services not specifically agreed between the parties.

Seller shall not be liable for a breach of the warranty set forth in this Section 10 if: (i) Buyer makes any further use of such goods or alters services after giving notice of non-conformity; (ii) the defect arises because Buyer failed to follow Seller's instructions; (iii) Buyer alters or repairs such goods or services without the prior written consent of Seller; (iv) alteration of goods or services occurs as a result of environmental or external matters.

Without limiting the generality of the foregoing, to the extent that the Services include the provision of cleaning, sanitization, or disinfection products or services aimed at disinfection, Seller makes no representation, warranty, or guarantee that any such products or Services will eliminate, prevent, or reduce the presence, growth, or transmission of Legionella bacteria or any other waterborne or airborne pathogen. Buyer acknowledges that no cleaning, disinfection, water treatment, testing, or related program can eliminate the risk of Legionella or other waterborne pathogens, and that the quality of Buyer's water, equipment, and related water systems, together with their operation, maintenance, monitoring, testing, remediation, and regulatory compliance, remains at all times the sole responsibility of Buyer.

11. Returns. No credits or returns of goods shall be permitted without Seller's prior written approval.

12. Limitation of Liability and Indemnification. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES, OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY BUYER OR COULD HAVE BEEN REASONABLY FORESEEN BY BUYER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

IN NO EVENT SHALL SELLER'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 SELLER FOR THE GOODS AND SERVICES SOLD HEREUNDER.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED FROM THE USE OF ANY GOODS, EQUIPMENT, OR SERVICES PROVIDED HEREUNDER, INCLUDING ANY CLEANING OR DISINFECTION PRODUCTS OR SERVICES, AND SELLER SHALL NOT BE RESPONSIBLE FOR CONDITIONS ARISING FROM BUYER'S OPERATION, MAINTENANCE, MODIFICATION, MONITORING, OR USE OF ITS WATER SYSTEMS OR EQUIPMENT FOLLOWING PERFORMANCE OF THE SERVICES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL NOT BE LIABLE FOR ANY CLAIM ARISING FROM THE PRESENCE, GROWTH, RELEASE, TRANSMISSION OF, OR EXPOSURE TO, LEGIONELLA OR OTHER WATERBORNE PATHOGENS, EXCEPT TO THE EXTENT CAUSED BY SELLER'S GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

Buyer's remedies with respect to any claim arising out of any order, or Seller's performance in connection therewith shall be limited exclusively to the remedies specified herein. Buyer agrees to indemnify, defend and hold harmless Seller from and against any and all claims, liabilities, damages and expenses, including attorney's fees and costs (collectively "**Claim(s)**") of any nature, including any Claim related and/or incident to Buyer's purchase and/or use of any goods, or any act or omission by Buyer, its agents or employees, except where a Claim results from the sole negligence of the Seller. For greater certainty, Buyer's indemnification obligations under this Section 12 include, without limitation, any Claim arising out of or related to the presence, growth, transmission of, or exposure to, Legionella or other waterborne pathogens in or from Buyer's water systems or equipment, except to the extent such Claim is caused by Seller's gross negligence or wilful misconduct.

13. Information. Seller may provide Buyer with advice, assistance, recommendations, information and/or data (the "**Information**") regarding the goods, including safety datasheet(s), technical datasheet(s), and/or allergen statements. Such Information is provided without warranties, express or implied, and are for informational purposes only. Buyer shall conduct its own tests to determine the safety and suitability of Seller's goods for Buyer's purposes. Under no circumstances

shall Seller have any liability or obligation to Buyer whatsoever for any Information provided by Seller to Buyer with regard to the goods sold by Seller hereunder.

14. Governing Law. All matters arising out of or relating to these Terms and each of Buyer's orders are governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein without giving effect to any choice or conflict of law provision or rule (whether of the Province of Ontario or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the Province of Ontario. The parties hereto each consent to: (i) the personal jurisdiction of the courts located in the Province of Ontario; and (ii) service of process being effected upon it by certified mail sent to the address set forth in the applicable order. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

15. Choice of Forum. Any legal suit, action, litigation, or proceeding of any kind whatsoever in any way arising out of, from, or relating to this Agreement, including all exhibits, schedules, attachments, and appendices attached to this Agreement, and all contemplated transactions, shall be instituted in the courts of the Province of Ontario, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, litigation, or proceeding. Service of process, summons, notice, or other document by mail to such party's address set forth herein shall be effective service of process for any suit, action, litigation, or other proceeding brought in any such court. Each party agrees that a final judgment in any such suit, action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. The parties irrevocably and unconditionally waive any objection to the venue of any action or proceeding in such courts and irrevocably waive and agree not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

16. Compliance with Law. 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 goods under this Agreement or any resale of the goods by Buyer. Buyer assumes all responsibility for shipments of goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on goods.

17. Termination. In addition to any remedies that may be provided under these Terms, Seller 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 and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (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.

18. Waiver. No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

19. Assignment. Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

20. Relationship of the Parties. The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture, or other form of joint enterprise, employment, or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

21. No Third-Party Beneficiaries. This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

22. Notices. Each party shall deliver all notices, requests, consents, claims, demands, waivers, and other communications under this Agreement, other than routine communications having no legal effect (each, a "**Notice**"), in writing and addressed to the parties at their officially designated addresses (or to such other address that may be designated by the receiving party from time to time in accordance with this Section). Notices sent in accordance with this Section will be conclusively deemed validly and effectively given: (a) on the date of receipt, if delivered by personal delivery, or by a nationally recognized same day or overnight courier (with all fees prepaid); (b) upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "read receipt" function, as available, return email or other form of written acknowledgment), if delivered by email; (c) when sent, if sent by facsimile (with confirmation of transmission) on the date of transmission if a Business Day or if not a Business Day or after 5:00 p.m. on the date of transmission, on the next following Business Day; or (d) on the fifth (5th) day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

23. Severability. If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

24. Survival. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Order including, but not limited to, the following provisions: Compliance with Laws, Confidentiality and Non-Analysis, Governing Law, Choice of Forum, and Survival.

25. Force Majeure. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such party's ("**Impacted Party**") failure or delay is caused by or results from the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) flood, tsunami, fire, earthquake, explosion; (c) epidemics or pandemics; (d) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest; (e) government order, law or actions; (f) embargoes or blockades in effect on or after the date of this Agreement; (g) strikes, lockouts, labour stoppages or slowdowns, labour disputes, or other industrial disturbances; (h) shortage of adequate power or telecommunications or transportation facilities; (i) failure of any governmental or public authority to grant a necessary licence or consent; and (j) other events beyond the reasonable control of the Impacted Party. The Impacted Party shall give notice within five (5) days of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of ten (10) days following written notice given by it under this Section 25, the other party may thereafter terminate this Agreement upon ten (10) days' written notice.

26. Miscellaneous. These Terms apply to all sales of Seller's goods or services to Buyer. Whenever the word "including" is used herein, it shall mean "including but not limited to". The Terms set forth herein constitute the entire agreement between the Seller and Buyer relating to the subject matter hereof and supersede all prior agreements, oral or written, and all other communications between the parties. Except as otherwise expressly provided for herein, these Terms may be amended only by a writing executed by the authorized representatives of both parties. Seller's failure at any time to insist upon strict performance of any of the Terms contained herein shall not be construed as a waiver of any subsequent breach of any Terms.