

# Terms and Conditions of Sale

## **Offer**

These Terms and Conditions of Sale and any terms contained in any applicable quotation, sales order acknowledgement, or invoice issued by Lantek (the "Additional Terms") together constitute an offer made by Lantek Corporation ("Lantek") to Customer. These Terms and Conditions of Sale and the Additional Terms together shall constitute the entire "Agreement" between Lantek and Customer and shall supersede any and all prior communications or agreements between the parties with respect to the purchase and sale of products covered hereby. These Terms and Conditions of Sale and the Additional Terms are integral parts of such Agreement and shall apply to all purchases made by Customer from Lantek. This Agreement is subject to Lantek's credit approval of Customer. Any samples, drawings, descriptive matter or advertising provided by Lantek and any descriptions or illustrations provided in Lantek's catalogues, brochures or websites are specifically for information purposes only, and shall not be binding upon Lantek.

## **Prices; Quotations; Other Charges**

Unless otherwise stated by Lantek, all prices are in United States dollars. Written quotations automatically expire seven (7) business days from the date issued and are subject to termination by notice within that period. Unless otherwise expressly provided in this Agreement, the prices quoted or referred to in any accompanying invoice (the "Invoice") shall not include any charges for freight, transportation, customs or duties, tariffs, taxes (whether sales, use, import, or other taxes of any nature whatsoever), inward remittance/bank charges, insurance, or any other charges relating to the sale, transportation, and shipment to, or use by, Customer of the products sold hereunder. Such charges and/or taxes shall be the sole responsibility of, and shall be borne exclusively by, Customer. Wherever applicable, any such charges and/or taxes will be added to the Invoice as a separate charge to be paid by Customer. If Lantek is required to pay any such charges and/or taxes, Customer agrees to reimburse Lantek for any amounts so paid upon demand. Any purchase order accepted by Lantek may be modified, cancelled or terminated by Customer only with Lantek's written consent.

## **Payment Terms**

Unless otherwise agreed by the parties in writing, all Invoices submitted by Lantek to Customer shall be payable net within thirty (30) days after the date of said Invoices. Unless otherwise agreed by Lantek, all payments due to Lantek hereunder shall be paid in United States dollars to Lantek, or to such entity or person as is designated by Lantek, in accordance with the remittance instructions contained in the Invoice.

Notwithstanding any other terms and conditions in this Agreement, in the event that any payment due from Customer to Lantek pursuant to this Agreement is not received and cleared by Lantek as provided for hereunder, then in addition to all other rights and remedies available to Lantek under law and hereunder, Lantek shall be entitled to a payment by Customer of accrued interest on any unpaid balance from its due date until payment is made at the rate of one and one half percent (1.5%) per month or the highest interest rate allowable by law, whichever is less. Customer understands and agrees that its obligation to make payments to Lantek shall be absolute and unconditional under any and all circumstances, whether or not Lantek violates any of its obligations described herein or otherwise, and such payments shall not be subject to any defense, set-off, or counterclaim for any reason whatsoever.

**Shipment and Delivery**

This Agreement is made with the understanding that it is subject to inventory availability. Unless otherwise agreed by the parties in writing, all shipping and handling expenses are the sole responsibility of Customer, and Customer shall reimburse Lantek for any such charges and expenses incurred by Lantek on Customer's behalf. Delivery dates are estimates only and are based on normal shipping conditions (shipping conditions and actual ship dates may vary). Unless otherwise indicated on the purchase order, all products shall be shipped F.O.B. Lantek. Lantek will endeavor to meet all scheduled dates (including delivery dates) set forth in the purchase order or otherwise requested in writing by Customer and accepted in writing by Lantek; provided, however, that Lantek reserves the right to change any and all such scheduled dates subject to Lantek's availability schedule with notice and without liability to Customer. Method and route of shipment are at Lantek's discretion unless Customer supplies explicit written instructions with respect thereto, in which case Lantek shall attempt, but shall not be obligated, to comply with such instructions. Unless otherwise indicated on the purchase order, all shipments are insured at Customer's expense and made at Customer's risk. Non-delivery by Lantek as to any product shall not be deemed a breach of this Agreement. Any non-delivery shall not relieve Customer from its obligation to accept or be responsible for any subsequent or prior shipment. All shipments shall be packaged in accordance with Lantek's standard and customary packaging practices unless otherwise specified in the purchase order. Lantek shall not be required to obtain insurance for any products packaged according to Customer's specifications. Lantek retains the right, at its option, to cancel this Agreement, in whole or in part, without any resulting liability to Customer or any third party. Any delivery not in dispute shall be paid for regardless of other controversies relating to other delivered or undelivered products.

**Title and Risk of Loss; Security Interest**

Title to and risk of loss and damage for any shipment of products shall pass to Customer immediately upon the earlier to occur of deposit with a common carrier or delivery of such shipment to Customer or its designated agent. Customer hereby agrees that this Agreement grants to Lantek an irrevocable and continuing security interest in any and all products shipped to Customer until the entire balance of the price of such products and all other monies then due from Customer to Lantek are paid in full.

Lantek may execute, on behalf of Customer, all instruments, including financing statements and certificates necessary to perfect and/or file a security interest under the laws of any state and under the Uniform Commercial Code ("UCC") without notice to Customer. Upon breach by Customer of any of the terms and conditions of this Agreement or under any of the Invoices which may be issued pursuant hereto, Lantek shall have all of the rights and remedies of a secured creditor under the UCC, including without limitation, the right to foreclose the security interest on the delivered products or proceeds thereof by any judicial procedure or take possession of the products, including the proceeds thereof from any sale. If Customer defaults on any payment or makes an assignment for the benefit of creditors, or if a proceeding in insolvency or bankruptcy is initiated by or against Customer, whether voluntary or involuntary, Lantek shall have the right to withhold shipments, in whole or in part, and to recall products in transit, retake same, and remove and/or repossess products which may be stored for Customer's account, without the necessity of taking any other proceedings, and to take such other action as may be necessary to protect its security interest, including any other remedies Lantek may have by operation of law or otherwise. The foregoing rights and remedies shall be in addition to, and not in lieu of, any other rights or remedies which Lantek may have hereunder, by operation of law or otherwise.

**Acceptance; Rejection**

Except as provided in this paragraph, Customer shall accept all products shipped in accordance with the terms and conditions of this Agreement. In order to reject a shipment, Customer must give written notice (each, a "Rejection Notice") to Lantek within ten (10) days after receipt of the shipment, together with a reasonably detailed written statement of its reasons for rejection. If no such notice is received, then Customer shall be deemed to have accepted the shipment of the products and to have waived any and all claims with respect thereto. In no case shall Customer return products without first obtaining Lantek's permission in writing. Lantek shall, within a reasonable period of time, notify Customer whether it accepts Customer's assertions of nonconformity. If Lantek disagrees with any alleged nonconformity by Customer, then an independent party mutually agreed upon by the parties shall analyze the products in question as may be necessary to substantiate whether the products rejected by Customer conformed in all material respects to the specifications accepted by Lantek therefor, if any. Both parties agree to cooperate with the independent party's reasonable requests for assistance in connection with its analysis hereunder. Both parties shall be bound by the independent party's results of analysis. The costs incurred by the parties shall be borne by the losing party. If Lantek or the independent party confirms the nonconformity, Lantek shall, at its sole option, replace (if it has not already done so) the nonconforming products with conforming products as promptly as reasonably possible or credit to Customer the purchase price therefor.

**Warranty**

Unless otherwise stated in writing all orders are considered Non-Cancellable/Non-Returnable. Lantek warrants exclusively that on the date of delivery by Lantek the products shall be in conformity with the specifications agreed upon by the parties in all material respects. The products are sold without further warranties, guarantees or representations and without any guarantee or promise by Lantek with respect to their processing possibilities, potential applications and merchantability.

**Disclaimer**

LANTEK'S SOLE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDY FOR A BREACH OF ANY WARRANTY WITH RESPECT TO ANY PRODUCT SHALL BE, AT LANTEK'S SOLE OPTION, CREDIT OR REFUND OF THE PURCHASE PRICE OR REPLACEMENT OF THE NONCONFORMING PRODUCT. FURTHERMORE, ANY SUCH WARRANTY SHALL BE NULL AND VOID AND SHALL NOT APPLY TO ANY PRODUCTS WHICH ARE (i) IMPROPERLY STORED BY CUSTOMER, (ii) ALTERED, MODIFIED, DAMAGED, ABUSED, OR MISUSED (WHETHER INTENTIONALLY OR ACCIDENTALLY) BY ANY PERSON OTHER THAN LANTEK OR ITS AGENT, OR (iii) NOTWITHSTANDING ANY NONCONFORMITY, ARE USED OR OTHERWISE ACCEPTED BY CUSTOMER OR CUSTOMER WAIVES ITS CLAIM FOR REJECTION UNDER THE PROVISIONS OF THIS AGREEMENT. THE FOREGOING WARRANTY SET FORTH ABOVE IS IN LIEU OF ALL OTHER WARRANTIES, AND LANTEK DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE AND/OR PARTICULAR PURPOSE. LANTEK MAKES NO REPRESENTATION REGARDING PATENTS, COPYRIGHTS, TRADEMARKS, TRADE NAMES, OR SERVICE MARKS IN CONNECTION WITH ANY PRODUCT. LANTEK MAKES NO WARRANTY AS TO THE AUTHENTICITY OF THE PRODUCTS AND DISCLAIMS ALL LIABILITY FOR COUNTERFEIT PRODUCTS.

**Limitation of Liability**

LANTEK SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER INCLUDING, WITHOUT LIMITATION, ANY LOST REVENUES, PROFITS, OR BUSINESS OF CUSTOMER OR ITS BUYERS, AGENTS, AND DISTRIBUTORS, RESULTING FROM OR ARISING OUT OF OR IN CONNECTION WITH ANY SALE, DISTRIBUTION, OR ANY USE OF ANY PRODUCTS OR FOR LANTEK'S FAILURE OF SUPPLY OF ANY PRODUCTS, FOR ANY REASON, WHETHER OR NOT LANTEK HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE MAXIMUM AMOUNT OF LANTEK'S CUMULATIVE LIABILITY FOR ANY LOSSES OR DAMAGES RECOVERABLE BY CUSTOMER ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE TOTAL PURCHASE PRICE RECEIVED BY LANTEK FROM CUSTOMER FOR THE APPLICABLE PRODUCT.

**Indemnification**

Customer shall indemnify, defend, and hold Lantek harmless from and against any and all loss, cost, liability, and expense (including, without limitation, reasonable attorneys' fees and costs) incurred and/or paid by Lantek resulting from or arising out of or in connection with any claims asserted or actions filed against Lantek by a third party, including claims for personal injury or property damage, resulting from, arising out of or in connection with, Customer's use of the products purchased hereunder, singly or in combination with other materials or in any processing operation in any process.

**Force Majeure**

Except as otherwise expressly set forth herein, Lantek shall not be liable for any delay or for any consequence of any delay in the delivery of any products if such delay shall be due to acts of God, acts of terrorism, acts of a public enemy, changes in law, wars, floods, fires, storms, strikes, lockouts, delivery of nonconforming or defective material, supplies, or equipment, significant interruptions of transportation, freight embargoes or failures, exhaustion or unavailability on the open market or delays in delivery of material, supplies, equipment, or services necessary for the performance of any provision hereof, or the happening of any material and reasonably unforeseeable act, misfortune, or casualty by which performance hereunder is delayed or prevented. If any such delay occurs, then (unless the cause thereof shall frustrate or render impossible or illegal the performance under these Terms and Conditions or shall otherwise discharge the same), Lantek's period for performing its obligations shall be extended by such period (not limited to the length of the delay) as it may reasonably require to complete the performance of its obligation.

**Assignment**

Customer may not assign this Agreement or any of its rights or obligations hereunder without Lantek's prior written consent and any purported assignment in violation of this provision will be void. This Agreement shall be binding upon and inure to the benefit of, and shall be enforceable by, the parties hereto and their permitted successors and assigns.

**Severability**

If any part of this Agreement shall be held unenforceable, the remainder of this Agreement shall nevertheless remain in full force and effect and, to the extent permissible under applicable law, such unenforceable provision or provisions shall be deemed revised to the minimum extent possible to permit enforcement of such provision on terms as near as possible to such provision as originally drafted.



**Governing Law; Forum; Enforcement**

This Agreement and any disputes between the parties arising in connection herewith shall be governed by and interpreted in accordance with the laws of the State of New Jersey applicable to contracts made and to be performed entirely within such State, without regard to (and without application of) its laws, rules, and principles regarding conflicts of laws. All disputes arising out of this Agreement shall be resolved by a court of competent jurisdiction in the State of New Jersey and both parties hereby consent to the exclusive jurisdiction of the courts of the State of New Jersey and the Federal District Court for the District of New Jersey. In the event Lantek takes or maintains any action to enforce its rights hereunder and prevails, Customer shall reimburse Lantek for its reasonable costs and expenses incurred, including, without limitation, reasonable fees and disbursements of counsel and other advisors and professionals.

**Cumulative Remedies**

Lantek's remedies herein are cumulative and in addition to any other or further remedies available to it at law or equity.

**Waiver**

Lantek's failure to enforce any right provided herein or to which it is entitled at law or equity will not constitute a waiver of that right or of any other rights to which it is entitled.

**Entire Agreement; Modification; Waiver**

These Terms and Conditions of Sale and the Invoice contain the entire agreement of the parties regarding the subject matter hereof and supersedes all prior quotes, orders, purchase orders, bills of lading, invoices, proposals, letters of intent, agreements, understandings, and negotiations regarding the same. No modification of this Agreement shall be effective without Lantek's written consent. Except as otherwise provided herein, in no event shall this Agreement be deemed amendable or amended except by a writing specifically referencing this Agreement and signed by Lantek and Customer. Any waiver by Lantek of strict compliance with any provision of this order shall not be deemed a waiver of any of Lantek's rights, privileges, claims, or remedies hereunder (with respect to such provision or any other provision hereof), nor of Lantek's right to insist on strict compliance with respect to such provision thereafter.