

Fuchs Lubricants Canada Ltd. – Terms and Conditions

1. **PRODUCT, PRICE, CREDIT CHECK.** Buyer hereby purchases the Product from Fuchs Lubricants Canada Ltd. ("Seller"), as referenced by Buyer's purchase order and accepted in writing by Seller on the terms and conditions set forth herein ("Terms and Conditions") which shall apply to the transaction. Buyer consents to Seller conducting credit checks against Buyer from time to time, and Buyer shall provide Buyer with additional documents requested by Seller.

The price quoted by Seller shall be the price for the first shipment of goods under the purchase order. Seller may amend the price for any subsequent shipments relating to the purchase order by providing Buyer five days prior written notice. Purchaser may cancel any shipment of goods for which the price has risen by giving Seller written notice three business days in advance of the particular scheduled delivery date.

2. **AGREEMENT.** These Terms and Conditions and the written or verbal order by Buyer with Seller shall constitute the agreement of the parties relating to the Product. In the case of conflict between verbal order, purchase order, or other document of Buyer with the Seller and these Terms and Conditions, these Terms and Conditions shall govern and supercede. No Term or Condition stated by Buyer shall be binding on Seller unless such Term or Condition is expressly accepted by Seller in writing. The Product shall be conclusively deemed accepted if not refused or returned by Buyer within seven (7) days of Buyer's receipt. Buyer shall conduct any inspection at its expense and shall return any nonconforming goods to Seller at Seller's place of business within said seven day period at Buyer's expense and risk.

3. **TERMS OF PAYMENT.** Payment of the Purchase Price is due and payable 30 days from the invoice date unless otherwise agreed between Buyer and Seller in writing. Any amounts unpaid and past due will be subject to a service charge on the unpaid balance at an interest rate equal to the lesser of 18% per annum or the maximum allowable interest rate under applicable law. Time of payment of the Purchase Price is of the essence.

Seller may suspend and refuse shipment of goods in the event Buyer's account with Seller is past due. Seller may also reject any future or pending orders while Buyer's account is past due.

4. **CREDITS.** Credits issued by the Seller to Buyer on account of returns, allowances or otherwise are valid only if issued in writing by Seller. All credits must be utilized by Buyer against the purchase of goods or services from Seller within one year of the credit's issuance date or they shall be automatically become null and void, and the Buyer's account debited accordingly. In no event shall credits, whether or not utilized within the aforesaid period, be refundable in cash. Seller shall have the right to apply all outstanding credits against amounts that may be due from Buyer to Seller at any time and from time to time.

5. **WARRANTIES.** Buyer acknowledges that it has made an independent inquiry into the suitability of the Product for its intended use and has not relied upon the skill, judgment, expertise, or representation of Seller. EXCEPT AS MAY BE SET FORTH ON THE REVERSE SIDE HEREOF, NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY, QUALITY OR FITNESS FOR ANY PURPOSE IS MADE. ANY WARRANTY ON THE REVERSE SIDE HEREOF SHALL BE LIMITED IN ACCORDANCE WITH ITS TERMS.

6. **TITLE; RISK OF LOSS; SELLER'S LIEN.** Title to the Product and risk of loss or damage shall pass to Buyer at Seller's loading dock, and Buyer grants to Seller a security interest, and acknowledges an unpaid Seller's lien, in and to the Product until paid for in full. Notwithstanding any request by Buyer, Seller may, without incurring any liability, exercise its own discretion in the method of shipment and carrier selection as agent for Buyer and for Buyer's account.

7. **ASSIGNMENT.** Buyer shall not assign or otherwise transfer any of its rights or obligations relating to Buyer's agreement of purchase from Seller.

8. **SHIPPING CHARGES; TAXES.** Separate charges for shipping and handling shall be borne by Buyer unless otherwise agreed in writing by Seller prior to sale. Buyer shall be responsible for and shall pay to Seller, or if requested by Seller, directly to the taxing authority, all applicable taxes, fees, levies, imports, duties, withholdings or other charges (including any interest and penalties thereon), if any imposed by any taxing authority by reason of the sale and delivery of the Product. The Product is sold to Buyer in Canada. Any importing or exporting of the Product shall be by Buyer not Seller. Accordingly, Buyer shall be responsible for, at its own risk and expense, any necessary licences, permits and any other approval or documentation which may be required. At Seller's option, prices may be adjusted to reflect any increase in the costs to Seller resulting from provincial, federal, local or foreign legislation.

9. **BUYER NOT TAKING DELIVERY.** In addition to any other rights provided to Seller by law, if Buyer is unwilling or unable to accept delivery of the Product on the delivery date agreed upon by the parties, Seller may terminate this agreement on delivery of written notice to Buyer, or Seller may store or arrange for storage of Product and/or disposal of product at Buyer's expense and invoice Buyer for sale, storage, and disposition of Product and related costs. In the event that Seller chooses to terminate pursuant to this paragraph, Seller at its option may retain all money paid by Buyer as of the date of such termination as an early termination fee.

10. **LIMITATION OF LIABILITY.** Buyer's sole and exclusive remedy for breach or any other claim in connection with this Agreement or the Product sold pursuant to this Agreement shall be for a refund of the Total Purchase Price. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR TO ANY THIRD-PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH, OR AS A RESULT OF, THE SALE, PERFORMANCE, NON-PERFORMANCE, DELIVERY, OR NON-DELIVERY OF THE PRODUCT, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT THE SELLER'S WRITTEN CONSENT, INCLUDING WITHOUT LIMITATION, DAMAGES BASED UPON LOSS OF GOODWILL, LOSS OF SALES OR PROFITS, INJURY TO

PERSON AND/OR PROPERTY, WORK STOPPAGE, PRODUCT FAILURE, IMPAIRMENT OF OTHER GOODS OR OTHERWISE, AND BUYER FULLY INDEMNIFIES AND HOLDS SELLER HARMLESS FROM AND AGAINST ANY AND ALL LIABILITIES, CLAIMS, DAMAGES, PROCEEDINGS, JUDGMENTS, LOSSES, AWARDS, FINES, PENALTIES, COSTS AND EXPENSES WHATSOEVER, INCLUDING LEGAL AND AGENT FEES, IN CONNECTION WITH OR RELATING TO THIRD PARTY CLAIMS.

11. **DELIVERY DATES; FORCE MAJEURE.** Although Seller will use commercially reasonable efforts to fill Buyer's orders in a timely manner, all delivery and completion dates are approximate and Seller shall not be responsible for any damage or claim of any kind resulting from any delay howsoever caused. Seller shall be entitled to extend any delivery or completion date for a reasonable period of time upon occurrence of a Force Majeure event, including without limitation Act of God, terrorist activity or threatened terrorist activity, inclement weather, labour dispute including strike or lock-out, accidents, governmental action, shortage or breakdown of or inability to obtain or non-arrival of any labour, material or equipment used in the manufacture of the Product, failure of any party or third-party to perform any contract with Seller or Buyer relative to the Product, or from any other cause whatever beyond Seller's control (collectively, the "Force Majeure Conditions"). If a Force Majeure Condition prevents, delays or otherwise interferes with Seller's delivery or completion of the Product which would cause the cost of the Product to exceed the Total Purchase Price, Seller shall be under no obligation to deliver the Product unless buyer agrees to pay the additional costs incurred by Seller in connection with such Force Majeure Condition to complete or deliver the Product.

12. **MISCELLANEOUS.** (a) *Enforcement.* Buyer shall be responsible and liable for all costs incurred by Seller in enforcing its rights and Buyer's obligations under this Agreement including all legal and agent fees.

(b) *Binding Effect.* This Agreement shall be binding upon and inure to the benefit of the parties, their respective successors, legal representatives and assigns, including in the case of Buyer, a successor or assignee to all or any substantial part of the business or business assets of Buyer, no matter the manner or form of succession or assignment and irrespective of whether the successor or assignee has possession of all or any part of the Product, and without regard or limitation of Seller's rights under any applicable federal or provincial law.

(c) *Governing Law.* This Agreement shall be governed by and construed under the laws of the Province of Ontario and the laws of Canada applicable therein. Buyer and Seller agree that the application of the United Nations Convention on Contracts for the International Sale of Goods does not apply to the sale of Product governed by the Agreement between Buyer and Seller and these Terms and Conditions. Buyer and Seller agree that any cause of action that may arise anyway under or due to this Agreement shall be brought and have venue in the Province of Ontario.

(d) *Notices.* All notices which are required to be given shall be in writing and delivered to the address set forth on the front page of this Agreement. Any such notice shall be delivered by hand or by certified first class mail, postage prepaid, return receipt requested, and shall be deemed given upon the date hand delivered or three business days after mailing.

(e) *Severability.* The invalidity or unenforceability of any of the provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement, which shall remain in full force and effect. If any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid or unenforceable, it shall be construed to make it valid and enforceable by limiting it as to time, subject or geographical scope as required under applicable law.

(f) *No Waiver.* All rights, privileges and remedies afforded the Seller are cumulative and not exclusive, and the exercise of any one of such remedies shall not be deemed a waiver of any other right, privilege or remedy. No term or condition of this Agreement shall be deemed or implied to have been waived by Seller, and Buyer agrees not to claim or raise estoppel against Seller in any proceedings.

(g) *Entire Agreement.* This Agreement constitutes the entire final, complete and exclusive understanding and agreement between the Buyer and Seller regarding the subject matter and supercedes all prior representations, proposals or understandings. This Agreement may not be amended, modified or supplemented except in writing as agreed to and signed by the parties.

(h) *Personal Information.* Buyer authorizes collection, use and disclosure by Seller of personal information of Buyer for all reasonable business purposes including customer survey, review by financial institution or potential purchaser, and Seller's marketing initiatives.

(i) *Special Sanction Notice.* Buyer may not, directly or indirectly, sell or re-export goods supplied under this Agreement (including technical support or services related to such goods, "Services") to or for use in in Russia, Belarus, the territories Crimea, Donetsk, Luhansk and any further, if any, self-proclaimed republic on the territory of the Ukraine. In case of violation, Seller is entitled (i) to terminate the entire or parts of the business relationship with Buyer with immediate effect, (ii) to stop any deliveries of goods (including rendering of Services) with immediate effect, and/or (iii) to any other adequate remedies (including, but not limited to, compensation of any damages, losses, and expenses).