

Fuchs Lubricants Co. - Terms and Conditions

1. **PRODUCT and PRICE.** The Buyer hereby purchases the Product from Fuchs Lubricants Co. ("Fuchs") ("Seller"), as referenced by the purchase order accepted in writing by Fuchs, on the terms and conditions set forth herein (these "Terms and Conditions").

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 specified by 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 working 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 as they become effective upon Buyer's receipt and acceptance of the Product referenced in the invoice. The Product shall be deemed accepted if not refused or returned by Buyer within seven (7) days of Buyer's receipt. Buyer shall conduct any required inspection at its expense and shall return any nonconforming goods to Seller with said seven-day period at Buyer's expense and risk.

3. **TERMS OF PAYMENT.** Payment of the Purchase Price is due and payable 25 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. Buyer shall be responsible and liable for all expenses incurred by Seller in collection, including reasonable attorneys' fees.

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 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against the purchase of goods or services from Seller within one year of the credit's issuance date or they shall be rescinded. 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.** EXCEPT AS MAY BE SET FORTH ON THE REVERSE SIDE HEREOF, NO WARRANTY OR GUARANTEE, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY AS TO MERCHANTABILITY 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.** Title to the Product passes from Seller to Buyer on shipment from Seller's facility. Loss or damage that occurs during shipping by a carrier selected by Seller is Seller's responsibility. Loss or damage that occurs during shipping by a carrier selected by Buyer is Buyer's responsibility.

7. **ASSIGNMENT.** Buyer shall not assign or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of 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. At Seller's option, prices may be adjusted to reflect any increase in the costs to Seller resulting from state, federal or local legislation.

9. **TERMINATION BY SELLER.** Seller may terminate this Agreement upon 5 days' prior written notice to Buyer if (a) Buyer is unwilling or unable to accept delivery of the Product on the delivery date agreed upon by the parties and (b) the parties are unable to agree upon another date for delivery. 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 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, AND BUYER INDEMNIFIES

AND HOLDS SELLER HARMLESS FROM ANY AND ALL SUCH CLAIMS OF DAMAGE BY BUYER OR OTHERS.

11. **DELIVERY DATES; FORCE MAJEURE.** All delivery and completion dates are approximate and Seller shall not be responsible for any damage of any kind resulting from any delay. Seller shall not be liable for any default or delay if caused, directly or indirectly, by acts of God, the elements, labor disputes, accidents, any governmental action, prohibition or regulation, shortage or breakdown of or inability to obtain or non-arrival of any labor, material or Product 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 delivery of 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.

(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 Seller's reclamation rights under the Uniform Commercial Code or any applicable State law shall extend to any Product in the successor's or assignee's possession or control.

(c) *Governing Law.* This Agreement shall be governed by and construed under the laws of Illinois, without regard to conflicts of laws principles. Buyer and Seller agree that any cause of action that may arise in any way under or due to this Agreement shall be brought and have venue in the County of Cook, Illinois.

(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 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 shall be deemed 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 to have been waived by Seller, nor shall there be any estoppel against Seller, except by written consent of the Seller.

(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 supersedes 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) *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).