

## **GENERAL TERMS AND CONDITIONS**

**The following General Terms and Conditions apply to purchases by Johns Manville (“Buyer”) of goods (together with any purchase orders or other similar documents created by Buyer, the “Agreement”). Buyer expressly rejects all terms in any order acknowledgements, invoices or similar documents from Seller and the purchases hereunder are expressly conditioned on Seller’s acceptance of the following General Terms and Conditions. Buyer and Seller may each be referred to herein as a “Party” or collectively as the “Parties.”**

### **1. Scheduling of Shipments.**

Buyer and Seller shall work together to coordinate the shipment of Products to Buyer’s Facilities. Authorized representatives at Buyer’s Facilities will order Products as required and Seller shall deliver such Products on the agreed date. Time is of the essence and it is essential that all Products be provided by Seller to Buyer in accordance with the agreed dates. Buyer must be advised immediately of any delays whatsoever. Seller agrees to both reimburse Buyer in full and indemnify Buyer for any loss, damage or cost, including, but not limited to, attorneys’ fees arising out of or related to any and all delays in Buyer’s receipt of any Products.

### **2. Freight.**

All shipments from Seller to Buyer will be designated as “DAP Destination” (as defined by Incoterms 2020 published by the International Chamber of Commerce) or to such other location as designated by Buyer. Seller shall pay all shipping costs. On a monthly basis, Seller shall provide Buyer with a detailed description of the shipping costs incurred to ship Products to Buyer. If Buyer determines it has more favorable shipping rates than Seller has, then upon Buyer notifying Seller of the more favorable shipping rate(s), Seller shall ship the Products using Buyer’s carrier at the more favorable shipping rates. In that event, Buyer’s carrier will invoice Buyer for such shipping costs and Seller shall immediately reduce the price of Products by the amount of shipping costs that Seller would have incurred to ship Product to Buyer if Buyer did not elect to have Seller use Buyer’s carrier.

### **3. Shipments of Hazardous Materials.**

Seller shall clearly mark all hazardous materials or substances. Seller shall comply with all federal, state and local laws, regulations, orders and ordinances regarding the shipment of hazardous materials or substances.

### **4. Product Changes.**

Seller shall provide Buyer written notice at least six months prior to any change in the Specifications that could in any way affect the appearance, performance or Buyer’s use of the Products. Similarly, Seller shall provide Buyer written notice at least six months prior to any change in feedstock, raw materials, manufacturing process or any other similar change that could in any way affect the appearance, performance or Buyer’s use of the Products. Any changes covered by this Section 4 must be approved in writing in advance by Buyer. Buyer, at its sole election, may terminate this Agreement at any time without any liability if Seller fails to provide such timely notice.

### **5. Inspection.**

Buyer, at its sole election, may inspect and test all Products under this Agreement at all times and places, but is not under any obligation to do so. Buyer's decision to conduct or not conduct any such inspection and/or testing shall not relieve Seller of any of its obligations under this Agreement. To the extent Buyer rejects Products as nonconforming, the quantities under this Agreement will automatically be reduced by the amount of the nonconforming Products unless Buyer otherwise notifies Seller. Nonconforming Products will be held for Seller's instructions and at Seller's risk, and, if Seller so directs, will be returned to Seller at Seller's sole expense. Seller's failure to provide written instructions within ten days, or such shorter period as may be commercially reasonable under the circumstances, after notice of nonconformity, will entitle Buyer, at Buyer's option, to either charge Seller for storage and handling or to dispose of the Products without liability. Payments for Products prior to inspection do not constitute an acceptance, and neither inspection, failure to make inspection, nor acceptance of Products release Seller from any of the warranties or other provisions of this Agreement nor impair Buyer's rights to reject or revoke acceptance of nonconforming Products.

## **6. Invoices.**

Invoices must be mailed or emailed by Seller to Buyer immediately after any shipment. Payment will be made subject to Buyer's offset/deduction/credit for any loss, rejection, storage fee, shipping cost, or adjustment for shortage, deficiency in quality, failure to make specified delivery, defects, failure to meet the Specifications or breach of any warranty or condition of this Agreement. Any such adjustment by Buyer is not an exclusive remedy of Buyer for any of the foregoing and Buyer's use of such remedies do not constitute a waiver of any other right, remedy or privilege.

To manually invoice JM, please adhere to the following requirements in order to avoid payment delays:

- Send email to [JMAPAY@jm.com](mailto:JMAPAY@jm.com)
- PDF or TIF documents
- Only one invoice per attachment
- PO numbers must be listed on invoices
- Invoices not meeting these requirements will not be processed and payment terms will be determined based on date correct invoices is received.
- Invoice and credit memo format is to match the format of the Purchase Order as far as line items, quantity and price. Johns Manville calculates taxes in SAP which is reflected on the JM Purchase Order.

## **7. Limited Meet or Release.**

If, during the Term, a third party offers Buyer any Product hereunder or a substantially similar product at a price lower than that being paid by Buyer under this Agreement, Buyer will provide Seller notice of such offer. Within 15 days following receipt of such notice, Seller will (a) meet such lower price or (b) provide a release allowing Buyer to purchase such product from such third party in the quantities Buyer elects and Seller will continue to sell Buyer its remaining requirements, if

any, pursuant to the terms of this Agreement. Unless expressly stated otherwise in a writing signed by both Parties, this Agreement, including the language in this Section, is neither intended, nor shall it be construed, to create an exclusive supply agreement between Buyer and Seller. As such, Buyer, in its sole discretion, may purchase any Product hereunder or any substantially similar product from any third party.

#### **8. Most Favored Nations Pricing.**

If at any time during the Term, Seller sells a Product to a third party under more favorable terms and conditions, including without limitation, pricing, than those provided to Buyer hereunder, Seller shall notify Buyer within three business days and provide Buyer the Product under the same favorable terms and conditions, effective on the same date as Seller provides the more favorable terms and conditions to such third party and continue to provide the more favorable terms and conditions to Buyer for the same period of time as such terms and conditions are provided to such third party. Upon five days' written notice, Seller shall provide Buyer access to Seller's company books and records to ensure compliance with this Section 8.

#### **9. Cost Reduction Initiatives.**

Seller agrees to work with Buyer to identify and implement at least 3% in cost reductions for each calendar year during the Term. This percentage annual cost reduction will be based upon the actual total delivered cost per unit to Buyer on January 1 of each year. Seller shall provide the necessary personnel and/or technical resources required to assist Buyer with implementation of the identified savings. If Seller does not assist Buyer with identifying and implementing the 3% annual cost reductions, then Buyer reserves the right to terminate this Agreement.

#### **10. Title and Risk of Loss.**

Title to, and risk of loss of, Products will remain with Seller until the Products are accepted (or deemed accepted) by Buyer hereunder or delivered to the destination designated by Buyer, whichever is later.

#### **11. Title to all Materials and Assets.**

Title to all materials and assets shipped by Buyer or on Buyer's behalf (collectively referred to as the "Asset") to Seller for any reason shall be vested in Buyer and shall remain the property of Buyer. Seller shall not permit any lien or other encumbrance of any kind to be placed on the Asset while in Seller's possession and/or control. Seller agrees to provide signage in its facility that clearly identifies the Asset as the property of Buyer, and shall execute such documents as reasonably requested by Buyer to preserve Buyer's title to, and interest in, the Asset. In addition, Seller grants to Buyer a power of attorney to execute any and all documents necessary to establish and maintain Buyer's title to, and interest in, the Asset. Buyer shall have the right to immediately, and without notice, take possession of the Asset at any time during Seller's normal business hours. Buyer shall be responsible for any and all inventory and/or property taxes on such Assets.

#### **12. Warranty.**

Seller warrants that all Products provided hereunder are free and clear of all liens and encumbrances whatsoever and that Seller has good and marketable title to same. Seller also

warrants that all Products (a) are free from any actual or claimed patent, copyright or trademark infringement, (b) conform strictly to the Specifications, (c) are merchantable, of good material and workmanship, and are free from defects, (d) are suitable for the use intended (e) conform to recognized industry standards of quality and function and (f) conform in all respects in the production, sale, delivery and use thereof with all applicable laws and governmental orders, rules and regulations.

### **13. Conflict Minerals.**

Seller warrants that its Products do not contain any conflict minerals (as defined in Section 1502(e)(4) of the Dodd-Frank Wall Street Reform and Consumer Protection Act) originating in the Democratic Republic of Congo or any adjoining country that directly or indirectly finances or benefits armed groups in the Democratic Republic of Congo or any adjoining country. Conflict minerals comprise columbite-tantalite, cassiterite, gold, wolframite and their derivatives, as well as any other mineral or its derivative determined by the U.S. Secretary of State to be financing conflict in the Democratic Republic of Congo or an adjoining country. The following does not negate the warranty listed above in this Section 13: Seller shall inform Buyer if its Products contain conflict minerals and if the Products do contain conflict minerals, Seller must provide evidence regarding the origin of the conflict minerals.

### **14. Remedies.**

Seller shall, at Seller's expense and at the direction of Buyer, immediately repair, replace, or otherwise correct any defective or nonconforming Products discovered within the maximum time permitted by law, which shall be no less than two years from the later of: (a) the date of acceptance of such Products or (b) the date the defective or nonconforming Products were discovered by Buyer. This remedy is in addition to all other remedies available to Buyer in law or in equity.

### **15. Indemnity.**

Seller shall indemnify, defend and hold harmless Buyer from and against any and all losses, damages (including, without limitation, incidental, special and consequential damages), liabilities, and claims, at law and/or in equity (including all reasonable costs, expenses and attorneys' fees incurred in connection therewith) related to or arising out of: (a) Seller's title to the Products purchased by Buyer hereunder; (b) infringement or alleged infringement of any patent, copyright or trademark relating to the sale, use or intended use of the Products purchased by Buyer hereunder; (c) injuries to or the death of any person, or loss of or damage to the property of any person, either of which is caused by or resulting from the negligence, intentional acts or breach of this Agreement by Seller or any of its agents, subcontractors, or employees; or (d) Seller's breach of this Agreement.

### **16. Insurance Coverage.**

Seller shall maintain the following insurance in full force and effect during the Term:

- a.** Workers' Compensation Insurance per statutory limits;
- b.** Employers' Liability Insurance in the amount of \$500,000 per occurrence and in the aggregate;

**c.** Commercial General Liability Insurance with the following limits: \$5,000,000 per occurrence, \$5,000,000 general aggregate, \$5,000,000 personal injury, and \$5,000,000 products/completed operations. These limits can be met by using Umbrella or Excess Insurance that follows the terms and conditions of the primary Commercial General Liability Insurance policy.

**d.** Automobile Liability Insurance for owned and non-owned vehicles with combined single limits of coverage of not less than \$1,000,000 per occurrence and in the aggregate.

All insurance policies shall be cancelable only upon 30 days' prior written notice to Buyer. Buyer shall be named as an additional insured on the Commercial General Liability Insurance and Automobile Liability Insurance policies. Prior to commencement of delivery of Products under this Agreement and upon renewal of required insurance, Seller shall provide Buyer with certificates of insurance from a reputable insurance company with a Best's rating of A or an equivalent rating showing that the required coverage is in effect. Seller shall require any subcontractors it uses to perform under this Agreement to carry the same insurance with the same limits of coverage as required of Seller.

#### **17. Termination for Cause.**

If Seller: (a) fails to timely deliver the Products ; (b) otherwise defaults in the performance of any of its obligations hereunder and the default continues for five (5) calendar days; or (c) becomes insolvent, a trustee or receiver of Seller's business or assets is appointed, Seller makes an assignment for the benefit of creditors, or a petition in bankruptcy is filed by or against Seller, then in any such event set forth in subsections (a) – (c) above, Buyer, at its sole discretion, may terminate this Agreement effective immediately in whole or in part and any other agreement, order, confirmation, or terms of sale between the Parties, by written notice to Seller. Buyer shall have no liability or obligation whatsoever to Seller by reason of or resulting from such termination.

#### **18. No Waiver.**

Failure of a Party to insist upon strict performance of any of the terms and conditions in this Agreement will not be deemed a waiver of any rights or remedies that such Party may have and shall not be deemed a waiver of any subsequent default in the terms and conditions hereof.

#### **19. Inconsistencies.**

In the event of any inconsistency or conflict between these General Terms and Conditions and any terms and conditions on the facing page of this Agreement or any attachment hereto, the order of precedence is as follows: (a) the terms and conditions on the facing page of this Agreement, (b) these General Terms and Conditions and (c) the terms and conditions on an attachment.

#### **20. Taxes.**

Buyer will pay all regular and ordinary taxes or other governmental charges that now or in the future may be imposed, assessed or levied against Seller in connection with the purchase and sale of Products under this Agreement. Buyer will provide Seller with properly completed exemption certificates for any taxes from which Buyer claims exemption. Seller shall be solely responsible for taxes based upon Seller's income or profit. Seller shall be responsible for all export and import duties that are incurred prior to transfer of title of the Products to Buyer.

## **21. Seller Is Not Entitled To Withholdings Or Benefits.**

As provided in C.R.S. § 8-40-202(2)(b)(IV) and § 8-70-115(2), Seller expressly agrees that it is an independent contractor and that as an independent contractor, Seller, including any of its employees, is not entitled to any employee benefits from Buyer, including, but not limited to, any employer withholdings or liability for: taxes, FICA, Medicare or Medicaid; medical or disability insurance; vacation or leave; pension; unemployment insurance (unless provided by the independent contractor or some other entity other than Buyer); or worker's compensation insurance (collectively, "Employee Benefits"). Seller is obligated to pay all federal and state income tax on any and all monies paid pursuant to the Parties' contractual relationship. To the maximum extent permitted by law, Seller waives any and all claims against Buyer and will hold Buyer harmless from and indemnify Buyer for any claims related to Employee Benefits, employee status, or employment taxes arising out of the performance of this Agreement.

## **22. Confidentiality.**

The purchase of Products under this Agreement and the Specifications and other information given to Seller in connection with this Agreement involve valuable property rights of Buyer and shall (a) be held confidential by Seller, (b) remain the property of Buyer and (c) not be disclosed by Seller to third parties or used by Seller for any purposes (including Seller's advertising or other marketing efforts) other than those required to perform under this Agreement unless Seller receives Buyer's prior written approval.

## **23. Severability.**

If any provision herein is declared unenforceable by a court of competent jurisdiction, then it will not affect the enforceability of this Agreement. In such event, there will be substituted for the affected provision an enforceable provision as similar as possible to reflect the intent of the affected provision. If such provision cannot be amended so as to be enforceable, then this Agreement will be deemed amended to delete the unenforceable provision.

## **24. Assignment.**

This Agreement is not assignable or transferable, by operation of law or otherwise, by either Party without the prior, express written consent of the other Party, which consent will not be unreasonably withheld.

## **25. Governing Law.**

This Agreement is governed by and construed in accordance with the laws of the State of Colorado without regard to conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods or any subsequently enacted treaty or convention shall not govern this Agreement, the performance hereof or any aspect of any dispute arising hereunder.

## **26. Venue.**

Seller and Buyer agree that in the event a dispute arises between them resulting in litigation that such litigation shall be undertaken exclusively in a state or federal court sitting in Denver County,

Colorado. Accordingly, Buyer and Seller hereby submit to the exclusive jurisdiction and venue of any state or federal court sitting in Denver County, Colorado.

## **27. Force Majeure.**

Notwithstanding the provisions set forth above, in the event Seller or Buyer is unable, in whole or in part, by Force Majeure (as defined below), to carry out its obligations under this Agreement, that Party's obligations, as they are affected by such Force Majeure, will be reduced or suspended during the period of such Force Majeure but for no longer period, and the Party claiming the Force Majeure will use its best efforts to remedy such Force Majeure with due diligence. The Party claiming the Force Majeure will give the other Party written notice of the Force Majeure as soon as possible after it occurs and immediate written notice following the conclusion of the Force Majeure. "Force Majeure" means acts of God, acts or failure to act of governmental authorities, wars, riots, fires, floods, epidemics, explosions, national emergency, and any other causes, whether of the kind herein enumerated or otherwise, not within the control of the Party claiming suspension. Increased cost of performance, lower profits, loss of profit opportunity, lack of or inability to obtain raw materials, fuel or supplier (unless caused solely by priorities, restriction or allocation imposed by governmental authority), change in market conditions, any market, financial or economic circumstance, mechanical or equipment failures, delays in shipping or customs clearance, labor performance, labor efficiency, labor availability, labor strike (within a Party's negotiating control), labor disturbance or dispute (within a Party's negotiating control), labor shortage, or loss of economic benefit will specifically not be deemed to be Force Majeure and will not be acceptable reasons for failing to perform the obligations set forth in this Agreement. During the period of Force Majeure, the Party claiming Force Majeure will have its obligations to the other Party reduced or suspended, as the case may be, to the extent and for the period of the Force Majeure. If Seller claims Force Majeure hereunder, (a) Buyer will have the right to obtain Products from alternate sources and to decide whether such alternative supply arrangements will reduce the forecasted amount due from Seller in an amount equal to or less than that obtained by Buyer from such alternate sources and (b) such Force Majeure continues for 45 or more consecutive days, Buyer may terminate this Agreement upon 15 days' written notice to Seller.

## **28. Compliance with Laws.**

Seller shall comply with all foreign, federal, state and local laws, orders, rules and regulations which may affect or be applicable to this Agreement or Seller including, without limitation, (a) those applying to the Products, (b) those applying to the prices charged by Seller, (c) those applying to the payments to be made by Buyer, or (d) those applying to labor, including, without limitation, the Fair Labor Standards Act and laws and orders regarding equal opportunity, handicapped workers, affirmative action, disabled veterans and small and disadvantaged businesses. In addition, Seller agrees to comply with the provisions of Executive Order 13496 (29 CFR Part 471, Appendix A to Subpart A), relating to the notice of employee rights under federal labor laws.

## **29. Anti-Bribery Laws.**

Each Party shall comply with all applicable anti-bribery laws and regulations, such as the U.S. Foreign Corrupt Practices Act or the U.K. Bribery Act. Each Party will maintain accurate records regarding any transactions relevant to its performance under this Agreement. Any payments made

to Seller hereunder will not be used to influence any act or decision of an official, party or candidate to use his, her or its influence with a government to assist JM in obtaining, retaining or directing business to Buyer, or any person or other corporate entity affiliated with Buyer. As used in this Section 29, "official" means any officer or employee of a government and "government" includes any department, agency or instrumentality of a government.

### **30. Joint Development.**

Buyer and Seller agree that during the Term they may exchange technical information pertaining to the Products and/or Buyer's products and processes in an effort to produce a higher quality product or process. To the extent Buyer and Seller engage in the joint development of a product or process utilizing each other's technology, the Parties will enter into a separate joint development agreement before commencing any such joint development activities that establishes the relative rights and obligations of the Parties, including the ownership of proprietary rights of jointly developed property.

### **31. Supplier Code of Conduct.**

Johns Manville's Supplier Code of Conduct can be found [here](#). Seller agrees to comply with these Code of Conduct guidelines.

### **32. Entire Agreement; Amendment.**

Except as provided otherwise herein, this Agreement supersedes all previous communications, representations or agreements between the Parties, whether oral or written. This Agreement will not be deemed modified by any terms and conditions contained in any order acknowledgments, invoices or similar documents. Any modification of this Agreement must be in the form of a written amendment signed by both Parties.

### **33. Safety.**

Seller shall furnish to Buyer Safety Data Sheets and any warnings or other safety and health information concerning the Products including, without limitation, any safe handling, use, storage, transportation and disposal practices.

### **34. Notices.**

Except as otherwise provided herein, all notices and communications required or permitted under this Agreement shall be in writing and shall be (a) hand delivered, (b) sent by registered or certified mail (postage prepaid, return receipt requested), (c) sent by email (provided a confirmation of delivery is received or (d) sent by recognized delivery courier using priority delivery service to the applicable Party at the respective address(es) shown below. Any such notice or communication shall be effective upon the earlier of actual receipt or deemed delivery, and delivery shall be deemed to have occurred as follows: if hand delivery, on the day so delivered; if mailed, three business days after the date so mailed; if emailed, upon written confirmation by the sending machine of effective transmission or upon telephone confirmation of receipt; and if sent by courier, the next business day. A Party may change its notice address by giving advance notice of such change to the other Party in accordance with this Section 34.



If to Buyer:

If to Seller:

Johns Manville  
717 17th Street  
Denver, Colorado 80202  
Attention:  
Email:

With a copy to:

With a copy to:

Johns Manville  
717 17th Street  
Denver, Colorado 80202  
Attention: General Counsel  
Email: Katherine.Albery@jm.com

**35. Attorneys' Fees.**

In the event a Party commences a proceeding against the other Party to enforce this Agreement, the prevailing Party shall recover from the non-prevailing Party its attorneys' fees and costs incurred in such proceeding and the non-prevailing Party shall pay such attorney fees and costs.