

**1. GOVERNING TERMS AND CONDITIONS.**

(a) These Terms and Conditions of Sale (“Terms”) shall apply to the sale of all products or services (“Products”) by Active Minerals International, LLC (“AMI”) to buyer (“Buyer”). Except to the extent otherwise expressly agreed in a writing signed by an authorized officer of AMI, these Terms, together with the respective quantities and delivery dates specified and agreed upon by the parties in a quote, order or invoice, constitute the entire agreement (“Agreement”) between AMI and Buyer with respect to the Buyer’s order of such Products and shall supersede all previous communications, warranties and representations, either written or oral, with respect thereto. ALL DOCUMENTS SUBMITTED TO AMI AND CONTRACT FORMATION BETWEEN AMI AND BUYER ARE EXPRESSLY MADE CONDITIONAL ON BUYER’S ACCEPTANCE OF THESE TERMS WITHOUT MODIFICATION OR SUPPLEMENT. ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED IN THEIR ENTIRETY AND SHALL BE DEEMED A MATERIAL ALTERATION OF THESE TERMS UNLESS SPECIFICALLY AGREED TO IN WRITING BY AMI, NOTWITHSTANDING AMI’S ACCEPTANCE OF PAYMENT FOR OR AMI’S DELIVERY OF ANY PRODUCTS COVERED HEREBY OR ANY OTHER SIMILAR ACT OF AMI. IF, HOWEVER, AMI’S DOCUMENT SHALL BE DEEMED AN ACCEPTANCE OF A PRIOR OFFER BY BUYER, SUCH ACCEPTANCE IS LIMITED EXCLUSIVELY TO THESE TERMS AND THE PRICE, QUANTITY, DELIVERY AND OTHER TERMS PROVIDED BY AMI.

(b) All orders placed by Buyer shall be subject to acceptance by AMI. AMI has no obligation to accept any order and AMI reserves the right to allocate its Product inventory as it may determine, in its sole discretion. No order may be cancelled or altered by Buyer except upon terms acceptable to AMI and set forth in writing.

(c) These Terms may not be amended, supplemented or otherwise modified except by a written instrument signed by an authorized representative of AMI. A party’s failure to enforce any provision set forth herein shall not operate as a waiver thereof unless such waiver is set forth in a writing signed by the parties.

**2. PRICE & PAYMENT.** AMI reserves the right to establish and change Product prices and payment terms at any time without notice, however changes will not apply to previously accepted orders. Payment terms are Net 30 days from date of invoice. In addition to all other legal or equitable rights of AMI, interest shall accrue on overdue invoices at the rate of the lesser of 1.5% percent per month or the highest rate permitted by law. AMI shall be entitled to recover from Buyer all costs of collection of overdue invoices, including reasonable attorney’s fees. AMI reserves the right, in its discretion, to establish a credit limit for Buyer and to require payment in advance of or to require C.O.D. terms for any shipment, or to later cancel any order, for which Buyer’s financial condition or payment history does not justify the extension of credit, in AMI’s discretion. After 30 days, orders held for credit reasons are subject to automatic cancellation. All taxes, duties and any other fees or charges of any nature whatsoever imposed by any governmental authority on or measured by the transaction between AMI and Buyer (excluding federal, state or local income taxes of AMI) shall be paid by Buyer. In the event AMI is required to pay any such tax, fee, or charge, Buyer shall reimburse AMI for such amount on demand by AMI.

**4. SHIPMENT; TITLE & RISK OF LOSS.** Unless expressly agreed otherwise, all prices and terms of sale are: (i) EXW AMI’s facility (Incoterms 2010) for domestic shipments, and (ii) CIF named port of destination (Incoterms 2010) for international shipments. Title and risk of loss for Products transfers to Buyer per the applicable Incoterms 2010 rules. All quoted delivery dates and/or periods are approximate. AMI reserves the right to make delivery in installments, and delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. All back orders will receive prompt consideration by AMI for completion as soon as is commercially practical. Claims for shortages, errors in delivery or other Product defects must be made in writing to AMI within 10 calendar days after receipt of shipment, and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. AMI shall not be liable for any damage or loss resulting from delays due to a cause beyond AMI’s reasonable control, including but not limited to an act of God, weather (including earthquake, tornado, fire, hurricane and/or flood), act of Buyer, embargo or other governmental act, regulation or request, accident, strike, slowdown, war, riot, delay in transportation or inability to obtain necessary labor and/or materials. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

**5. LIMITED WARRANTY.**

(a) AMI warrants that Products produced by AMI will conform to AMI’s Product specifications in effect at the time of delivery. If Buyer raises timely claims of a Product defect, AMI and Buyer shall designate a mutually acceptable independent testing company to investigate and in such case said testing company’s findings shall be conclusive and binding on the parties (the expense of which examination shall be borne by AMI with respect to each item found not to conform to specification and by Buyer with respect to each item

found to conform to specifications). AMI’s exclusive liability, and Buyer’s exclusive remedy, for nonconforming Products is limited, at AMI’s option, to: (i) replacement of the defective Products or (ii) refund of the purchase price of such Products. Products may not be returned without AMI’s permission and transportation for return will not be paid by AMI unless authorized in advance.

(b) Buyer acknowledges that AMI may also act as a distributor for Products that are manufactured or produced by third parties (“Resale Products”) and matters relating to the quality of the Resale Products are not within AMI’s control. Accordingly, Buyer shall have the benefit of any warranty extended directly by the applicable manufacturer of the Resale Products. AMI MAKES NO WARRANTIES WHATSOEVER CONCERNING RESALE PRODUCTS.

(c) Except as expressly set forth herein, all Products are sold “**AS IS**”. THE FOREGOING WARRANTIES (AND RELATED REMEDIES) ARE IN LIEU OF, AND AMI EXPRESSLY DISCLAIMS, ALL OTHER WARRANTIES, GUARANTEES OR REPRESENTATIONS WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR WARRANTIES PROVIDED IN ARTICLE 2-312(3) OF THE UNIFORM COMMERCIAL CODE AND/OR ANY SIMILAR LAW THAT GOVERNS THE SALE OF PRODUCTS HEREUNDER. **NO WARRANTY OR ASSUMPTION BY AMI OF ANY LIABILITY IN CONNECTION WITH THE SALE OF THE PRODUCTS (OTHER THAN THOSE CONTAINED HEREIN) MAY BE MADE UNLESS IN WRITING AND SIGNED BY AN OFFICER OF AMI.**

**6. ACKNOWLEDGEMENT.** Buyer acknowledges that the Products have not been tested by AMI for safety or efficacy in any particular application unless otherwise stated in AMI’s written materials furnished to Buyer. Buyer is solely responsible to test and effectively evaluate the Products to determine, to Buyer’s satisfaction, whether the Product is suitable for Buyer’s intended uses and applications (which shall require evaluation of suitability from a technical, as well as a health, safety, and environmental, standpoint). Buyer assumes all responsibility for compliance with regulatory requirements related to the handling, storage, transportation, sale, use and/or disposal of the Products. Buyer acknowledges receipt of all applicable manufacturers’ technical and material safety data, in accordance with responsible distribution standards. **BUYER EXPRESSLY RELEASES, AND SHALL INDEMNIFY, AMI FROM ALL LIABILITY, IN TORT, CONTRACT OR OTHERWISE, INCURRED IN CONNECTION WITH THE HANDLING, STORAGE, TRANSPORTATION, USE, SALE AND/OR DISPOSAL OF PRODUCT PURCHASED BY BUYER FROM AMI.**

**7. LIMITATION ON LIABILITY.** IN NO EVENT WILL AMI BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, NEGLIGENCE, PRODUCT LIABILITY, CONTRIBUTION OR ANY OTHER LEGAL THEORY AND IN NO EVENT WILL AMI BE LIABLE FOR LOST REVENUE OR PROFITS OR FOR ANY EXPENSES ARISING DIRECTLY OR INDIRECTLY FROM THE HANDLING, STORAGE, TRANSPORTATION, USE, SALE OR DISPOSAL OF THE PRODUCT SOLD HEREUNDER. IN NO EVENT SHALL AMI’S LIABILITY HEREUNDER EXCEED THE PURCHASE PRICE OF THE PRODUCTS THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.

**8. MISCELLANEOUS.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware, without giving effect to its conflicts of laws provisions. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS. Any litigation or proceeding arising out of this Agreement shall be brought exclusively in the courts of the State of Georgia, and each party knowingly, voluntarily and irrevocably consents the personal jurisdiction of such courts and waive any objection as to venue or *forum non conveniens*. Each of the parties hereby waives the right to a trial by jury in connection with any such litigation or proceeding. No claim or cause of action, other than a claim for payment of the Product price, arising under this Agreement may be asserted more than one (1) year after the date on which such claim or cause of action arises. In the event that any provision hereof shall be illegal, invalid or unenforceable, it shall not affect the legality, validity or enforceability of any other provision hereof and such illegal, invalid, or unenforceable provision shall be interpreted and modified by the parties so as to eliminate such illegality, invalidity and/or unenforceability. This Agreement shall be binding upon inure to the benefit of the parties hereto and their respective successors and permitted assigns.