

**MARION AG SERVICE, INC.
TERMS AND CONDITIONS OF SALE**

1. APPLICATION:

Unless otherwise agreed in a formal written contract signed by both parties, these Terms and Conditions of Sale are incorporated into and form part of the Agreement, which comprises the basis on which Marion Ag Service, Inc., an Oregon Corporation, including any of Marion Ag Service, Inc.'s Affiliates (collectively, "Seller") sells product and/or sendees related to such product together ("Product"). This Agreement shall apply to all purchases of Product by Buyer from Seller and its terms are incorporated into and made part of any Order Confirmation and/or Invoice from Seller. "Order Confirmation" includes the confirmation from Seller to Buyer prior to shipment or delivery of any Product ordered by Buyer, whether by internet, e-mail, fax, or telephone, as well as any signed Sales Contract, if any. By accepting delivery of the Product from Seller, Buyer agrees to be bound by and accepts the terms and conditions set forth herein. These terms and conditions are subject to unilateral change by Seller in Seller's sole discretion for future transactions, and from that point forward. Seller may condition any or all future sales to Buyer upon Buyer's acceptance of such changed terms.

2. PAYMENT AND CREDIT TERMS:

- (a) Required payment terms are stated in the Order Confirmation and will be the basis for the Invoice. Order Confirmations for delayed or future delivery ("Forward Sale(s)") will confirm Buyer's binding order any required down payment. Buyer's Forward Sale down payment is nonrefundable, confirms acceptance, and binds the Buyer to accept delivery and make full payment.
- (b) Upon application and approval of credit. Seller may assign Buyer a maximum credit amount ("Credit Limit"). Seller has the right to reduce the Credit Limit and/or withdraw Buyer's credit under any Credit Agreement at any time without prior notice, except as otherwise provided by law. Seller reserves the right to revoke creditor demand full payment if Buyer fails to pay when due or, in the sole discretion of Seller, there has been an adverse change in Buyer's ability to repay credit extended by Seller, whereupon Seller shall have the right to demand payment or other assurance which it deems adequate and Seller is hereby authorized to file any lien available to vendors and/or applicators of the Products in the manner provided by applicable law notwithstanding the terms of invoices or other documents or the existence of an event of default by Buyer under this or any other agreement between Buyer and Seller shall be a default under all agreements. Seller does not waive its right by accepting late payments. Buyer agrees to pay- reasonable attorney fees and costs of collection, including any incurred in proceedings due to insolvency or bankruptcy. Buyer is responsible for all financial and other obligations to Seller under this Agreement, even if there is a change in the ownership, structure or type of entity that Buyer is: and Buyer will notify Seller promptly in writing if any of those changes occur.
- (c) If, in Seller's judgment, Buyer's credit shall become impaired at any time. Seller shall have the right to decline to make shipment hereunder or may restrict shipments to an acceptable letter of credit, cash advance or other terms acceptable to Seller,
- (d) As a general and continuing security for the payment of all purchases from Seller and the payment and performance of Buyer of all indebtedness, liabilities and obligations of the nature, however arising, whether monetary or otherwise, now existing or hereafter arising in favor of Seller, Buyer shall upon request by Seller, deliver to Seller, in form and substance satisfactory to Seller, in its sole discretion, a general security agreement ("Security Agreement") granting a security interest in favor of Seller in some or all of Buyer's presently owned or hereafter acquired property, assets, rights, benefit, privileges and undertakings of every nature and kind, real or personal, moveable or immovable. Buyer further agrees to deliver to Seller such further security agreements, deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge (the "Supplemental Agreements") as Seller may reasonably request to effectively take security in the above mentioned property of Buyer. Shipment of Product may not commence until Buyer has executed and delivered to Seller the Security Agreement and the Supplemental Agreements, if any.
- (e) The Seller shall have the right in its sole discretion, to apply any monies due from the Buyer under any contract between the Seller or any of its Affiliates and the Buyer toward the payment of any sums which the Buyer may now or hereafter owe to the Seller or the Seller's Affiliates under any agreement. In addition, in the event that the Buyer defaults in payment due to the Seller, the Seller shall have the right to withhold any unpaid sums due by the Seller or any of its Affiliates to the Buyer under any contract with the Buyer and to apply such sums to the amount owing by the Buyer to the Seller or any of Seller's Affiliates.

3. PRIVACY NOTICE:

By providing personal information to Seller, Buyer is consenting, to the extent that such consent is required by law, to the collection, use and disclosure of this information by Seller to enable Seller to establish, maintain and manage a relationship with Buyer.

4. TAXES:

The Buyer shall pay all government sales and excise taxes on the Product. Any tax or governmental charge enacted or increased as of or after the date of this Agreement, which is payable by Seller or which increases Seller's cost of Purchasing, processing, transporting, delivery or selling products to Buyer, other than taxes on income, shall be paid by Buyer to Seller, in addition to the price specified herein. All import duties, taxes, wharfages, customs duty or other charges of whatsoever nature directly or indirectly applicable or relating to the import of the products into the importing country shall be for Buyer's account.

5. DELIVERY/TITLE/RISK OF LOSS:

- (a) Deliveries may, at Seller's option, be spread over the period specified in the Order Confirmation. Any failure by Buyer to promptly provide reasonable notice of a delivery schedule or to take delivery of any scheduled shipment of Product hereunder shall entitle Seller, at its sole option, and in addition to any other rights or remedies to which Seller may be entitled at law or in equity, to terminate the remaining portion, if any, of the Order Confirmation.
- (b) For all Railcar deliveries under the Order Confirmation, Buyer is solely responsible for offloading or unloading all Product. To the extent the Buyer fails to offload or unload the entire quantity of Product from the railcar, (i) any residual or remaining Product shall be deemed to have been abandoned by Buyer for the beneficial use or re-use by Seller, and will become the property of Seller when received and accepted by Seller at Seller's facility; (ii) Buyer will not receive credit, payment, or other consideration for any such residual or remaining Product; and (iii) Buyer is solely responsible for the transportation of such residual or remaining Product (including freight charges, shipping documents, and

compliance with all laws, rules and regulations related thereto) until received and accepted by Seller at Seller's facility.

- (c) For railcar deliveries, title to and risk of loss of the Product shall pass from Seller to Buyer upon the earlier of (i) Constructive Placement or (ii) Actual Placement, in each case, reported by the applicable railroad's car location message C'CLM"). "Constructive Placement" shall mean when a rail car cannot be actually placed or delivered to the consignee or unloader, and as a result, such rail car is held on railroad tracks awaiting instructions from the consignee or unloader. and is reported by the railroad through the CLM system as constructively placed on a specified date and time. "Actual Placement" shall mean when a rail car is placed in or delivered to an accessible position for unloading, or to a point designated by the consignee or unloader. and is reported by the railroad through the CLM system as placed on a specified date and time. For truck deliveries, title and risk of loss shall pass as set forth in the Order Confirmation.
- (d) Equipment/unsafe conditions: Seller may reject any rail cars, trucks, transports, pipelines, barges, vessels, containers or storage presented for loading/unloading/transfer of Product, which present, in its sole discretion, an unsafe or potentially unsafe situation Seller may refuse to unload, transfer or handle any Product under any conditions which it deems, in its sole discretion, unsafe or potentially unsafe, including, without limitation, any conditions caused by Product, drivers, personnel, equipment, procedures and/or adverse weather conditions.
- (e) Hazmat Laws: If and to the extent Buyer or its agent or contractor loads, unloads or ships "hazardous materials" (as designated in accordance with 49 C.F.R. Parts 100-185, as amended from time to time) purchased from Seller, then Buyer hereby warrants that all such materials shall be prepared for shipment, loaded, shipped and unloaded in compliance with all applicable laws, rules, regulations, orders, and other requirements of federal, state, provincial and local governments aid agencies thereof, regarding the handling and transportation of hazardous materials.

6. REMEDIES AND TERMINATION:

- (a) If the Buyer shall default in the payment of any amount for a period often (10) days beyond the due date of such payment, the Seller shall, in its own discretion and without prior notice to Buyer, may do any one or more of the following: (i) suspend performance under the Order Confirmation or any other agreement between Buyer and Seller; (ii) terminate the Order Confirmation or any other agreement between Buyer and Seller, whereby any and all obligations of Buyer, including payments or deliveries due, will, at the option of Seller, become immediately due and payable or deliverable, as applicable; and/or (iii) Set-off against any amount that Seller (or any of its affiliates) owes to Buyer (or any of its affiliates) under the Order Confirmation or any other agreement between or among any such parties. If Seller suspends performance and withholds delivery of the Product as permitted above, it may sell the Product to a third party and deduct from the proceeds of such sale the purchase price and all reasonable costs resulting from Buyer's default as identified above, including, without limitation, all costs associated with the transportation (including demurrage and other vessel or shipping related charges), storage, and sale of the Product.
- (b) Seller expressly reserves the right to cause the liquidation or cancellation of this Agreement because of: (i) the insolvency or financial condition of the Buyer; (ii) the commencement of a case or the appointment of or a taking of possession by trustee or custodian under 11 U.S.C. Section 101 et seq. or successor legislation in effect as of the date hereof; (iii) any and all other defaults of the terms and conditions specified herein; or (iv) the institution or price of quantity controls by any government, governmental agency or governmental authority which are lower than the price or less than the quantity set forth in the Order Confirmation or Invoice.
- (c) Buyer agrees and understands that in the event that any amounts that are not paid in accordance herewith. Seller may assign or enforce the same for collection. Seller does not waive its right by accepting late payments. Buyer agrees to pay reasonable attorney fees and costs of collection, including any incurred in proceedings due to insolvency or bankruptcy.

7. WARRANTIES, QUALITY, AND ASSUMPTION OF RISK:

Seller warrants only that it has good title to any product sold and such product conforms to its stated specifications. **EXCEPT AS OTHERWISE EXPRESSLY SET FOR I II HEREIN, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR ANY PARTICULAR PURPOSE.** Seller may measure, sample and test Product in its customary manner at the loading location to determine the quantity and quality of Product delivered. The results of such measurement, sampling and testing shall be treated, in the absence of fraud or manifest error, as conclusive and binding as to the quantity and quality of Product loaded. The Buyer represents that it is familiar with the characteristics, qualities and uses of the Product it is purchasing from the Seller and that the Buyer is not relying on the Seller's skill or judgment to select or furnish the Product suitable for any particular purpose. The Buyer assumes all risk and liability for the use of the Product, whether alone or in combination with other materials.

8. INDEMNIFICATION:

To the fullest extent permitted by law. Buyer shall defend, protect, indemnify, and save Seller harmless from misuse, disposal, and/or environmental release of Product purchased hereunder while title is held by Buyer or Product is under Buyer's control.

9. LIMITATION OF LIABILITY:

- (a) **SELLER'S MAXIMUM LIABILITY TO THE BUYER ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE PURCHASE OF PRODUCT BY BUYER FROM SELLER OR FROM THE PERFORMANCE OR BREACH OF ANY AGREEMENT PERTAINING THERETO, INCLUDING BUT NOT LIMITED TO THIS AGREEMENT, SHALL BE LIMITED TO THE PURCHASE PRICE FOR THE PRODUCT WITH RESPECT TO WHICH SUCH MATTER ARISES OR SUCH CLAIM RELATES.**
- (b) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY NOR ITS AFFILIATES, NOR ITS OR ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO THE OTHER PARTY, ITS AFFILIATES OR ITS OR ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, FOR ANY INDIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED OR INCURRED BY ANY SUCH PARTY, INCLUDING BUT NOT LIMITED TO/AND/OR COSTS OR CLAIMS ARISING FROM THIRD PARTY CONTRACTS, DOWN TIME, LOST PRODUCTION TIME, OR BUSINESS INTERRUPTION. THE LIMITATIONS ON, AND RELEASES FROM, LIABILITY EXPRESSED HEREIN SHALL APPLY REGARDLESS OF HOW CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION, NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, BREACH OF CONTRACT, DEFAULT OR OTHERWISE, OF THE PARTY WHOSE LIABILITY IS LIMITED, AND SHALL EXTEND TO ITS AFFILIATES AND ITS AND THEIR DIRECTORS, OFFICERS, AND EMPLOYEES, AND SHALL SURVIVE COMPLETION OF THE**

TERMINATION OF ANY AGREEMENTS BETWEEN BUYER AND SELLER FOR ANY REASON.

- (c) For purposes of this Agreement, the term "Affiliate" shall mean a Party's ultimate parent company and any company more than 50% owned directly or indirectly by such ultimate parent company and for greater certainty, in the case of a Party being a partnership, a partner of the partnership shall be considered an Affiliate.

10. FORCE MAJEURE/BUSINESS DISRUPTION:

- (a) Seller shall not be liable to the Buyer for any failure to perform any obligation to the extent such failure was caused by Force Majeure. The term "Force Majeure", as used herein, means any cause not reasonably within the control of the parties and shall include, but not be limited to, the following: (i) physical events such as acts of God, disease, plague, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of equipment or lines of pipe; (iii) material disruption in raw material supply; (iv) material interruption and/or curtailment of Seller's manufacturing or production; (v) interruption and/or curtailment of transportation and/or storage; (vi) acts of other such as terrorist attacks, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (vii) governmental actions requiring the parties to comply with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction.
- (b) Notice. If Seller's performance is prevented by Force Majeure, it will provide notice to the Buyer. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible.
- (c) Consequences. Upon providing notice of Force Majeure to Buyer, Seller will be relieved of its obligation, from the onset of Force Majeure event, to make delivery of Product to the extent and for the duration of Force Majeure. and shall not be deemed to have failed in such obligations to Buyer during such occurrence or event. For the duration of the Force Majeure, Seller may, in its sole discretion, allocate any available supply of Product among Seller's existing customers (including Seller's Affiliates) and deliver to Buyer its allocation of such Product. Under no circumstance shall Seller be obligated to cure any deficiencies in deliveries of Product caused by Force Majeure.

11. CONFIDENTIALITY:

Buyer agrees that all offers, prices, delivery terms, and other information exchanged are confidential and, except as required by law, all information shall be kept strictly confidential and shall not be disclosed to any other person or company without the prior written consent of Seller.

12. COMPLIANCE WITH LAWS:

The Buyer and the Seller shall comply with the relevant provisions of any national, state, provincial or local law or ordinance and all lawful orders, rules and regulations issued thereunder, which are applicable to the operation of the Buyer's or the Seller's respective businesses and the delivery and purchase of Product.

13. GOVERNING LAW/CONSENT TO JURISDICTION/JURY WAIVER:

- (a) Buyer acknowledges and agrees that any transactions between Seller and Buyer will be governed by and construed in accordance with the substantive laws of the State of Idaho and, to the extent applicable, the federal Electronic Signatures in Global and National Commerce Act. Buyer agrees that any legal proceedings arising from these transactions may be maintained in the courts of the Fourth Judicial District of the State of Idaho, and Buyer consents to the jurisdiction and venue of these courts.
- (b) **TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, BUYER AND SELLER WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND ANY RELATED AGREEMENT, AND THE OBLIGATIONS AND TRANSACTIONS ARISING UNDER OR CONNECTED TO THEM. BUYER AND SELLER EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY GIVEN.**

14. MISCELLANEOUS:

- (a) This Agreement and any related Order Confirmation(s) constitute the full and complete agreement between the Parties hereto related to the subject matter hereof and supersede all prior or contemporaneous understandings, statements, or agreements between the Parties on such subject matter. Buyer acknowledges and agrees that no employee, officer, agent or representative of the Seller has the authority to make any representations, statements or promises in addition to or in any way different than those contained herein, and that it is not agreeing to this Agreement in reliance upon any representation, statement or promise of the Seller except as expressly stated herein. No changes, amendments or clarifications of any of this Agreement shall be valid or effective unless in writing and signed by an authorized representative of the Seller.
- (b) All Order Confirmations issued by the Buyer to the Seller incorporate this Agreement as if such provisions were fully set forth in such Order Confirmations. No other terms and conditions, whether unilaterally altered or deleted herein, or otherwise presented, shall have any application, or any transactions occurring pursuant thereto, unless this Agreement is specifically and formally amended in writing by the Seller and the Buyer. (c) Each remedy contained herein shall be cumulative and in addition to any other remedy provided by law. The failure of either Party to insist on strict performance of any provision herein, or to take advantage of any right hereunder, shall not be construed as a waiver of such provision or right. In any dispute, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs incurred therein.
- (c) This Agreement, and all the terms and provisions hereof, shall enure to the benefit of and be binding upon the Parties hereto, and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
- (d) All sales hereunder are intended for agricultural uses. If Buyer uses or resells Product for any non-agricultural use. Buyer will inform Seller prior to such use or resale; Buyer warrants and agrees to comply with all statutes, ordinances, regulations and requirements of all governmental entities, whether federal or state, county or municipal, concerning the storage or use of the Product; and Buyer hereby agrees to indemnify, defend and hold harmless Marion Ag Service, Inc. and its affiliates, and their respective directors, employees and agents, from

and against all expenses (including attorneys' fees), liabilities, fines and claims of any kind or nature directly or indirectly arising or alleged to arise out of the use of Product for any non-agricultural purpose whatsoever.

- (e) Seller is an equal opportunity employer and is a United States government contractor. Therefore, this Contract is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapters 60 and 61. Unless this Contract is exempt by regulations issued by the Secretary of Labor, there is incorporated herein by reference the following: 41 C.F.R. 60-1.4:41 C.F.R. 60-250.4 and 61-25.10 and 41 C.F.R. 60-741.4.
- (f) A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as deliver)' of an original signed copy of this Agreement.
- (g) Buyer agrees to carry and maintain insurance appropriate for its business and reasonably similar to those carried and maintained in similar businesses.

15. NO THIRD-PARTY BENEFICIARIES:

Any Order Confirmation is solely for the benefit of and shall inure to the benefit of. Buyer and Seller and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

16. SEVERABILITY:

The invalidity or unenforceability of any provision of the Order Confirmation shall not affect the validity or enforceability of its other provisions.

17. COUNTERPARTS AND CONVERSION.

This Agreement, or any amendment to this Agreement, may each be executed in as many counterparts as necessary or convenient, including both counterparts that are executed at paper and counterparts that are electronic records and are executed electronically. Each counterpart of such document, when so executed, shall be deemed an original but all such counterparts shall constitute one and the same document. A manually or electronically executed counterpart of this Agreement, or any amendment to this Agreement, may be delivered by any means, including without limitation by electronic means via website or portal or email, or by facsimile, telecopy, or other electronic imaging. Any counterpart may be converted from paper to electronic form, or from electronic form to paper, at the discretion of the party receiving such counterpart, and such converted counterpart shall be deemed an original.

18. AMENDMENTS.

This Agreement may only be amended by a writing signed by the parties hereto, or by an electronic record that has been electronically signed by the parties hereto and has been rendered tamper evident as part of the signing process. The exchange of email or other electronic communications discussing an amendment to this Agreement, even if such communications are signed, does not constitute a signed electronic record agreeing to such an amendment.

19. ELECTRONIC DOCUMENT.

Electronic records and signatures may be used in connection with the execution of this Agreement. This Agreement is an electronic record executed by the parties hereto using electronic signatures. This Agreement is just as legally valid and enforceable as if the parties hereto had signed it on paper using a handwritten signature.