

RHETECH TERMS AND CONDITIONS OF SALE

1. Each delivery shall stand as a separate sale and is subject to credit arrangements or to receipt of cash. If payment is not made in accordance with terms, or if Seller shall have any doubt at any time as to Buyer's financial condition, Seller may withhold delivery of the material until the Seller receives adequate assurance that Buyer is financially solvent.

2. Buyer grants Seller a security interest in the goods described on the front of the invoice and in the proceeds thereof, to secure payment of the purchase price. A copy of the invoice may be filed by Seller at any time as a financing statement to perfect Seller's security interest.

3. The quantity delivered hereunder may vary by ten percent (10%) more or less from the quantity ordered. Buyer accepts such excess or diminution.

4. All orders or contracts are subject to and conditioned upon written acceptance by Seller and are not binding on Seller unless or until Buyer's acceptance of Seller's Customer Requirements Manual ("CRM") incorporated by reference herein. The CRM includes but is not limited to terms that will govern quality, packaging, freight, and labeling.

5. Seller shall not be liable for any loss or damage resulting from the handling or use of the material shipped, whether in the manufacturing process or otherwise.

6. Deliveries may be suspended, without liability, in case of an act of God, war, riots, fire, explosions, flood, strike, lock-out, injunction, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, accident, breakage of machinery or apparatus, governmental action, national defense requirements or other causes beyond the reasonable control of Seller, preventing the manufacture or shipment of material upon which the manufacture of the material specified in this order is dependent. Quantities affected by said suspension may be eliminated from the order without liability to Seller, but the order will remain otherwise unaffected.

7. Claims on account of weight will be allowable only (1) if for an amount in excess of one percent (1%) or more of the entire contents of all shipments (excluding shipments by bulk rail car and truck in which case claims shall be allowable only if for an amount in excess of one percent more of the entire contents); (2) if made within ten (10) days after receipt at the destination, and (3) if supported by certified bulk scale tickets in the event of bulk shipments.

8. If Seller is unable to supply the total demand for material specified herein, Seller may distribute its available supply among any or all purchasers, as well as departments and divisions of Seller on such basis as it may deem fair and practical, without liability for any failure of performance which may result therefrom.

9. Buyer agrees that if this contract covers material that must necessarily be manufactured especially for Buyer or not customarily carried in stock by Seller and said contract is suspended or terminated for any reason beyond the Seller's control, Buyer shall take delivery of and pay for as much of the material as has been completed together with that still in process on the date notice of the termination and/or suspension is received by Seller. If Buyer for any

reason cannot accept delivery of such material, Buyer shall pay for same as though delivery had been made and Seller may store such material for Buyer's account at Buyer's expense.

10. Seller warrants that all material sold is free from defects in composition and workmanship and that the materials conform to product specifications or to product data sheets which Seller shall provide to Buyer upon request. SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Notice of defective or nonconforming material must be made in writing within ten days of delivery. Failure to give written notice shall constitute a waiver by Buyer of both the right to revoke acceptance and of all claims or defenses based on the quality of the material. Defective material may not be returned until authorized in writing by Seller and only upon specific instructions given by Seller. Seller shall not be liable for any loss, damage or expense directly or indirectly arising from the use of the material or from any other causes. Buyer assumes all risk and liability resulting from use of the material covered by this order, whether used independently, or in combination with other products. Seller shall not be liable for special, indirect, incidental or consequential damages, including without limitation lost revenues and profits, even if it has been advised of the possibility of such damages. Buyer shall defend, indemnify and hold Seller harmless from any claims arising from Buyer's resale of the materials. The Seller is purporting to sell only such right, title and interest as it has in the material. The statute of limitations applicable to all claims arising under this agreement shall be one (1) year from the date the claim accrues.

11. The Seller guarantees that, to the best of its knowledge, the material provided Buyer is produced and sold free of valid patent infringement claims, but does not guarantee that the use thereof, or the articles made therefrom by the Buyer along or in conjunction with materials will not infringe a patent.

12. Seller, upon Buyer's written request, may furnish to Buyer technical advice with reference to the use of the material sold hereunder, if and to such extent as Seller has such advice conveniently available. If any such advice, and that if any advice or assistance is furnished, it shall be given and accepted at Buyer's risk, and Seller shall not be responsible or liable for the advice or assistance given or the results thereof.

13. If Buyer should default: (a) Seller, in addition to all other remedies available to it at law and equity, may cancel the order or reduce the quantities to be delivered hereunder by giving notice to Buyer; (b) If Buyer shall be obligated to pay to Seller interest on any unpaid balance at the highest legal rate permitted and further shall be responsible to Seller for any costs or expenses, including attorney fees, in the enforcement of the provisions of these Conditions of Sale.

14. The price quoted, unless otherwise specified on the face hereof, shall be immediately adjusted to equal any applicable lower or higher price announced by Seller. Any revised price shall apply only to shipments made on or after the effective date of the change in price.

15. Unless otherwise agreed by Seller in writing, the Buyer shall reimburse the Seller for all taxes, excises or other charges which the Seller may be required to pay to any applicable

governmental authority upon the sale, production, storage, or transportation of the material sold hereunder.

16. No claim for damages of any kind, whether as to material delivered or for non-delivery of material, shall be greater in amount than the purchase price of the material in respect of which such damages are claimed. No charge or expense incident to any claims will be allowed unless approved by an authorized representative of Seller. No claim shall be allowable after the material has been processed in any manner.

17. In the absence of a written agreement to the contrary, Seller shall designate the shipping and delivery terms, mode of transportation, and carrier for all shipments. If delivery is delayed by Buyer or by reason of any contingency referred to in Paragraph 6 hereof, the storage of the material for the account of Buyer shall constitute delivery. No liability is assumed by Seller for the acts or omission of the carrier.

18. All shipping and delivery terms contained on purchase orders or similar instruments shall be governed by the International Chamber of Commerce *Incoterms 2010* and are incorporated herein by reference, with specific reference made to Free Carrier (FCA), Carrier and Insurance Paid (CIP), Delivered at Place (DAP), and Delivered Duty Paid (DDP). To the extent any terms or conditions contained in this Agreement are inconsistent with *Incoterms 2010*, the terms contained herein shall govern.

19. Unless otherwise agreed by Seller in writing, title to the goods shall pass from the Seller to the Buyer when Seller has completed its delivery obligations according to the shipping or delivery term used in the contract as contained herein.

20. If any government action should place or continue limitations on the price provided for in this contract such that it would be illegal or against public or government policy for Seller to charge, assess or receive the full amount of such prices as determined by this contract, then Seller shall have the option (1) to terminate performance of the affected portion of the contract without liability for any damages, (2) to revise the contract subject to Buyer's approval in order to most nearly accomplish the original intent or (3) to continue to perform under this contract subject to such reductions in prices as Seller may deem necessary to comply with such governmental action.

21. This contract is not assignable or transferable by Buyer, in whole or in part, except with the written consent of Seller.

22. Buyer agrees not to communicate or disclose to any person or entity, either directly or indirectly or under any circumstances or at any time, any knowledge or information whatsoever acquired by the Buyer during the period of this contract relating to or concerning Seller's pricing information and/or other confidential information regarding the property, business affairs of Seller or any of its subsidiaries without the written consent of Seller and BUYER AGREES NOT TO UTILIZE OR MAKE AVAILABLE ANY SUCH KNOWLEDGE OR INFORMATION, EITHER DIRECTLY OR INDIRECTLY, IN CONNECTION WITH THE SOLICITING OF OR NEGOTIATIONS WITH ANY COMPETITOR OR CUSTOMER OF THE SELLER. THE PARTIES AGREE THAT DUE TO THE CONFIDENTIAL NATURE

OF THE PRICING INFORMATION AS SET FORTH ABOVE, THAT IT WOULD BE IMPOSSIBLE TO DETERMINE THE EXACT DOLLAR AMOUNT OF THE DAMAGES SUSTAINED BY THE SELLER UPON DISCLOSURE OF THE BUYER AND THEREFORE UPON VIOLATION OF THIS PARAGRAPH BY BUYER, THE BUYER AGREES TO PAY TO SELLER THE AMOUNT OF \$250,000. 00 (TWO HUNDRED FIFTY THOUSAND DOLLARS) AS LIQUIDATED DAMAGES.

23. This document contains all of the terms and conditions with respect to the sale and purchase of the material sold hereunder. These terms and conditions supersede any of previous date and no modification thereof shall be binding on Seller unless separately contracted in writing and agreed to by a duly authorized representative of Seller. SELLER OBJECTS TO THE INCLUSION OF ANY DIFFERENT OR ADDITIONAL TERMS proposed by Buyer in its acceptance of this contract and if they are included in Buyer's acceptance, a contract for sale will result upon Seller's terms stated herein, notwithstanding the inclusion of same by Buyer. No modification shall be effected by the acknowledgement or acceptance of purchase order forms stipulating different conditions. Unless Buyer shall notify Seller in writing to the contrary within three days after receipt of this document by Buyer, acceptance of the terms and conditions hereof by Buyer shall be indicated and, in the absence of such notification, the Buyer's acceptance of the material shall be equivalent to Buyer's assent to the terms and conditions hereof. Waiver of either party or any default by the other hereunder shall not be deemed a waiver by such party of any default by the other which may thereafter occur.

24. This contract and performance hereunder and all lawsuits, arbitration, remedies, special proceedings, or other proceedings hereunder shall be construed, governed and enforced in accordance with, under and pursuant to the laws of the State of Michigan where it was made, and in any action, arbitration, remedies, special proceeding or any other proceedings that may be brought, arising out of, under, in conjunction with, by reason or in relation to this contract, the laws of the State of Michigan shall be applicable and shall govern to the exclusion of the law of any other forum, state or jurisdiction and any claim arising out of, in connection with, by reason of, or in relation to this contract shall be enforced, adjudicated, litigated or, on demand of the Seller, arbitrated in Michigan and the parties stipulate and consent to the jurisdiction of the Courts of the State of Michigan. To the extent any provision or clause in this agreement is prohibited by any law or is deemed unenforceable, such prohibition or unenforceability shall not invalidate any of the remaining provisions or clauses hereof.

25. Buyer acknowledges reading, and agrees to be bound by the preceding Terms & Conditions of Sale, and agrees to and accepts all of the terms and conditions set forth herein.

26. Definitions.

A. "**Seller**" means RheTech, Inc., a Michigan corporation, its affiliates, successors, or assigns.

B. "**Buyer**" means the party purchasing or buying goods from Seller.

C. "**FCA [named place]**" or "**Free Carrier [named place]**" means that Seller shall deliver the goods, cleared for export, to the carrier nominated by Buyer at the

named place. If the named place of delivery is Seller's premises, Seller is responsible for loading the goods on the carrier's mode of transport, and delivery is complete when Seller loads the goods. If the named place of delivery occurs at any other place, Seller is not responsible for unloading the goods from Seller's mode of transport and delivery is complete when Seller places the goods at the carrier's disposal. Buyer may permit Seller to contract for carriage at Buyer's risk and expense. If applicable, Seller shall arrange for export clearance and shall be responsible for export expenses, including but not limited to any export duties, taxes, licenses, official authorizations, customs formalities and other charges payable upon export, if any. Seller's completed delivery to the carrier nominated by Buyer transfers title and risk of loss or damage to the goods from Seller to Buyer. Buyer shall be responsible for and assume all responsibility and costs relating to the goods from the time Seller's delivery is complete, including but not limited to any carriage of the goods, import costs, transit and insurance, if any. Buyer shall pay the costs of any pre-shipment inspections except when such inspections are mandated by the authorities of the country of export.

D. **“CIP [named place of destination]” or “Carriage and Insurance Paid to [named place of destination]”** means that Seller shall deliver the goods, cleared for export, to the carrier nominated by Seller at the named place. Seller shall contract for carriage and pay the cost of carriage necessary to bring the goods to the named destination. If applicable, Seller shall arrange for export clearance and shall be responsible for export expenses, including but not limited to any export duties, taxes, licenses, official authorizations, customs formalities and other charges payable upon export, if any. Seller shall contract and pay for minimum-cover insurance against Buyer's risk of loss or damage to the goods during the carriage to the named place of destination. Buyer shall bear all risks and any additional costs occurring after the goods have been delivered to the carrier nominated by Seller. Buyer shall be responsible for and assume all responsibility and costs relating to the goods from the time Seller's delivery is complete, except that Seller shall pay the cost of carriage to the named place of destination. If applicable, Buyer shall obtain import licenses and shall bear the cost of all customs formalities, duties, and taxes for the import of the goods and for their transit from the named place of destination. Buyer shall pay the costs of any pre-shipment inspections except when such inspections are mandated by the authorities of the country of export. If multiple carriers are used for the carriage to the agreed destination, Seller's duties and responsibilities are complete when Seller delivers the goods to the first carrier. Title and risk of loss or damage to the goods passes from Seller to Buyer when Seller completes delivery to the first carrier nominated by Seller.

E. **“DAP [named place of destination]” or “Delivered At Place (named place of destination)”** means that Seller shall deliver the goods to the named place of destination. Seller shall contract for carriage and pay the cost of carriage necessary to bring the goods to the named destination. If applicable, Seller shall arrange for export clearance and shall be responsible for export expenses, including but not limited to any export duties, taxes, licenses, official authorizations, customs formalities and other charges payable upon export, if any. Seller's delivery shall be complete when the goods are placed at the disposal of the Buyer or party nominated by Buyer on the arriving means of transport ready for unloading at the named place of destination. Seller shall bear all risks of loss and of damage to the goods in bringing the goods to the named place. Title and risk of loss or damage to the goods transfers from Seller to Buyer when the goods are delivered at the named place of destination. If applicable, Buyer shall

obtain import licenses and shall bear the cost of all customs formalities for the import of the goods and for their transit from the named place of destination. Buyer shall pay the costs of any pre-shipment inspections except when such inspections are mandated by the authorities of the country of export.

F. **“DDP [named place of destination]”** or **“Delivered Duty Paid [named place of destination]”** means that Seller shall deliver the goods to the named place of destination. Seller shall contract for carriage and pay the cost of carriage necessary to bring the goods to the named destination. If applicable, Seller shall arrange for export and import clearance and shall be responsible for export and import expenses, including but not limited to any export and import duties, taxes, licenses, official authorizations, customs formalities and other charges payable upon export and import, if any. Seller’s delivery shall be complete when the goods are placed at the disposal of Buyer on the arriving means of transport ready for unloading at the named place of destination. Seller shall bear all risks of loss and of damage to the goods in bringing the goods to the named place of destination. Title and risk of loss or damage to the goods transfers from Seller to Buyer when the goods are delivered at the named place of destination. Buyer shall pay the costs of any pre-shipment inspections except when such inspections are mandated by the authorities of the country of export.

G. **“Blacksburg”** means Seller’s premises located at 221-A York Road, Blacksburg, South Carolina, USA 29702, when used on a purchase order or other similar document as part of a shipping or delivery term.

H. **“Fowlerville”** when used as part of a shipping or delivery term means Seller’s premises located at 9201 West Grand River, Fowlerville, Michigan, USA 48836, when used on a purchase order or other similar document as part of a shipping or delivery term.

I. **“Sandusky”** means Seller’s premises located at 2901 W. Monroe Street, Sandusky, Ohio, USA 44870, when used on a purchase order or other similar document as part of a shipping or delivery term.

J. **“Whitmore Lake”** means Seller’s premises located at 1500 E. North Territorial Road, Whitmore Lake, Michigan, USA 48189, when used on a purchase order or other similar document as part of a shipping or delivery term.