



TERMS AND CONDITIONS OF THIS SALE

The invoice, order confirmation, price quotation or delivery ticket is expressly made conditional on Buyer's assent to the terms and conditions stated below. Seller offers or agrees to furnish the products described on the invoice, order confirmation, quotation or delivery ticket only upon these terms and conditions. These terms and conditions govern the sale of products by Seller and apply notwithstanding any conflicting, contrary or additional terms and conditions in any purchase order or other document or communication from Buyer. Seller specifically objects to inclusion of any conflicting, contrary or additional terms and conditions in any purchase order or other document or communication from Buyer. Neither Seller's acknowledgment of a purchase order nor Seller's failure to object to conflicting, contrary or additional terms and conditions shall be deemed an acceptance of such terms and conditions or a waiver of the terms and conditions stated below. If these terms and conditions appear on the reverse side of a price quotation of Seller, the price quotation is to be construed as an offer subject to these terms and conditions, and an order or purchase shall be construed as Buyer's assent to same.

1. **DEFINITIONS.** "Seller" means Monarch Silica, LLC a Texas Limited Liability Corporation with its principal offices in Conroe, Texas. "Buyer" means the person or entity identified on or receiving the invoice, order confirmation, quotation or delivery ticket on the reverse side hereof. "Products" means the materials described on the reverse side hereof which Buyer has purchased or may purchase.
2. **PRICES.** Prices are exclusive of all city, state and federal taxes, impositions and other charges. If Seller is liable for or shall pay any of the foregoing, the same shall be paid by Buyer to Seller in addition to the price of the Products. If Seller must pay any such tax or charge, Buyer shall reimburse Seller immediately upon receipt of Seller's receipt therefor. In the event Buyer claims an exemption from any tax, a valid tax exception certificate must be furnished to Seller.
3. **TITLE AND DELIVERY.** Prices on the Products are FCA point of origin; i.e. Seller's facility. Title to Products transfers at Seller's facility, and Buyer is expected to transport Products. In the event of shipments by Seller, such shipments are made at Buyer's risk. All shipping and related ordinary and customary charges shall be paid by Buyer in addition to the price of the Products unless otherwise agreed in writing by Seller. Any charges for freight and handling will include a 15% handling fee. Subject to Seller's right of stoppage in transit, delivery of the Products to the carrier shall constitute delivery to Buyer and title and risk of loss shall thereupon pass to Buyer. Selection of the carrier and route shall be made by Seller. Buyer acknowledges that delivery dates provided by Seller are estimates only and that Seller is not liable for failure to deliver on such dates. Seller reserves the right to make deliveries in installments. Delivery of a quantity varying from the quantity specified shall not relieve Buyer of the obligation to accept delivery and pay for the Products delivered. Delay in delivery of one installment shall not entitle Buyer to cancel other installments.
4. **PAYMENT.** All payments under the terms herein, unless otherwise noted, are due and payable to Seller 30 days net from date of invoice. If payment is not made as agreed, Buyer agrees to pay (a) interest on past due payments from the time they are due at 18% per annum or the maximum rate permitted by law, and (b) all costs and expenses of collection including reasonable attorney's fees incurred by the Seller in its efforts to recover such amounts so due and owing. If Seller believes in good faith that Buyer's ability to make payments may be impaired, or if Buyer shall fail to pay any invoice when due, Seller may suspend or cancel supply of any order or any remaining balance thereof until such payment is made, and Buyer shall remain liable to pay for any Products already supplied. Seller shall have no obligation to extend credit or grant deferred payment terms with respect to any order except as may be agreed in writing by the Seller prior to acceptance of such order. Buyer agrees to submit such financial information, cash payments, or satisfactory security as may be reasonably requested by Seller for the establishment and/or continuation of credit terms.
5. **ACCEPTANCE OF PRODUCTS; PRODUCT RETURN OR REFUND.** Inspection and acceptance of the Products shall be Buyer's responsibility. Buyer is deemed to have accepted the Products unless written notice of rejection is received by Seller within ten (10) days after delivery of the Products. Buyer waives any right to revoke acceptance thereafter. Buyer shall report any discrepancy in quantity, damage or alleged nonconformance within ten (10) days after delivery. In the event of a rejection, Buyer's sole and exclusive remedy for nonconforming Products shall be, at Seller's option, the replacement of the Products or refund of purchase price (without interest). In such circumstances, Buyer shall retain the remainder of any alleged defective product for Seller's inspection. In no event shall Seller be liable for transportation from Seller's plant or factory, adjustment of price, or other expenses or damages that may arise in connection with such allegedly nonconforming products.
6. **DISCLAIMER OF WARRANTIES. NO OTHER WARRANTY OR GUARANTEE OF ANY KIND IS MADE BY SELLER, EXPRESS OR IMPLIED, STATUTORY, BY OPERATION OF LAW, OR OTHERWISE, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
7. **LIMITATION OF LIABILITY.** BUYER'S RECOVERY FROM SELLER FOR ANY CLAIM SHALL NOT EXCEED BUYER'S PURCHASE PRICE FOR THE PRODUCTS, IRRESPECTIVE OF THE NATURE OF THE CLAIM, WHETHER IN CONTRACT, TORT, WARRANTY, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE.
8. **LIMITATION OF DAMAGES.** BUYER SHALL NOT IN ANY EVENT BE ENTITLED TO, AND SELLER SHALL NOT BE LIABLE FOR, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY NATURE INCLUDING, WITHOUT LIMITATION, BUSINESS INTERRUPTION COSTS, REMOVAL COSTS, REPROCUREMENT COSTS, LOSS OF PROFIT OR REVENUE, PROMOTIONAL OR MANUFACTURING EXPENSES, OVERHEAD, INJURY TO REPUTATION AND/OR LOSS OF CUSTOMERS OR ALLEGED DAMAGE TO A RELATIONSHIP WITH A CUSTOMER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
9. **INDEMNITY.** BUYER SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM ANY CLAIMS BASED ON SELLER'S COMPLIANCE WITH BUYER'S SPECIFICATIONS OR INSTRUCTIONS, OR MODIFICATION OF ANY PRODUCTS BY PARTIES OTHER THAN SELLER, OR USE IN COMBINATION WITH OTHER PRODUCTS, OR THE ACTS OR OMISSIONS OF BUYER OR ITS EMPLOYEES OR AGENTS, WHETHER BASED UPON BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE.
10. **SAFETY.** If Buyer is the user of the Products, it agrees to comply with all federal and state laws regarding the safe use of Products.
11. **FORCE MAJEURE.** Seller shall not be liable for any delays in performance or nonperformance caused by circumstances beyond Seller's control, including but limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restrictions, lock-outs, labor disputes or shortages, transportation embargoes or other failures or delays in transportation, or inability to obtain necessary raw materials or equipment.

- 12. GOVERNING LAW AND VENUE.** These Terms and Conditions shall be governed by and construed in accordance with the laws of the State of Texas. Venue of any suit or other action related to the sale of Seller’s product(s) shall lie exclusively in Montgomery County, Texas.
- 13. MISCELLANEOUS.** No Products shall be distributed to any foreign country to which distribution is prohibited by United States law. No prior statement or agreement shall vary or modify the written terms herein. No rights, duties, agreements or obligations hereunder may be assigned or transferred by Buyer without the written consent of the Seller. The obligations, rights, terms and conditions hereof shall be binding on the parties hereto and their respective successors and assigns. The waiver of any provision hereof shall not be deemed a waiver of any other provision hereof or of any breach or default hereunder. Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof in that jurisdiction or affecting the validity or enforceability of such provision in any other jurisdiction.

Date: _____

Name

Title

Company Name