

**FUJIFILM Wako Chemicals U.S.A. Corporation  
LAL Division**

**Terms and Conditions of Sale**

**General Conditions of Sale**

**Terms**

Buyer means any party and its affiliates ("Buyer") entering a purchase order for products offered for sale through the FUJIFILM Wako Chemicals U.S.A. Corporation business division referenced above ("Seller"). The term Buyer includes, without limitation, designated representatives and successors and assigns of Buyer. If there is any inconsistency among (i) Buyer's purchase order or other product purchase materials, (ii) Seller's confirmation or other product sale materials, (iii) Buyer's Terms and Conditions of Purchase or corresponding document, and (iv) Seller's Terms and Conditions of Sale, the Seller's Terms and Conditions of Sale shall govern. For purposes hereof, Seller's "Terms and Conditions" shall be the Terms and Conditions of Seller in effect at the time Buyer places an order with Seller, as available on Seller's internet site or otherwise circulated by Seller to Buyer electronically or in writing. Seller's Terms and Conditions shall apply to all purchase orders fulfilled by Seller.

**Acceptance**

Upon receipt of a purchase acknowledgement from Seller, and the subsequent acceptance of goods ordered, Buyer will be deemed to have assented to the terms and conditions of sale presented below. Unless noted in a separate written document manually signed by the Seller and Buyer, these Terms and Conditions of Sale represent the entire agreement among the parties, and unless covered under such a separate agreement, supersede any and all representations, warranties, or other statements or promises, if any, which have been made by or to any of the parties in connection with a product order acknowledgement, and shall be valid and binding.

**Pricing and Terms**

Seller reserves the right to change prices previously quoted or otherwise made available to Buyer at any time without notice. Any price reduction or price increase will automatically apply to Buyer's invoice. To obtain information as to Seller's current price list, a representative of the Seller should be contacted via telephone at 804-271-7677 or email at [wkuspyrostarinfo@fujifilm.com](mailto:wkuspyrostarinfo@fujifilm.com). If prepayment is not required, standard payment terms for product orders are NET THIRTY (30) DAYS from the date of invoice and must be payable in U.S. dollars. A finance charge of one and a half percent (1.5%) per month (annual percentage rate of eighteen percent (18%)) may be charged to past due accounts.

## **Credit Card Orders**

Seller accepts VISA®, MasterCard® and American Express® as payment for orders.

Information associated with the use of credit cards to make product purchases is forwarded by Seller directly to First Data Corporation. First Data Corporation is a financial services organization headquartered in Atlanta, Georgia that acts as an independent contractor for Seller to assist in the administration of the payment process for goods sold.

## **Taxes and Other Charges**

Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any government authority in the United States or abroad, on or measured by the transaction between Seller and Buyer shall be paid by the Buyer in addition to the price or payment process quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall promptly reimburse Seller, or, in lieu of such payment, Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

Due to special handling requirements and the hazardous nature of certain products sold, additional charges for hazardous packaging and transportation will be added to the invoice.

## **Security Terms / Costs and Expenses of Collection**

For the purpose of securing payment of amounts due Seller from Buyer hereunder, Buyer hereby grants to Seller: (i) notwithstanding any passage of title, a continuing first purchase money security interest in Seller's products to be shipped hereunder, and all accessories thereto and substitutions therefor; and (ii) a continuing purchase money security interest in all of the proceeds of the foregoing. If Buyer fails to make payment to Seller of any invoice for any product shipped by Seller within thirty (30) days of the date of such notice, or should Buyer become insolvent or be a party to any bankruptcy or receivership proceeding prior to full payment of all amounts payable hereunder, Seller may, notwithstanding any other provisions herein set forth, exercise any or all of its rights as a secured creditor under applicable law, including, without limitation: (a) refuse to make further shipments to Buyer; (b) with or without demand or notice to Buyer, declare the entire amount unpaid immediately due and payable; and (c) obtain custody of and sell any or all of such products as permitted under applicable law, applying the proceeds of the sale to the expenses of retaking, repairing and selling such products, reasonable attorneys' fees and to the satisfaction of all indebtedness then due and unpaid by Buyer to Seller. Any surplus shall be paid to Buyer and any deficiency shall be paid to Seller by Buyer. All past due amounts shall accrue a delinquency charge at the rate of one and a half percent (1.5%) per month.

In the event that Buyer fails to make full payment for the products, in the manner and within the time specified by Seller in its payment terms, Buyer shall be liable to Seller for payment of all costs and expenses incurred by Seller in seeking collection of the amounts owed by Buyer, including but not limited to the costs of collection agencies and reasonable attorneys' fees incurred by Seller.

## **Product Samples**

Product samples may be provided at no charge for the purpose of testing a particular product or product lot. Such an accommodation shall be made only upon a written request approved in writing by an authorized representative of Seller.

## **Lot Reservation Policy**

Reserved lots will be held for up to three (3) weeks from the date the sample is shipped. The lot reservation will be automatically cancelled at the end of three (3) weeks without notice to Buyer unless otherwise extended by the Seller in its sole discretion. The size of any product lot must be approved in writing by both Buyer and Seller.

## **Perishable Product Packaging**

Perishable products are packed as appropriate in insulated cartons for protection while in transit. A packaging charge is added as a separate item on the invoice when products require dry ice or cold packaging. Seller will not accept responsibility for shipments packaged contrary to Seller's procedures or packages mishandled during shipment or following delivery to Buyer.

## **Shipping and Delivery Matters**

Items ordered are generally shipped within forty-eight (48) hours of receipt of the product order. Partial shipments of product may be made at Seller's discretion when complete orders cannot be shipped. If partial shipments are not acceptable, notification to Seller must be set forth in writing at the time the order is placed. Orders are shipped using a supply chain delivery service using a national courier delivery service for orders to be delivered in the United States unless otherwise specified. Seller routinely ships via FedEx®. To avoid possible damage when shipments are made near a weekend or holiday, frozen or cold packaged products are shipped on Monday through Thursday. Seller will not accept responsibility for shipments made contrary to Seller's normal shipping schedule as described in the preceding sentence. Special shipping and delivery requirements must be clearly indicated in writing at the time an order is placed by the Buyer. Shipments are FOB at the point of origin for the product, with freight prepaid and added to Buyer's invoice, unless otherwise agreed upon in writing. Title to the products ordered passes to Buyer upon delivery by Seller of goods to the delivery service carrier. Buyer is responsible for insuring the products during transport that Buyer orders. Insurance expenses for goods shipped will be charged to Buyer along with freight expenses in the invoice submitted by Seller for the sale of product.

## **Unloading and Demurrage**

Seller's delivery equipment, if any, is furnished with the understanding that Buyer will use all reasonable effort to unload and return the same to the delivering carrier within the tariff or contracted period free of demurrage and extra detention charges. Any demurrage and extra detention charges on such equipment are for Buyer's account.

## **Insurance**

Buyer represents that it maintains commercially reasonable and customary insurance policies or adequately self-insures itself against risks associated with the purchase and use of the products at coverage levels commensurate with the risks associated with such activities. Buyer expressly acknowledges and agrees that it is responsible for insuring the products at all times following the delivery by the Seller of such goods to the carrier service for transport to the Buyer, including, without limitation, any returned deliveries that are transported to the Seller, and hereby authorizes Seller to insure the product at a commercially reasonable level and include such charges in its invoice for such goods.

## **Seller Performance Disruption**

Seller shall not be liable for any loss, damage or penalty as a result of any delay in manufacturing or delivering, or failure to manufacture or deliver, products as ordered by Buyer due to any cause whatsoever beyond Seller's control, whether a force majeure event or otherwise.

## **Allocation of Goods During a Supply Disruption**

If Seller is unable for any reason to supply the total demands for goods specified in Buyer's purchase order, Seller may allocate its available supply among any or all buyers on such basis as Seller may deem fair and practical in its sole discretion, without liability for any failure of performance, including but not limited to allocations made to its affiliates, subsidiaries or parent organization.

## **Shortages and Damages**

If a shortage occurs in any shipment received from Seller, Buyer will notify Seller's Customer Service Department in writing within three (3) business days and request a credit or replacement product. Otherwise, the order will be considered complete. Seller shall provide a commercially reasonable level of assistance with filing claims for product loss or damage, but shall incur no responsibility for the loss or damage if Buyer fails to retain all packing materials and containers for possible inspection by the carrier.

## **Cancellations**

Cancellation of custom prepared products will not be accepted after an order has been accepted, or after manufacturing process has begun, whichever is earlier.

## **Returns**

A Return Goods Authorization number and shipping instructions must be obtained from Seller's Customer Service Department prior to returning any product. All products must be returned in good condition and shall be subject to a handling and restocking charge of 20 percent (20%) of the purchase price, plus freight costs. No product may be returned for any reason whatsoever after thirty (30) days from the **delivery / invoice** date. Where spoilage occurs in transit, Buyer shall contact Seller's Customer Service Department and request instructions immediately upon receipt of the shipment. Credit will not be issued on any items that are returned without prior written authorization from Seller.

## **Conditions and Intended Use**

Unless otherwise indicated, Seller's products are for the purposes described in the catalogue for the product, and/or as described in the product label. They are not to be used for administration to humans or for drug purposes. Nothing disclosed herein is to be construed as a recommendation to use products in violation of any patents. The information presented as to restriction or the use of products is believed to be accurate. However, such information and products are offered without warranty or guarantee since the ultimate conditions of use and the variability of the materials treated are beyond Seller's control. Seller will not be responsible for patent infringements or other violations that may occur with the Buyer's use of these products.

## **Indemnity**

Buyer agrees to indemnify and hold Seller, its parent, subsidiaries and affiliates, and its and their respective directors, officers, employees, representatives, agents, successors and assigns (collectively, the "Seller Indemnitees") harmless from any and all damages and costs, including, without limitation, attorneys' fees, that any Seller Indemnitee may sustain or incur as a result of any claim against such Seller Indemnity due to negligence or misuse of the product by the Buyer associated with the purchase or use of any product ordered. Buyer shall notify Seller in writing immediately upon Buyer's receipt of knowledge of any incident involving Seller's products which result in, or are reasonably expected to, personal injury or any other civil or legal claim. Buyer agrees to fully cooperate in the investigation and determination of the cause of such incident and shall make available to Seller all statements, reports and tests made by Buyer or made available to Buyer by others. The furnishing of any information to Seller relating to such incident and any investigation by Seller of such information or incident shall not in any way constitute any assumption of any liability for such incident by any Seller Indemnitee.

## **Limitation on Warranties**

Except for the warranties, if any, printed on or packaged with products when sold, SELLER MAKES NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, REGARDING ANY PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR MERCHANTABILITY, SUITABILITY FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF PROPRIETARY RIGHTS. THE WARRANTIES SHIPPED WITH THE PRODUCTS PROVIDE BUYER'S EXCLUSIVE REMEDIES IF PRODUCTS ARE DEFECTIVE OR NON-CONFORMING.

## **Limitations of Liability**

SELLER WILL NOT IN ANY EVENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGE, LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS, ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED TO BUYER BY SELLER OR ON BEHALF OF SELLER. Seller's liability (whether in contract, tort or otherwise, and with regard to any product or other goods or services furnished to Buyer by Seller or on behalf of Seller) will not exceed the lesser of (a) \$10,000 or (b) three (3) times the purchase price paid by the Buyer for the same.

## **Dispute Resolution Process**

The Buyer and Seller shall use good faith efforts to address and resolve any and all disputes arising with regard to the purchase and sale of the products, but in case of failure, disputes may at Seller's option be settled through binding arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. Unless otherwise agreed in writing by the parties, the location for any such arbitration proceeding will be in the Richmond metropolitan area of the Commonwealth of Virginia in the United States of America. Both parties acknowledge and agree that for purposes of such arbitration and other judicial proceedings, each is subject to jurisdiction in the federal and state courts located in the Commonwealth of Virginia. The award to be rendered shall be final and binding upon both parties and any court having jurisdiction thereof in the United States of America or the country in the Buyer's principal place of business is located may therefore enter judgment upon the award rendered by the arbitrators. Except for the enforcement of an arbitration award, Buyer hereby acknowledges and agrees that no litigation or other judicial or administrative proceeding that involves Seller will be initiated or pursued by Buyer in any jurisdiction outside of the United States of America. Notwithstanding any of the foregoing provisions, Seller may, at its option, bring suit or institute other judicial procedures against Buyer in any court where Buyer or its assets may be located.

## **Governing Law**

The validity and interpretation of these Terms and Conditions of Sale and purchase orders, and of each clause and part thereof, shall be governed by the laws of the Commonwealth of Virginia without regard to its conflicts of law principles. The parties hereby expressly exclude the applicability of the United Nations Convention on the International Sale of Goods.

## **No Resale of Products into U.S. Embargoed/Sanctioned Countries**

In purchasing Seller's products, Buyer shall comply at all times with all applicable laws and regulations, including without limitation, United States Export Administration Regulations ("EAR") and any other applicable export control and sanctions regulations, and all environmental and health and safety laws and regulations (collectively, "Regulations"). In furtherance and not in limitation of the foregoing:

(a) Buyer shall have the sole responsibility for obtaining and maintaining, and shall obtain and maintain, any and all approvals, licenses, permits, registrations and authorizations, howsoever called, of any applicable regulatory agency, department, bureau or other government entity necessary for any resale or use of Seller's products outside of the United States, and shall not sell any products to, or for the use or benefit of, any intermediary or ultimate purchaser to which Seller could not sell products under laws or regulations of the United States or other applicable jurisdictions; and

(b) Buyer shall not, directly or indirectly, engage in any activity or transaction in relation to any U.S. sanctioned country that, if undertaken by a U.S. person, would be in violation of U.S. sanctions laws and regulations, including, but not limited to, the International Emergency Economic Powers Act (50 U.S.C. § 1701-1706), the provisions of related Executive Orders, sanctions administered or enforced by the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") and any other Regulations that may be in effect and applicable to such sanctioned countries, unless both (i) applicable authorizations are obtained or general licenses apply, and (ii) Seller has provided its prior written approval.

## **Intellectual Property Rights**

Seller has certain existing intellectual property rights with respect to the products and other assets, and any derivatives or improvements thereof. Buyer shall have no right, title or interest in or to any of Seller's intellectual property. For the purposes of these Terms and Conditions of Sale, intellectual property rights are defined as inventions and/or works and any and all rights under U.S. and/or foreign patents, trade secrets, know-how, copyrights, trademarks, and other industrial or intangible property rights of a similar nature; all rights pursuant to grants and/or registrations worldwide in connection with the foregoing and all other rights with respect thereto; all rights under applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all rights under amendments, continuations, divisions, and continuations-in-part of such applications; and all rights under corrections, reissues, patents of addition, extensions, and renewals of any such grant, registration, and/or right.

Buyer shall not use Seller's name, trademarks, logos or service marks or refer to Seller or any of its affiliates directly or indirectly in any customer list, advertising, sales presentation, news release, release to any professional or trade publication or for any other purposes without Seller's prior written approval of such use and of the form and substance of the reference.

## **Amendments and Assignment**

The Terms and Conditions of Sale set forth herein may not be amended or modified in any respect except in accordance with a written instrument signed by an authorized representative of Seller. Any sales contract formed between Buyer and Seller may not be assigned by Buyer except with the prior written consent of Seller. Seller may assign its rights and obligations under any such sales contract without the consent of Buyer.

## **Effect of Waiver Limited**

Seller's waiver of any breach or failure to enforce any of Buyer's obligations under these Terms and Conditions of Sale at any time shall not limit or waive Seller's right thereafter to enforce strict compliance with the terms and conditions hereof.

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