

Gulf Coast Sand, LLC (“SELLER”) TERMS AND CONDITIONS

- 1. Acceptance.** By receipt of this document, BUYER agrees to be bound by the following terms and conditions in the purchase of product(s) from SELLER. No contract shall exist except as provided in this document, as this document is a complete and exclusive statement of the terms and conditions of the sale.
- 2. Price.** The purchase price of the product(s) shall be established by the SELLER. Prices shall be valid for the stated amount of time with the exception of any changes in freight and energy costs or changes in federal, state or local laws or regulations affecting the mining, processing and transportation of the product. All products are subject to availability. Actual amount invoiced shall reflect the quantity of product delivered to customer and may exceed the amount stated on BUYER's purchase order.
- 3. Warranty and LIMITATION OF WARRANTY.** SELLER warrants that the product(s) delivered by it will be of the kind and quality described in SELLER's invoice and will be free of defects in workmanship or material. Should any failure to conform to this warranty appear within thirty (30) days of delivery, SELLER shall, upon notification, correct such nonconformity, including non-conformance with the specifications, at its option, either by repairing the nonconformity, or replacing the defective product(s) F.O.B., the SELLER's plant. SELLER's sales personnel may have made statements about the product(s) to be purchased under this contract. Such statements do not constitute warranties and are not part of the contract for sale.

THIS WARRANTY IS IN LIEU OF ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR PURPOSE, OR OTHER WARRANTIES, EXPRESS OR IMPLIED, except of title and against patent, trademark, trade name, or copyright infringement. All chemical and physical properties of product(s) are typical. SELLER recommends that BUYER confirm all properties of the product(s) in the laboratory of their choice. Correction of non-conformities, in the manner and for the period of time provided above, shall constitute fulfillment of all liabilities of SELLER to BUYER, whether based on contract, negligence or otherwise with respect to, or arising out of such sale of the product(s).

SELLER shall not be liable for special, indirect, consequential or other damages, expenses, losses or delays to BUYER howsoever caused, including without limitation, damages for decrease in income, increase in costs of any description or decrease in profits, or from failure of performance of any product sold herewith. The remedies set forth in this instrument are exclusive, and liability of SELLER shall not, except as expressly provided herein, exceed the price of the product in which such liability is placed. BUYER may commence any action for a breach of any of SELLER's obligations within one (1) year after the breach occurs, regardless of BUYER's lack of knowledge of the breach. Any action not commenced within the one (1) year period shall be forever barred notwithstanding any longer statutory period of limitations. SELLER does not claim complete knowledge of all laws and regulations and, therefore, cannot guarantee or imply compliance with same and cannot indemnify BUYER for any liability imposed resulting from noncompliance.

SELLER'S WARRANTY AGAINST INFRINGEMENT OF ANY PATENT, TRADEMARK, TRADE NAME, OR COPYRIGHT, DOES NOT INCLUDE WARRANTY AGAINST INFRINGEMENT AS TO THE USE OF THE PRODUCT BY THE BUYER, OR ANY THIRD PARTY TRANSFEREE OF BUYER. SELLER shall indemnify the BUYER against such infringement only up to the price of the product.

- 4. Routing.** BUYER shall be responsible for all routing and shipping expenses, unless otherwise specified in writing by SELLER. SELLER shall not be in default for any delay or failure to perform hereunder due to causes beyond its control and without its fault or negligence.
- 5. Inspection.** BUYER shall have the right to inspect the product(s) at the time and place of delivery. If BUYER does not provide, within forty-eight (48) hours after delivery, notice to SELLER of a claim for damages on account of the condition, quality, or grade of the product(s), BUYER will be deemed to have irrevocably accepted the product(s). BUYER must specify in detail the basis of such claim. Risk of loss shall be on the BUYER as of the date of delivery.
- 6. Terms of Payment.** The terms of payment shall be as specified in SELLER's invoice, otherwise shall be on a net 30 basis. Any late payment shall be subject to an interest penalty, which shall accrue at a rate of 1.5% per month.
- 7. Change Orders** Changes in job scope which were not requested by GCS, were not primarily caused by GCS, or were otherwise outside of the control of GCS, which result in increased cost or lost revenue to GCS may be assessed as a surcharge to BUYER in addition to all pricing quoted or otherwise agreed to with BUYER, which BUYER shall be responsible to pay. Examples of such changes in job scope which may result in a surcharge to BUYER shall include, but not be limited to, changes in delivery date, volume of product ordered, delivery location, order cancellation, and/or failure to pick up all or a portion of an order at a designated delivery location.
- 8. Personal Health Effects.** BUYER acknowledges and understands the following information and instructions regarding industrial silica sand products:

Silica Sand Products DANGER



These products have been classified, following the Globally Harmonized System (GHS) of Classifying and Labeling Chemicals criteria, as a Category 1A Carcinogen, a Category 1 Specific Target Organ Toxicity (following repeated exposures), and a Category 2B Eye Irritant. For Industrial Use Only. DO NOT USE THIS PRODUCT FOR BLASTING OR AS AN ABRASIVE. DO NOT PNEUMATICALLY UNLOAD THE SILICA SAND PRODUCTS AT A PRESSURE EXCEEDING 5 PSI SO AS TO AVOID ABRADING THE PRODUCT. DO NOT BREATHE DUST. Read the specific Safety Data Sheet (SDS) before using and follow applicable local, state and federal health and safety standards. The SDSs for the products are available online at www.gulfcoastsand.com or by calling 504-276-7263.

- 9. Not to be used for Blasting or Abrasive Purposes.** BUYER agrees to not use the products purchased herein for blasting or abrasive purposes.
- 10. Receipt and Understanding of SDS.** BUYER acknowledges the receipt of a Safety Data Sheet (“SDS”) from SELLER for each corresponding product supplied, in accordance with 29 CFR § 1910.1200(g)(6)(i).

11. Responsibility for SDS Disclosure. BUYER accepts full responsibility for disclosure of all information provided in SELLER'S SDSs and all other information regarding the hazards of improperly using the supplied product(s) to any third party or employee of BUYER receiving SELLER'S product(s) from BUYER, in accordance with 29 CFR § 1910.1200(g)(7)(i-vii).

12. Release of SELLER Liability. BUYER releases SELLER of any liability related to the disclosure of SDS information to any third-party or employee of BUYER receiving SELLER'S product(s) from BUYER. Further, BUYER releases SELLER for any injuries or damages to persons or property arising out of the use or operation of the product(s) sold hereunder.

13. Packaging and Labeling of Product. In the event BUYER purchases the product(s) sold hereunder in bulk and packages the same for resale, BUYER assumes the responsibility for (i) adequately labeling all packages with the required warnings concerning the potential adverse health effects associated with exposure to SELLER'S product(s), in accordance with 29 CFR 1910.1200, or as amended, (ii) preparing and timely providing its customers, agents and contractors with a current BUYER'S SDS in accordance with 29 CFR 1910.1200, or as amended, and (iii) timely providing its customers with other literature and notices which BUYER receives from SELLER or other sources regarding warnings, product hazards and precautions to be followed, whether or not such information is mandatory under 29 CFR 1910.1200, or as amended. SELLER will not be liable for any changes that may occur in SELLER'S product(s) as a result of BUYER'S packaging operations.

14. Defense, Indemnification and Hold Harmless. BUYER agrees to defend, indemnify and hold harmless SELLER, its officers, directors, shareholders, employees, successors and assigns from and against any and all claims, liabilities, losses, or damages, including any attorney's fees, as a result of any claim, suit, action, administrative proceeding, demand, judgment or settlement arising out of (a) BUYER'S breach of any of its obligations described under paragraphs 8-12 above; or (b) any allegation of a material or safety defect in the SELLER'S product(s) or a failure to warn of any dangers or risks associated with the use of SELLER'S product(s) (including any allegation of conspiracy to so act), which may be brought by a third party or employee of BUYER receiving SELLER'S product(s) from BUYER. Further, BUYER agrees to defend, indemnify and hold harmless SELLER, its officers, directors, shareholders, employees, successors and assigns, against claims for loss, damage, injury or death from any cause to a person or persons resulting from or during the use of SELLER'S product(s) sold hereunder, or the re-use of bags as described in paragraph 18 herein.

15. Technical Assistance. As part of the transaction(s) hereunder, SELLER may offer technical assistance to BUYER, which shall not be deemed to be, nor will it include, environmental, health and safety consulting, and such technical assistance shall not affect the liability limitations or obligations of the parties hereunder, including as specifically set forth in paragraphs 3 and 13.

16. Product Changes and Subcontracting. SELLER reserves the right to discontinue, alter or improve its processes or products, without imposing on itself any obligation to BUYER, other than as identified in ISO 9001:2008 procedures. SELLER also reserves the right to subcontract the mining, processing, or shipping of its products sold hereunder.

17. Compliance with Transload Regulations. BUYER must comply with all rules and regulations established by SELLER at any of SELLER's owned or subcontracted transload facilities or other delivery sites, subject to SELLER's refusal to deliver product for failure to comply.

18. Taxes. Any tax or other governmental charge on deliveries or sale of the product(s) sold hereunder shall be for the account of and paid by BUYER.

19. Bag Re-use. If the product(s) purchased hereunder are delivered in bags, BUYER is hereby advised that if BUYER intends to re-use any such bags, or distribute said bags to a third party who intends on re-using said bags, ALL REFERENCES to SELLER, or SELLER'S product(s), including all wording and logos, need to be permanently removed from the bags. Furthermore, BUYER is advised to refer to OSHA safety standards and regulations in regard to re-use of bags. Depending on the specific circumstances of re-use, bags may not even be certified for re-use, making it illegal for BUYER to continue to re-use, or allow there-use, of the bags at all. BUYER hereby releases SELLER from any and all liability for the performance of bags during re-use.

20. Costs and Attorney's Fees. BUYER agrees to pay all SELLER's costs, including reasonable attorneys' fees, incurred as a result of BUYER's breach hereunder or any collection action taken by SELLER.

21. Force Majeure. Seller is not responsible for failure to make delivery, delays, or any other deviations in performance directly or indirectly due to causes beyond SELLER's reasonable control. Excused non-performance includes but is not limited to: fires; floods; accidents; labor or transportation problems; difficulty in obtaining fuel, materials, supplies or power at current prices and quantities through SELLER's regular sources of supply; engineering; technical or design difficulties; and the impact on the conduct of SELLER'S business of any existing or future legislation or governmental orders, rules or regulations. If any such contingencies occur, SELLER may allocate production and deliveries among its customers. If SELLER determines through SELLER'S normal accounting procedures that SELLER'S performance of this agreement will result in a loss due to causes beyond SELLER'S control that could not have been reasonably anticipated, SELLER may delay, limit or cancel its obligation to deliver the product(s).

22. Non-Waiver of Remedies. A failure to assert any rights or remedies available to SELLER under these terms and conditions, or a waiver of the rights and remedies available to the SELLER by a course of dealing or otherwise, shall not be deemed to be a waiver of any other right or remedy under these terms and conditions.

23. Jurisdiction and Venue. The terms of this agreement shall be governed by the laws of the State of Delaware without regards to its conflicts of law provisions. The exclusive venue for any claim or dispute arising under this agreement shall be in the State Courts in Wilmington Delaware.

24. Severability. In the event any section, paragraph, or portion of these terms and conditions shall be deemed by any court having lawful jurisdiction of the subject matter of this agreement invalid for any reason, this agreement shall be otherwise valid and enforceable as if the invalid section had not been of it in the first instance.

25. Captions. Subject headings and captions of the paragraphs and sub-paragraphs of these terms and conditions are included for purposes of convenience only and shall not affect the construction or interpretation of any provisions.

26. English Language Version Applicable. The English language version of these terms and conditions shall be binding, and shall not be affected by any translation of these terms and conditions to another language.