

TERMS AND CONDITIONS OF SALE
BARRINGTON CHEMICAL CORPORATION
and its division, BARRINGTON NUTRITIONALS

GENERAL: All sales of goods (“Products”) by Barrington Chemical Corporation, including its division Barrington Nutritionals (“Barrington”) are made subject to these Terms and Conditions of Sale, which are incorporated by reference as an integral part of each purchase order or other agreement for the sale of Products (“Order”). Barrington’s agreement to sell Products are expressly conditioned upon the assent of buyer or purchaser (“Buyer”) thereto. The information contained in these Terms and Conditions of Sale serve to supplement the information contained in the Barrington's materials and specifications. Barrington will not be bound by, and expressly rejects, any variations from or additions to these Terms and Conditions of Sale contained in any Order or other document submitted by the Buyer. No variation from these Terms and Conditions of Sale shall be binding upon the Barrington unless specifically agreed to in writing by an authorized representative of the Barrington – none of Barrington’s employees or agents has the authority to modify these Terms and Conditions of Sale verbally. In addition to these Terms and Conditions of Sale, certain Products sold by Barrington are sold in collaboration with the manufacturers and/or licensors of such Products, and such Products are sold subject to their respective manufacturer's and/or licensor's Terms and Conditions of sale. Please contact Barrington for further details.

ORDERS: All Orders for Products placed by Buyer shall not be binding on Barrington unless and until accepted by Barrington. Barrington reserves the right to reject any Order for any reason. Once submitted to Barrington, an Order may not be changed or cancelled by Buyer unless such change or cancellation is expressly agreed to in writing by an authorized representative of Barrington. Any such agreement to change or cancel an Order may be conditioned upon Buyer paying a change or cancellation charge intended to compensate Barrington for costs incurred, including, but not limited to, storage and shipping costs, costs of producing non-standard catalog items, costs incurred in purchasing materials, change or cancellation costs imposed on Barrington by its suppliers, disposal costs incurred in disposing of Products in accordance with law, and any other cost resulting from a change or cancellation of an Order placed by Buyer. If Barrington is unable for any reason to fill Buyer's entire Order for Products, Barrington may allocate its supply among any or all buyers on such basis as Barrington deems convenient and practical, without liability for any failure of performance which may result from such determination.

PRICE AND PAYMENT: The Products are offered for sale at prices to be established by Barrington, unless otherwise specified on the Order, Barrington’s invoice, order confirmation, acknowledgment or otherwise agreed to by the parties in writing. Barrington’s quoted prices apply for 30 days or as otherwise stated in its quote. Barrington may revise the price of any Product upon notice to the Buyer if Barrington’s costs increase or other circumstances beyond Barrington’s reasonable control. Such revised price shall be paid by Buyer on all shipments made on and after the effective date of the price change, irrespective of the dates of the orders for such shipments were placed. In the event Barrington is prevented by any governmental restriction from increasing any price herein or from continuing any price already in effect, the Barrington may terminate this Agreement upon ten (10) days’ notice to Buyer.

Unless otherwise specified on the Order, Barrington’s invoice, order confirmation, acknowledgment or otherwise agreed to by the parties in writing, Buyer will pay for all Products on a net thirty (30) day

basis. Barrington reserves the right to assess reasonable interest charges on any amounts not paid by the date such payments is due, plus reasonable attorney fees and collection costs. Barrington may apply payments to any of Buyer's accounts. All orders are subject to credit approval by Barrington. Barrington reserves the right to withhold shipment or to require other adequate assurances of performance of Buyer's payment obligations as Barrington in its discretion may require, notwithstanding any order confirmation issued by Barrington.

TAXES: Barrington's price for the Products is exclusive of any Federal, state, or local sales, use, gross receipts, value-added, retailer's occupation, transportation or excise taxes levied upon, or measured by, the sale, the sales price, or use of goods required in the performance of any order. Barrington will list separately on its invoice any such taxes applicable to any such goods or transaction, and payable by Buyer, with respect to which Buyer does not furnish to Barrington evidence of exemption.

DELIVERY, TITLE AND DELAY: Unless delivered pricing was quoted, Buyer is responsible for all shipping and handling costs, insurance and other applicable surcharges [*should we refer to Incoterms 2010?*]. Title and risk of loss pass to Buyer upon delivery of the Products to the carrier at Barrington's shipping point. Barrington reserves the right to make partial shipments and Buyer will accept delivery and pay for the Products delivered. Barrington's delivery dates are estimates only and Barrington will not be not liable for failure to fulfill its obligations for any accepted order or for delays in delivery due to causes beyond its reasonable control (e.g., acts of God, man-made or natural disasters, epidemic or medical crises, materials shortages, labor strikes, acts of terrorism, delays in transportation, etc.). Any demurrage or detention fees charged by a carrier shall be paid by the Buyer. All claims by Buyer must be made within five (5) days of delivery and accepted by Barrington in writing.

PRODUCT ACCEPTANCE; RETURN PROCEDURES: Buyer shall promptly inspect the delivered Products. After five (5) business days, Buyer will be deemed to have irrevocably accepted the Products as conforming to specifications. Buyer must notify Barrington in writing of any damage, shortage, defect or other discrepancy to the Products within five (5) business days after delivery. Conforming Products may not be returned for credit except with Barrington's prior written agreement, and then only in strict compliance with Barrington's instructions. Authorized returned Products must be in original manufacturer's shipping cartons, containers, or equivalent, and unopened (seals intact). Unidentified or unauthorized return shipments will be discarded without credit. At Barrington's discretion, Barrington will return all Products not eligible for return to Buyer freight collect or hold Product for Buyer's account at Buyer's expense. Specifications and samples sent by Barrington and approved by Buyer prior to Order will be representative of the material that will be provided for the order. Any specifications sent at time of Order by Buyer that are different than previously discussed will not be considered valid.

LIMITED PRODUCT WARRANTIES AND REMEDIES: Barrington warrants to Buyer that at the time of delivery: (a) Barrington will have good title to all Products supplied to Buyer and the right to convey title to such Products to Buyer free and clear of all liens, and (b) all such Products will conform to the specifications, drawings, samples, or other description furnished or specified by Barrington or agreed to in writing by Barrington. The limited warranties contained in this paragraph are exclusive and Barrington makes no other express or implied warranties or representations concerning the Products (whether implied by statute or otherwise). THE WARRANTIES GIVEN IN THIS PARAGRAPH ARE IN LIEU OF ALL OTHER WARRANTIES FERRO MIGHT HAVE GIVEN BUYER, INCLUDING WARRANTIES OF MERCHANTABILITY AND WARRANTIES OF FITNESS FOR INTENDED USE. EXCEPT AS SET FORTH IN THIS PARAGRAPH, BARRINGTON HAS NOT MADE AND HEREBY EXPRESSLY DISCLAIMS ANY OTHER OR FURTHER REPRESENTATION OR WARRANTY, EITHER EXPRESS OR IMPLIED, CONCERNING THE

PRODUCTS. ALL OTHER WARRANTIES BARRINGTON OR ANYONE PURPORTING TO REPRESENT BARRINGTON MAY HAVE GIVEN, OR WHICH MAY BE PROVIDED OR IMPLIED BY LAW OR COMMERCIAL PRACTICE, ARE HEREBY EXCLUDED.

If Products do not conform to the specifications required, Barrington has the option to (a) repair the Products, (b) replace the Products at no cost to Buyer; or (c) refund Buyer's purchase price. Barrington's warranty made in connection with a sale of Products shall not be effective if Barrington has determined, in its reasonable discretion, that Buyer has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices or has failed to use the Products in accordance with instructions, if any, furnished by Barrington. Unless due to the negligence of Barrington, Barrington is not liable for Products damaged in shipment, improper care or storage of the Products or for any expenses incurred by Buyer in testing alleged non-conforming Products.

LIMITATION OF LIABILITY AND DISCLAIMER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES: In no event shall Barrington's liability arising in connection with any Products hereunder exceed the price paid for the specific product in question delivered hereunder, even if the parties have been advised of the possibility of such damages. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, OR CONTINGENT DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, BUSINESS INTERRUPTION, LOSS OF REVENUE, COST OF CAPITAL OR LOSS OR DAMAGE TO PROPERTY OR EQUIPMENT) OR FOR ANY OTHER REASON, INCLUDING LOSS OF PROFITS; USE; OPPORTUNITY; GOODWILL; DAMAGE TO PROPERTY; STRICT LIABILITY; OR ANY OTHER THEORY OR FORM OF ACTION ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, USE, INABILITY TO USE, OR PERFORMANCE OF THE PRODUCTS; OR ANY FAILURE OR DELAY IN CONNECTION WITH ANY OF THE FOREGOING. In the event applicable law does not permit the disclaimer of implied warranties set forth above, all implied warranties, including implied warranty of merchantability and fitness for a particular purpose, are limited to claims made within one (1) year from the date of delivery of the product.

USE OF PRODUCTS AND INDEMNITY - Buyer represents and warrants to the Barrington that it shall use the Products in accordance with applicable law, rule, regulation, and not in violation of any patent or other proprietary rights of any third party. Buyer shall indemnify, defend and hold Barrington and its directors, officers, employees, agents, suppliers, parents, affiliates, subsidiaries, successors and assigns harmless from and against any and all fines, penalties, suits, actions, claims, liabilities, judgments, losses, damages, costs and expenses (including attorneys' fees) resulting or arising from (a) Buyer's negligence or willful misconduct, (b) Buyer's use, sale, handling, storage, or disposal of the Products or any product or waste derived therefrom, (c) Buyer's discharge or release of the Products or any product or waste derived therefrom into water, onto land or into the air, (d) Buyer's exposing any person (including Buyer's employees) to the Products or any product or waste derived therefrom, including failure to warn of such exposure, or (e) the transportation of the Products to Buyer after tender of the Products by Barrington to the carrier at Barrington's shipping point. The foregoing shall apply, without limitation, to injury to person (including death) or damage or harm to property or the environment. This indemnity shall not apply to any fine, penalty, suit, action, claim, liability, judgment, cost or expense caused solely by Barrington's negligence or willful misconduct, but shall apply where there is concurrent negligence or willful misconduct on the part of Barrington and Buyer in proportion to Buyer's negligence or willful misconduct.

GENERAL PROVISIONS: (A) If Buyer takes benefit of or becomes subject to any provision of applicable bankruptcy or insolvency law, Barrington will have the right to immediately terminate this Agreement.

(B) The Terms and Conditions of Sale may be modified, amended or waived only by a written instrument which expressly refers to this paragraph and is signed by Barrington. **(C)** These Terms and Conditions of Sale, as well as the Order to which they relate, will be governed by the laws of the State of New York and any legal action will be brought exclusively in the courts located in the County of Westchester, State of New York. **(D)** No waiver by either party of any of the terms or conditions covered herein shall be construed as a waiver of any other breach or default, and acceptance by the Barrington of any payments with knowledge of the breach or default shall not constitute such waiver. Any payments to be made or obligations to be performed before, upon, or subsequent to the termination of this Agreement shall survive termination of this Agreement if not already made or performed at the date of termination. **(E)** If any provision(s) of this Agreement shall be held to be illegal or unenforceable, the legality and enforceability of the remaining provisions shall not in any way be affected or impaired. **(F)** Buyer understands and acknowledges that all Products are subject to any applicable proprietary rights of third parties (e.g., patents, trademarks, copyrights and/or licenses). **(G)** Should any action, suit or proceeding be instituted by either party relating to the validity or interpretation of this Order, then the prevailing party in such matter shall be entitled to recover from the other party its reasonable attorney's fees and costs or expenses of litigation incurred in connection with the matter.