



**INNOPHOS NUTRITION, INC. ("BUYER")
TERMS AND CONDITIONS OF PURCHASE**

1. **SCOPE; NO MODIFICATIONS.** The Terms and Conditions of Purchase contained herein (the "Terms") apply to all purchases of goods and services (collectively, the "Products") by Buyer from any seller ("Seller") and may not be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Buyer and delivered to Seller. Each shipment received by Buyer from Seller shall be deemed to be only upon the Terms, notwithstanding any different or additional terms and conditions that may be contained in any quotation, offer, acknowledgment, invoice or other document of Seller and notwithstanding Buyer's acceptance of or payment for such shipment. The Terms shall supersede and control over any terms and conditions in Seller's documents, including Seller's quotation or offer. However, if the Buyer and Seller have executed a Contract applicable to the Products provided hereunder, the Terms shall supplement the terms and conditions of the Contract. If there is a conflict between the terms and conditions of the Contract and the Terms, the terms and conditions of the Contract shall supersede and control the Terms.

2. **PRICES.** Unless otherwise agreed by Buyer in writing, all prices are F.O.B. the "ship to" location designated in the applicable order. Seller shall bear and be solely responsible for all shipping, handling and insurance costs and shall bear all risk of loss or damage in transit. Seller shall pay and be solely liable for any taxes, fees and duties (including without limitation import and export duties) or other amounts, however designated, levied or based upon the Products and/or any order, excluding any federal, state or local sales, use or excise taxes levied upon or measured by the sale, the sales price, or use of the Products. Seller will list separately on its invoice any such sales, use or excise taxes lawfully applicable to the Products and payable by Buyer with respect to which Buyer does not furnish to Seller lawful evidence of exemption.

3. **PAYMENT TERMS.** Buyer shall pay all undisputed amounts with respect to any order within thirty (30) days after the later of (a) delivery and acceptance of Products conforming with these Terms, and (ii) receipt of an invoice from Seller, with a 1% discount provided for payment within ten (10) days of such date. Buyer may withhold any payment disputed in good faith, and may reject any invoices submitted more than six (6) months from the date of

acceptance of the applicable Products. In no event shall Buyer be liable for any late fees, interest or collection costs with respect to late payments.

4. **DELIVERY; TIME OF THE ESSENCE.** Time is of the essence with respect to delivery dates hereunder. Seller shall notify Buyer immediately if timely delivery cannot be made, in which case Buyer may at its option, without liability, cancel the order, in whole or in part, and in addition to Buyer's other rights and remedies, may charge Seller a late fee, cost of cover of the applicable order and/or any loss suffered or incurred by Buyer as a result of Seller's failure to make timely delivery. All deliveries shall be accompanied by a certificate of analysis for the applicable Product(s) and such other analytical, manufacturing and quality control information reasonably requested by Buyer and/or its customers. Seller will also provide Buyer with all information which will reasonably assist Buyer in the safe handling and use of all Products sold hereunder and in complying with any applicable reporting requirements.

5. **TESTING AND ACCEPTANCE.** All Products provided hereunder are subject to inspection and testing by Buyer and/or its customers at all reasonable times and places, including inspection as Seller's facilities before, during or after manufacture. Buyer reserves the right to reject and refuse acceptance of Products (a) delivered in error, (b) in excess of the quantity called for in any applicable order, or (c) otherwise not in conformance with these Terms or any Specifications (as defined in Section 7 below). Payment for any Products shall not be deemed acceptance thereof and is without prejudice to any and all claims Buyer may have against Seller.

6. **SELLER'S ACCEPTANCE.** Seller's shipment of any goods or performance of any services included in the Products covered by these Terms, or Seller's receipt of payment by Buyer for such Products, shall constitute Seller's acceptance of these Terms as fully as if Seller had accepted them in writing.

7. **WARRANTY.** Seller hereby expressly warrants to Buyer that all Products delivered hereunder: (a) shall be of new and first quality material, good workmanship and free from defects; (b) shall conform to all specifications, drawings, samples or other descriptions furnished to Seller by

Buyer and/or its customers (the "Specifications"); (c) shall be fit for the purposes for which they are purchased when the purpose has been made known to Seller; (d) shall comply with all applicable federal, state, local and international laws, rules, regulations and orders, including without limitation those regarding the manufacture, sale, delivery and/or transportation of the Products, labor and employment, product registration and regulation, environmental health and safety, transportation, customs and trade, anti-bribery and export controls, and any consumer fraud acts and deceptive and unfair trade practices acts; (e) are free and clear of all liens, security interests and other encumbrances of any kind or nature; and (f) do not, and their use by Buyer and its customers will not, infringe any patent, copyright, trademark, trade secret, confidentiality or other proprietary right of any third party. Seller further warrants that services included in the Products furnished hereunder shall be performed in a skilled and workmanlike manner. Products found to be defective in material or workmanship or which do not conform with specifications within eighteen (18) months from the date of shipment (or performance) or twelve (12) months from the date same are put into service, whichever date occurs first, shall, at Buyer's option, be corrected or repaired in place by Seller, or be replaced at Buyer's facilities by Seller, or be returned to Seller at Seller's expense (including transportation and handling costs) for full refund. In the event such Products are chemical raw materials and fail to conform to specifications, samples, or are unfit for the purpose for which they were purchased when the purpose was made known to Seller, within sixty (60) days from the date of delivery, at Buyer's option, Seller shall replace such Products with conforming Products at Seller's expense (including transportation and handling costs); or such Products shall be returned to Seller at Seller's expense (including transportation and handling costs) for full refund. This warranty shall survive any inspection, delivery or acceptance of Products or the payment for same by Buyer.

8. **PRODUCT INDEMNIFICATION.** Seller will indemnify, defend and hold harmless Buyer, its directors, officers, employees, agents, successors, assigns, customers and other users of its goods and services from and against any and all losses, expenses, damages, claims, suits and liabilities (including incidental and consequential damages; court costs and attorney's fees) arising as a result of (a) the Products, including without limitation the manufacture, packaging, storage, shipment, distribution, sale or use thereof, (b) any actual or alleged breach of any representations, warranties, covenants or other terms contained herein, or (c)

arising under any strict tort or negligence claims premised on either an actual or alleged defect in the Products. At Buyer's request, Seller will assume promptly full responsibility for the defense of any action described in this paragraph which may be brought or threatened by a third party against Seller and/or Buyer.

9. **MEET OR RELEASE.** If at any time during the term of this purchase order Buyer can purchase goods or procure services of like quality and quantity of the Products at a price which will result in a total delivered cost to Buyer that is lower than the total delivered cost of the Products purchased hereunder, Buyer may notify Seller of such total delivered cost and Seller shall have an opportunity of pricing the Products hereunder on such a basis as to result in the same or lower total delivered cost to Buyer. If Seller fails to do so or cannot legally do so, Buyer may purchase such goods or procure such services at the lower total cost and any purchases so made shall be held to apply to the applicable purchase order, and the obligation of Buyer and Seller shall be reduced accordingly.

10. **SET OFF.** All claims for money due or to become due from Buyer will be subject to deduction or set off by Buyer for any counterclaim arising from this or any other transaction with Seller.

11. **INTELLECTUAL PROPERTY.** Seller shall indemnify, hold harmless and defend Buyer from and against any and all liabilities, damages, claims or suits based upon actual or alleged infringement of any patent, copyright, trademark, license or similar right resulting from the furnishing of the Products hereunder (except where any claimed infringement is due to Buyer's design). In the event the Products are held to be infringing, Seller shall, at its own expense and at Buyer's option, either procure for Buyer the right to continue using the Products or replace or modify them so that they become non-infringing, or refund in full the purchase price paid therefor by Buyer, provided that any replacement or modification shall be of equivalent quality and shall not affect the performance attained prior thereto by the Products or the plant in which the Products are utilized, installed or have been performed.

12. **TITLE TO DRAWINGS AND SPECIFICATIONS.** Buyer shall at all times have title to all drawings, specifications and other documents supplied or prepared by Buyer and/or by Seller in connection with the furnishing of the Products hereunder and Seller shall hold in confidence and use the same only to the extent necessary for execution of this purchase order and

shall, upon Buyer's request, promptly turn over to Buyer all copies of same. Seller shall not release for publication any information concerning these Terms or any applicable purchase order, their existence, or the project for which it is given, except with Buyer's prior written consent.

13. **TERMINATION.** Buyer has the right to terminate any purchase order in whole or in part at any time and for any reason upon five (5) days' prior written notice to Seller. In such event, Seller may claim only properly supported out-of-pocket costs plus a reasonable amount of demonstrable related charges for the work already performed, all determined in accordance with generally accepted accounting principles. Notwithstanding the foregoing, if (a) Seller breaches any of the Terms, or (b) in the event of Seller's bankruptcy or insolvency, or if any proceeding is brought against Seller under the bankruptcy or insolvency laws, Buyer reserves the right, in addition to Buyer's other rights and remedies under the law, to terminate any order and cancel all or any part of the undelivered portion of such order without any liability whatsoever. All warranties, limitations of liability, indemnities, and other terms that by their nature are intended to extend beyond termination of any applicable order shall survive termination.

14. **ENTIRE AGREEMENT.** These Terms, together with the Specifications, constitute the entire agreement between Buyer and Seller concerning the subject matter hereof and supersede all prior agreement with respect thereto. No amendment, supplement, addition or modification of these Terms shall be effective or binding unless made in writing and signed by authorized representatives of each party.

15. **GOVERNING LAW.** The Buyer and Seller agree that these Terms shall be deemed to have been made and executed in the State of New York and that any dispute arising under these Terms and/or the relationship of the parties shall be resolved in accordance with the laws of the State of New York excluding any choice of law principles thereof. The parties disclaim the applicability of the United Nations Convention on Contracts for the International Sale of Goods.

16. **DISPUTES.** The parties shall endeavor in good faith to resolve any dispute, controversy or claim arising out of or relating to these Terms and/or the relationship of the parties, or the breach, termination or validity thereof, by an in-person negotiation between executives at the offices of the party giving notice of dispute hereunder (or at such other location as the

parties may agree), which shall occur within 30 days of written notice of dispute by either party to the other. All reasonable requests for information or documents made by one party to the other will be honored promptly. If the dispute remains unresolved 45 days after such notice, the parties shall attempt in good faith to resolve the dispute by confidential, non-binding mediation under the CPR Mediation Procedure in New York, NY. Unless the parties agree otherwise, the mediator will be selected by the parties from approved CPR mediation panel members within 10 days of a party's notice to conduct mediation, failing which the mediator shall be appointed by CPR from such panel members. Any such matter, which remains unresolved 45 days after appointment of a mediator, shall be settled by confidential, binding arbitration by three arbitrators in accordance with the CPR Rules for Non-Administered Arbitration. Within 10 days of notice by either party issued following the mediation period, each party shall select one arbitrator from approved CPR panel members for commercial disputes, and within 10 days of such selections, the two arbitrators shall select the third from such CPR panel members. If any such selection by a party or the two arbitrators shall not be made on time, CPR shall make the selection in question. Discovery shall be limited to one set of interrogatories by each party to be issued within 10 days of the final appointment of arbitrators. Interrogatories shall be limited to requests for information or documents which are reasonable in scope and necessary for the arbitration proceeding; and responses shall be due within 30 days of receiving interrogatories. Depositions shall not be permitted, except as allowed by approval of the third arbitrator, whose rulings on issues of discovery shall be final and unappealable. Any hearing shall be conducted on a single day, unless a majority of the arbitration panel allow otherwise. The parties may call a reasonable number of witnesses, and may by request cause the other party to make witnesses available. In accordance with Section 15 above, the arbitrators shall resolve this dispute in accordance with the laws of the State of New York. The arbitrators shall only award direct monetary damages, and shall not award special, indirect, consequential, incidental or punitive damages. The award (by a majority of the arbitrators) and decision shall be in writing and contain findings of fact and conclusions of law, and shall determine allocation of costs (but not attorney's fees) among the parties. Judgment upon the award may be entered by any court having jurisdiction thereof. This dispute resolution process shall not apply to bona fide third party practice in litigation brought by or against a third party, and shall not be construed to preclude either party from obtaining injunctive or other equitable relief during such dispute resolution process. During any dispute resolution process properly invoked and pursued

hereunder, any applicable statute of limitations shall be deemed to be tolled.

17. **RELATIONSHIP OF PARTIES.** Buyer and Seller are and will always remain independent contracting parties with respect to each other, and nothing in these Terms will be construed to place the parties in the relationship of partners, joint ventures, fiduciaries or agents.

18. **FORCE MAJEURE.** Any delay or failure of either Buyer or Seller to perform its obligations hereunder shall be excused to the extent that it is caused by any event or occurrence beyond the reasonable control of the party and without its fault or negligence, for example: acts of God, actions by any governmental authority, fires, floods, windstorms, explosions, riots, natural disasters, wars or court injunction or order. During the period of such delay or failure to perform by Seller, Seller shall provide Buyer with prompt written notice of such delay (including a description of the cause of the event or circumstance, an estimate of the duration of the delay and a statement regarding the remedial steps that are being undertaken to resume performance and Seller's interim allocation plans, if any, for the supply or performance of the Products during the delay). During such period, Buyer, at its option, may purchase goods or services from other sources in the quantities and at the delivery times requested by Buyer and at the price set forth in this purchase order. If the delay lasts more than thirty (30) days or Seller does not provide adequate assurance that the delay will cease within thirty (30) days, Buyer may immediately cancel this purchase order without liability.

19. **WAIVER.** Buyer's waiver of any breach, or failure to enforce any of the terms and conditions of these Terms, at any time, shall not in any way affect, limit or waive Buyer's right thereafter to enforce and compel strict compliance with every term and condition hereof. Acceptance by Buyer of any Products or payment of any invoice with respect to any order shall not preclude subsequent rejection of any Products which are later determined to be defective or otherwise not in conformance with these Terms. No waiver of any provision of these Terms by Buyer shall be valid unless made in writing and signed by Buyer.

20. **CUMULATIVE REMEDIES.** No remedy conferred to Buyer by any provision of these Terms is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given in these

Terms or existing at law or in equity, by statute or otherwise.

21. **ASSIGNMENT; SEVERABILITY.** Neither these Terms nor any right or obligation hereunder may be assigned by Seller without the prior written consent of Buyer. Subject to the foregoing, these Terms shall inure to the benefit of and be binding upon the trustees, successors and allowable assigns of the parties. Any attempted assignment, sublicense or transfer by Seller in violation of these terms shall be null and void. If any Section of these Terms, or any part thereof, is determined to be invalid or illegal by any court or administrative agency of competent jurisdiction, then that part shall be limited or curtailed to the extent necessary to make such Section, or part thereof, valid, and all other remaining terms and conditions of these Terms shall remain in full force and effect.

[End of Terms and Conditions of Purchase]