

Standard Terms & Conditions of Sale

Birko Corporation

*your partner
in food safety*



APPLICABILITY. These Terms and Conditions of Sale are the exclusive contract between Buyer and Seller; there are no terms, understandings, agreements, other than those stated herein. These Terms and Conditions may not be altered amended or waived except in writing signed by an officer of Birko Corporation (“Seller”). Acceptance of Buyer’s purchase order is subject to acceptance of the express Terms and Conditions contained herein. If any provisions of Buyer’s purchase order or other writings are different from or are otherwise in conflict with these Terms and Conditions, these Terms and Conditions shall govern and the terms contained in Buyer’s purchase order or other writings are expressly rejected by Seller. In the event that there is a written, executed omnibus purchase contract between Buyer and Seller relating to the purchase of the products or services ordered, the terms of the omnibus agreement shall control to the extent that there is a conflict between the terms herein and the terms of the omnibus agreement.

ACCEPTANCE OF ORDER AND CANCELLATION. No order for products placed by a Buyer shall be binding on Seller unless and until accepted by Seller. Seller reserves the right to reject any order for any reason. Once submitted to Seller, 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 Seller. Any such agreement to change or cancel an order may be conditioned upon Buyer’s paying a change or cancellation charge intended to compensate Seller for costs incurred, including, but not limited to, storage and shipping costs, costs of producing non-standard items, costs incurred in purchasing materials, change or cancellation costs imposed on Seller by its suppliers, disposal cost 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.

DELIVERY. Title and risk of loss or damage with respect to all chemical products, other products, and equipment shall pass from Birko Corporation to Customer upon delivery of such products to the carrier for shipment to Customer. Unless other terms of delivery are agreed upon, all transportation, handling and insurance charges for the chemical products, other products and equipment, from Birko Corporation’s point of shipment to destination, shall be borne by Customer. For bulk purchases, Birko Corporation reserves the right to ship and bill **2%** more or less than the exact quantity ordered.

Birko Corporation reserves the right to refuse, cancel or delay shipment to Customer when Birko Corporation reasonably believes that Customer may be unable to pay for any shipment pursuant to the terms hereof, when Customer is delinquent in any payments, or when Customer has exceeded its credit limit. Unless at the time of

Customer's acceptance of Birko Corporation confirmation, Customer specifies in writing the desired method of transportation, Birko Corporation will use its judgment in selecting the carrier and route. Delivery schedules are estimated and assume timely receipt of all necessary information and documentation from Customer, and Birko Corporation assumes no responsibility for delays. If Customer delays delivery of any product, Birko Corporation may invoice Customer for such product, and hold it at Customer's sole risk and expense pending instructions from Customer. All goods become Buyer's property upon Seller's delivery in good condition to the shipping carrier. Buyer hereby assumes all risks of damages in shipping.

TITLE AND RISK OF LOSS. Title and risk of loss for Products transfers to Buyer at Seller's shipping point, unless products are shipped in Seller's vehicles in which case title and risk of loss transfer to Buyer when the vehicle first enters Buyer's property. Buyer shall unload railroad tank cars within 48 hours (Sundays and holidays excepted).

ACCEPTANCE BY BUYER. Buyer acceptance occurs when physical possession of goods or service occurs. Any discrepancy in orders for chemical products, other products, equipment or services versus chemical products, other products, equipment or services delivered must be brought to the attention of Customer Service in writing by emailing customerservice@birkocorp.com within 10 days of receipt at that point, the Birko Corporation Return Policy will be invoked.

PAYMENT. All payments shall be made to the address on the Birko Corporation invoice within the stated terms from the date of invoice. Customer shall pay all applicable sales tax and freight charges. Payment terms are net 30 days from date of invoice. Past due balances are subject to a late payment charge of 1 1/2% per month, or the maximum amount permitted by applicable law, whichever is less. Buyer shall pay all charges, costs and legal fees incurred in collecting amounts owed. Acceptable form of payment will include but not limited to check, ACH, Wire and approved credit cards Master Card and VISA. Birko Corporation reserves the right to hold future shipments for those Customer accounts with balances in excess of terms.

CONTAINERS. At Sellers discretion Seller will accept for recycle those containers determined to be in acceptable condition at no cost. Buyer may use the containers only for the storage of original contents. Buyer may return the containers to Seller under the following requirements, said containers must be empty and sealed with appropriate closures to meet DOT regulations, said containers may only have contained Birko product and must be triple rinsed.

WARRANTY. Seller Warrants that all chemical products and other products conform to Seller's published specifications at the time of delivery and be fit for uses and purposes described in Birko Corporation's product literature. Seller warrants that services provided by Seller will be consistent with Seller's standard specifications or, if none, with Seller's standard practices. Buyer acknowledges that: (a) Seller acts as a distributor for products manufactured by others and sold under the manufacturer's and/or the Seller's brand(s) ("Resale Products") and (b) matters relating to the quality of Resale Products are not within Seller's control and are governed solely by the specifications, warranties

and limitations and provided by that manufacturer. Customer shall make all claims relating to defective, damaged or deficient chemical products, products, equipment or services, in writing by emailing customerservice@birkocorp.com, as promptly as said products or equipment or performance of services possible, but in no event later than 60 days after delivery of said products or equipment or performance of services.

Except as provided in the first sentence of this section, SELLER MAKES NO OTHER WARRANTIES CONCERNING ITS PRODUCTS AND/OR THEIR USE AND NO WARRANTIES WHATSOEVER REGARDING RESALE PRODUCTS. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF FREEDOM FROM INTELLECTUAL PROPERTY (i.e., patent, trademark, trade secret and copyright) INFRINGEMENT

PRODUCT RETURNS. Products may be returned only upon agreeing to Birko Corporation Product Return Policy and receiving an RMA from Birko Corporation Customer Return Label must be visible on each pallet of returned product. Product without Customer Return Label will be rejected upon receipt. Birko Corporation reserves the right to accept or reject all returns based on the guidelines described in the Birko Corporation Product Return Policy BCD-0002-F2. To inquire a return contact Customer Service at customerservice@birkocorp.com.

REMEDIES. As Customer's sole remedy for defective, damaged, or deficient chemical products, other products, equipment or services, Birko Corporation will, in its sole discretion, either (i) replace any defective, damaged or deficient chemical product or other products, (ii) re-perform any defective product or defective services Birko Corporation determines did not meet this warranty, or (iii) refund the purchase price of such chemical products or services, pro-rate will be utilized for consumed material. Customer waives any and all other remedies.

This warranty does not apply to (i) damage resulting from misuse, neglect, accident or improper storage of any of the chemical products, other products or equipment by any person or entity other than Birko Corporation or (ii) any chemical product, other product or equipment altered by any person or entity other than Birko Corporation.

LIMITATION ON LIABILITY. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL, SPECIAL OR CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES FROM ANY CAUSE OR FOR ANY REASON WHATSOEVER, IRRESPECTIVE OF WHETHER THE CLAIM ARISES FROM ACTUAL OR ALLEGED BREACH OF WARRANTY, INDEMNIFICATION, BREACH OF CONTRACT, PRODUCT LIABILITY, CONTRIBUTION OR ANY LEGAL THEORY AND IN NO EVENT WILL SELLER BE LIABLE FOR LOST PROFITS, COSTS OR LOSSES NOT ASSOCIATED WITH DIRECT PHYSICAL DAMAGE TO PROPERTY FOR ANY CLAIMS MADE UNDER OR RELATED TO THE SALE OF PRODUCTS OR SERVICES TO BUYER. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE

PRICE OF THE PRODUCTS OR SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.

PRODUCT STEWARDSHIP. Buyer agrees that products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with the manufacturer's recommendations and applicable laws and regulations. Buyer agrees to instruct its employees with respect to, and to make certain that they know and understand procedures necessary to enable them to comply with the requirements set forth herein and make certain that they are adequately trained in the use, handling, storage, transportation and disposition of the products. Buyer further agrees to deliver the most recent edition of product literature, including MSDSs, to its employees and customers and to maintain a written record of such deliveries. Buyer shall only sell to those who can handle, use, store, transport and dispose of products safely.

INDEMNITY. Buyer agrees to defend, indemnify and hold Seller, its officers, directors, agents, and employees harmless from all claims, demands, actions and causes of action relating to personal injury or property damage to third parties, including attorney's fees and actual costs ("Claims") incurred as a result thereof, to the extent of its negligence or arising after delivery of the products to Buyer. Seller agrees to defend, indemnify and hold Buyer, its officers, directors, agents, and employees harmless from Claims to the extent of its negligence.

FORCE MAJEURE. Means act of god, terrorism, war, labor shortage or similar circumstances. Any delivery so suspended shall be cancelled without liability, but these Terms and Conditions shall otherwise remain unaffected. This section does not apply to payment obligations. Seller is excused from all obligation owed to buyer in the event of a forced majeure

TERMINATION. Any order or delivery may be terminated or suspended, (a) by either party if any proceeding under bankruptcy is brought by or against the party, (b) by a party if the other party defaults in its material obligations and such default is not cured within a reasonable time if such default is curable, or (c) by Seller if payment terms referred to in section 6 are not complied adhered to.

ARBITRATION. Except with respect to a dispute, claim, disagreement or other matter involving a claim for injunctive relief or as otherwise provided herein, if any dispute, claim, disagreement or other matter arising from or relating to this Agreement or the alleged breach of this Agreement cannot be settled within thirty (30) days after any party sends written notice to each other party to this Agreement, the parties shall try in good faith to settle such matter by non-binding mediation in Adams County Colorado administered by the American Arbitration Association under its Commercial Mediation Rules which are then in effect before commencing arbitration of the dispute. The mediator shall be a disinterested attorney who has been admitted to practice law in the State of Colorado appointed by the American Arbitration Association who has at least ten (10) years of experience in the private practice of law devoted

The parties will submit any dispute related to this Agreement to arbitration in Denver, Colorado before a single arbitrator under the American Arbitration Association's Commercial Arbitration Rules. A party may seek interim relief from any court having jurisdiction without waiving any remedy under this Agreement. The arbitrator may not award punitive damages or other damages not measured by actual damages, or limit, expand or otherwise modify the terms of this Agreement. A party may enter a judgment on an award in any court having jurisdiction. The prevailing party is entitled to an award of reasonable attorney fees. This Agreement is governed by the substantive laws of the State of Colorado excluding its choice of law rules and principles.

GENERAL PROVISIONS. All specifications, formulae, drawings, contained in Birko Corporation's catalogs, website and marketing documents ("Descriptions") are suggestive only, and are not representations or warranties of any kind.

Unless Customer is authorized to distribute the chemical products delivered hereunder pursuant to a written agreement with Birko Corporation, the products are for Customer's internal use only, and Customer may not repackage, resell or otherwise distribute the products to third parties.

Customer shall not use Birko Corporation's trademarks or any part thereof as part of Customer's name, nor register any name, including domain names, or mark confusingly similar to Birko's trademarks. Customer acknowledges that Customer is not being licensed any right or interest of any kind in Birko's trademarks and that Customer may not use same without prior consent of Birko Corporation.

The relationship of the parties hereto is that of buyer and seller. Nothing in the Terms, and no course of dealing between the parties, shall be construed to create or imply any employment or agency relationship or a partnership or joint venture relationship between the parties or between one party and the other party's employees or agents. Accordingly, neither party shall be empowered to bind the other party in any way, to incur any liability or otherwise act on behalf of the other party. Each party shall be solely responsible for payment of its employees' salaries (including withholding of income taxes and social security), workers compensation, and all other employment benefit Birko Corporation acceptance of any order is subject to Customer's assent to all of the terms and conditions set forth herein.

Customer's assent to these terms and conditions shall be presumed from Customer's receipt of Birko Corporation acknowledgment, or from Customer's acceptance of all or any part of the products ordered. No additions or modifications of Birko Corporation's terms and conditions by Customer shall be binding upon Birko Corporation unless agreed to in writing by an authorized representative of Birko. If a purchase order or other correspondence submitted by Customer contains terms or conditions contrary or in addition to the terms and conditions contained herein, Birko Corporation fulfillment of any such purchase order shall not be construed as assent to any of the terms and conditions.

