

JEBRO INCORPORATED STANDARD TERMS OF SALE (January 1, 2019)

The following terms of sale are incorporated into the Purchase Agreement between Seller and Buyer. All capitalized terms not defined herein shall have the same meanings ascribed to them in the Purchase Agreement, as applicable. The Purchase Agreement and these terms of sale are complementary—what is called for by one is as binding as if called for by the other. If Buyer finds a conflict, error, or discrepancy between the two documents, Buyer will call the same to Seller's attention in writing. In resolving conflicts, errors, and discrepancies, if any, the documents shall be given precedence in the following order: first, these terms of sale; second, the Purchase Agreement.

1. **Title.** Title to, and risk of loss of, goods shall pass to Buyer as, (a) bulk goods pass final flange on Seller's delivery line at Seller's site or, where point of sale is other than Seller's site, as the goods pass the final flange on the transport delivery line for Seller; or (b) drums or other containers are loaded onto Buyer's transport at Seller's site, or, where point of sale is other than Seller's site, as the goods are loaded onto Buyer's dock or transport.

A furnished Bill of Lading properly consigned constitutes delivery of shipments.

2. **Taxes.** Any tax or other charge imposed during the period covered by the Purchase Agreement by state or federal law upon the manufacture, sale, and/or transportation of the goods herein specified shall be added to the price stated and paid by the Buyer.
3. **Price and Quantity; Effect of Regulated Price.** Price and quantity shall be separately designated by Seller for each type of goods on the Purchase Agreement. Unless otherwise stated on the Purchase Agreement, all prices shall be FOB Seller's point of manufacture or storage as selected by Seller. If Buyer fails to take the quantity of goods ordered within the time agreed upon in the Purchase Agreement, Seller reserves the right to extend the time—but shall not be obligated to do so. If Seller extends the time for Buyer to take the quantity of goods ordered in the Purchase Agreement, Buyer will be obligated to take such quantities within Seller's extended timeframe. Seller's remedies for Buyer's breach are set forth below in paragraph 21. If Seller is prevented by law, regulation, rule, order or other governmental action from utilizing any price under the Purchase Agreement, including any modification thereof, Seller may terminate the Purchase Agreement or suspend performance upon giving Buyer notice thereof. Volumes affected by a suspension will not be delivered at a later date and will be considered removed from the Purchase Agreement.
4. **Shipping.** To the extent flexibility is allowed by the Purchase Agreement for time or size of deliveries, the parties shall reasonably cooperate to coordinate period(s) and time(s) for deliveries hereunder; and Buyer shall give reasonable prior notice as to quantities and scheduling desired. The following additional terms apply to shipping:
 - (a) Seller reserves the right, but shall not be obligated, to furnish material from a shipping point other than the one specified on the Purchase Agreement; however, Seller agrees that if a change is made in point of origin, there shall be no increase in the delivered cost of Buyer.

- (b) When, due to governmental restrictions against the use of highways by trucks weighing in excess of posted weight limits or due to other unusual road conditions, a shipment cannot be transported to destination over the most direct route, the shipment will be transported over an available route subject to charges computed at the rate published for the distance over such available route.
- (c) Except as otherwise provided, the minimum quantities shall be: 48,000 pounds on asphalt, (including emulsified asphalt), residual fuel oil, and road oil. Exception: When the above minimum pounds result in total weight which is in excess of weight limitations of vehicles permitted by federal, state or municipal laws, the minimum pounds to apply will be 40,000 pounds.
- (d) Seller and Buyer shall make reasonable provisions for immediate loading and unloading of vehicle. Except as otherwise provided, a total of one and half hours (1.5) hours free time will be allowed for loading and unloading. A charge of forty dollars (\$40.00) for each fifteen (15) minute period or fraction thereof will be assessed for detention of vehicle in excess of the free time. Loading or unloading time shall be determined from the time carrier's unit arrives at the place of loading or unloading, or as soon as loading or unloading commences if prior to scheduled time, until the time when all connections have been removed from carrier's unit, necessary shipping documents have been executed and carrier's unit is ready to depart from the shippers or Buyer's premises. Detention charges as determined in this item shall be included with and become a part of the freight bill.
- (e) It shall be the responsibility of Buyer to furnish adequate facilities for unloading and suitable tanks for product being delivered.
- (f) Buyer shall assume all responsibility for unloading on receipt of goods to insure correct product is received and put into correct tank.
- (g) Seller will charge a hundred-dollar (\$100.00) pumping fee any time Buyer requests Seller to pump off any asphalt or burner fuel product at the desired destination.
- (h) When carrier is required to stop-off at more than one location for loading and/or unloading, a charge of \$35.00 per stop shall apply. The applicable line haul charge shall be computed via the actual route of movement.
- (i) Seller may charge a minimum of one hundred dollars (\$100.00) as a CANCELTION FEE for any loads that are canceled.

5. **Returned Loads.** Seller is not required to take any unused product or return product from Buyer. However, Seller maintains the option to accommodate the return of select burner fuel or select asphalt products (excluding diluted emulsion product). Buyer must contact Seller to obtain approval before returning any material. Seller's acceptance of any and all return product is at the sole discretion of Seller. **No diluted emulsion can be returned under any circumstances.** Seller may charge a minimum of four hundred dollars (\$400.00) as a reprocessing fee for any product returned; in other cases, Seller may charge a reprocessing fee that is reasonable and customary, or that otherwise reflects its actual costs for such reprocessing. Buyer will receive no credit for returned product, and will be responsible for paying any and all transportation costs for product returned.

6. **Destination.** All goods stated in the Purchase Agreement must be used by Buyer only at the destination and only on the Project identified on the Purchase Agreement.
7. **Credit and Payment.** If the credit of Buyer shall at any time, in the sole judgment of Seller, become impaired, Seller may decline to make further deliveries, except after full payment for shipments already made and cash payments in advance for additional shipments or deliveries.

Unless credit is arranged by Buyer and approved by Seller, terms shall be full cash payment prior to loading of goods except that, if goods are unique to Buyer, cash payment shall be due in full prior to manufacture by Seller.

8. **Warranties and Limitations.** Seller warrants only that –
 - (a) Seller has good title to goods covered in the Purchase Agreement at the time of delivery to Buyer.
 - (b) As to goods for paving, surfacing, re-surfacing—or other applications to streets, roads, highways or other paved areas—the contents of the goods shall conform at the time of delivery to Buyer to the specifications stated or referenced in the Project Terms section of the Purchase Agreement. If there are no specifications stated or referenced on the Purchase Agreement, then the goods shall conform at the time of delivery to Buyer to: (i) the specifications approved or adopted for such class of goods by the governmental unit having jurisdiction over the public streets, highways or roads or other paved areas to which the goods will be applied, or (ii) Seller’s then-current standard specifications therefor, if the goods are for use on a private street or surface.
 - (c) As to all goods *other than* goods for paving, surfacing, re-surfacing—or application *other than* to streets, roads, highways or other paved areas—the delivered goods shall conform, at the time of delivery to Buyer, to the specifications, if any, stated or referenced in the Project Terms section of the Purchase Agreement. If there are no specifications stated or referenced on the front side hereof, then the goods shall conform, at the time of delivery to Buyer, to Seller’s then current specifications, as acknowledged and agreed by Seller.

All other warranties of Seller, express or implied, and all representations, guarantees, instructions, promises, descriptions and samples from Seller—or the same pertaining to product quality, composition, characteristics, environmental or human safety or hazard or health effects, performance or like matters—are disclaimed and otherwise excluded. Seller further disclaims and excludes any and all remedies for: defects or damages caused by ordinary wear and tear; use for a purpose for which the materials or equipment were not specified; improper or insufficient installation, operation, maintenance, storage, or abuse; and modifications, additions, or other changes to the product not performed by Seller. Seller further disclaims and excludes any and all consequential or special damages arising out of or relating to the Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019). Without limiting the foregoing disclaimers and exclusions, all implied warranties of fitness for a particular purpose

and merchantability, along with any warranties of freedom from patent infringement, are further expressly disclaimed and excluded. Notwithstanding the foregoing, Seller shall supply Safety Data Sheets, if required by law, or if requested.

9. **Acceptance.** When any shipment, delivery, or lot of goods is shipped from Seller's facilities in vehicles owned or controlled by Buyer, including Buyer's hired haulers (independent contractors, or otherwise) or by common carrier, Buyer will be deemed to have accepted the goods as conforming to the Purchase Agreement, and all Seller warranties with respect to the shipment, delivery or lot of goods will terminate. Further, if Buyer does not reject the goods before they are loaded into said vehicles at Seller's facilities, Buyer will have waived its right to reject the goods. All tests and analyses performed at the request of Buyer or contracting party or their agents are to be performed at Buyer's expense.

10. **Seller's Breach as to a Particular Shipment; Impracticability of Performance.** No breach by Seller with respect to any particular individual shipment delivery, or lot of goods under the Purchase Agreement shall entitle Buyer to cancel the entire Purchase Agreement. Instead, Buyer shall pursue its remedy for damages with regard to that particular shipment, delivery, or lot and shall continue to order the additional shipments, deliveries, or lots ordered under the Purchase Agreement. Further, Seller shall have the right to terminate the Purchase Agreement or any related deliveries or suspend performance without liability if, for any reason: (a) Seller's supplier shuts down, temporarily or permanently; or (b) the units in, or the plant at which, the goods are made and/or stored, is unable to make, store, or transport the goods, though no fault of Seller. Seller shall give Buyer reasonable prior written notice of such termination or suspension.

11. **Excused Performance.**
 - (a) **Force Majeure** – Seller shall not be in breach of the Purchase Agreement and shall not be liable for any delay in delivery or any non-delivery of all or any part of the goods described in the Purchase Agreement arising from acts of God, wars, revolutions, civil disturbances, labor disputes, fires, explosions, vandalism, sabotage, weather conditions, government rules or regulations, breakdowns of machinery, interruptions or delays in transportation, inability of Seller to obtain products or raw materials from its sources of supply, or any other circumstances beyond the reasonable control of Seller. Promptly after Seller determines to claim excuse of performance, Seller shall notify Buyer in writing of the circumstances and consequences claimed, but the Purchase Agreement shall otherwise continue in force and effect.

 - (b) **Alternate Supply** – Under no circumstances shall Seller be obligated to purchase or otherwise obtain goods or raw materials for goods from any other person or entity.

12. **Allocation.** If at any time and for any reason including, but not limited to, any of the Excused Performance causes set forth above, Seller, in its sole discretion, believes that it will be unable to supply all of the goods ordered by Buyer and Seller's other customers, Seller shall have the right, at its option and without liability, to allocate its available supply of goods among any and all then-present and/or future customers. Seller shall allocate its available supply of goods in any manner it deems equitable.

Seller shall not be obligated to complete any deliveries to Buyer that were fully or partially cancelled by Seller pursuant hereto.

13. **Termination.** The price, terms, and volumes offered by Seller and committed to by Buyer pursuant to the terms of the Purchase Agreement are based on Buyer's commitment to honor the terms of the Purchase Agreement for the full term, therein stated. Seller may terminate the Purchase Agreement: (a) after expiration of the term stated on the Purchase Agreement or, if applicable, any subsequent extensions; (b) at any time due to Buyer's uncured failure to purchase the required volume hereunder; or (c) for any other breach of the Purchase Agreement by Buyer, in which event Seller may also assert any other remedies it may have against Buyer.
14. **EEOC.** The Equal Employment Opportunity clause of Section 202 of Executive Order 11246, the implementing rules and regulations of the Office of Federal Contract Compliance, and all other state local or federal laws which by law or government contract or subcontract with Seller or its affiliates, parent or subsidiary companies have to be a part of the Purchase Agreement are incorporated herein by reference; and Buyer agrees to comply therewith to the extent required by law or Seller's commitments to any governmental agency or governmental contractor.
15. **Protected Veteran Clause.**

Seller and Buyer shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.
16. **Individuals with Disability Clause.**

Seller and Buyer shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.
17. **Limited Remedies.** Seller's liability and Buyer's exclusive remedy for any cause of action arising out of the Purchase Agreement is expressly limited, at Seller's option, to replacement of the goods at the F.O.B. point stated on the Purchase Agreement or payment not to exceed the purchase price of the goods at such F.O.B. point for which damages are claimed.
18. **Dispute Resolution; Law and Jurisdiction.** If a dispute arises out of or relates to the Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019), including any alleged breach of the same, Seller and Buyer shall endeavor to settle the dispute in a cooperative manner, including resolving minor non-conformities that would give rise to economic waste. Within a reasonable time after such a dispute arises, the Parties' representatives with the necessary authority to resolve such matters shall discuss the dispute and make a good-faith effort to resolve such dispute. If the dispute is not resolved after such discussions, Seller and Buyer may proceed with litigation. The Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019), is performable in the county in which Seller's facility is located. Such county shall constitute a mandatory venue for any

and all disputes; or, if mandatory venue cannot be agreed upon under applicable law/public policy, such county shall nevertheless constitute a permissible venue for any and all disputes. Additionally, for any particular dispute arising out of or relating to in any way whatsoever, directly or indirectly, Seller's shipping, delivering, or otherwise transferring material in vehicles owned or controlled by Buyer, including Buyer's hired haulers (independent contractors, or otherwise) or by common carrier, venue is permissible in the county from which Seller shipped, delivered, or otherwise transferred the material. All disputes shall be governed by Article 2 of the Uniform Commercial Code (the "**UCC**") as enacted by the State from which Seller shipped, delivered, or otherwise transferred material in vehicles owned or controlled by Buyer, including Buyer's hired haulers (independent contractors, or otherwise) or by common carrier. The costs of litigation shall be borne by the non-prevailing party, including reasonable and necessary attorney's fees, as determined by the trier of fact.

19. **Waivers.** If Seller or Buyer, respectively, fails to insist on performance of any term, condition, or instruction—or to exercise any right or privilege provided in the Purchase Agreement or these Jebro Incorporated Standard Terms of Sale (January 1, 2019)—such failure shall not thereafter waive any such term, condition, instruction, or any right or privilege. Likewise, any failure to insist upon the performance of any particular term, condition, or instruction hereunder, shall not establish—nor, do the Parties intend for it to establish—a course of dealing between the Parties that should be relied upon in any present or future dealing.
20. **Assignment.** If Buyer elects to sublet all or part of any project described in the Purchase Agreement, Buyer may do so with the understanding that this contract is still binding and that Buyer must purchase such materials for the use of said subcontractor. With Seller's prior written permission, this contract may be transferred to said subcontractor.
21. **Seller's Remedies for Buyer's Breach.** Seller agrees to sell, and Buyer agrees to take and pay for, the quantity of goods during the specified period of time set forth in the Purchase Agreement. If Buyer fails to take the quantity of goods within the time set forth in the Purchase Agreement, or, if applicable, within any time period extended by Seller or within any applicable extension, then Buyer shall nonetheless be liable to Seller for the difference between the Purchase Agreement quantity and Buyer's actual takes during the Purchase Agreement time period (or any applicable extension), at the price set forth in the Purchase Agreement. It is the Parties' intent that Seller ultimately recover the Purchase Agreement price, rather than the difference between the Purchase Agreement price and whatever the market price might be at the time and place of Seller's tender, thus allocating the risk to Buyer that the market price will drop between the date of the Purchase Agreement and the date of Seller's tender. Notwithstanding the above, solely at Seller's option, Seller may elect to pursue the remedies under Articles 2.706, 2.708, and/or 2.709, etc., of the Uniform Commercial Code, as applicable, in the event of Buyer's breach.
22. **Loading and Transporting Conditions.**
 - (a) **Right to Reject Transport Vehicles and Refuse to Load/Transfer Under Unsafe Conditions:**

- (i) Seller reserves the sole right to reject any rail cars, trucks, transports, barges, vessels or containers presented for loading which Seller reasonably believes would present an unsafe or potentially unsafe situation or condition; and
- (ii) Seller reserves the right, in its sole discretion, to refuse to load goods under any condition Seller deems unsafe, which is caused by, including but not limited to, drivers, personnel, equipment, procedures and/or weather conditions.
- (iii) Notwithstanding the foregoing, Seller's failure to exercise such rights of rejection or refusal shall not constitute, nor be interpreted as, Seller's approval, satisfaction, or implied acceptance regarding the manner or conditions of transport.

(b) **Compliance with Jebro Incorporated Designated Policies and Procedures:** Buyer agrees that Buyer, its contractors, agents, and employees will comply with all of Seller's safety regulations and rules when such Buyer's contractors, agents or employees are on Seller's premises in connection with the performance of the Purchase Agreement.

(c) **Compliance with Hazmat Laws:** If and to the extent, Buyer loads, unloads or ships hazardous materials (as listed in the Tables of 49 C.F.R. 172.101 and 172.102 as amended from time to time) pursuant to the Purchase Agreement, Buyer hereby warrants that all hazardous materials shall be prepared for shipment, loaded, shipped and unloaded in compliance with all applicable federal, state, and local laws, rules and regulations regarding the handling and transportation of hazardous materials and Buyer shall indemnify and defend Seller from all liability, of whatever nature, to which Seller may become subject as a result of Buyer's failure to comply therewith.

(d) **Accident Reporting and Emergency Response:** If a release occurs after the goods have left Seller's facility, as between Seller and Buyer, Buyer shall make all release notifications and reports that are legally required and shall provide Seller with written notice of such release notifications and reports within three business days of making such notifications and reports. Further, as between Seller and Buyer, Buyer shall be responsible for and shall clean up all releases that occur after the goods have left the Seller's facility pursuant to applicable governmental standards and agency directives.

23. **Miscellaneous.** The Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019), constitutes the entire agreement and contract of the Parties and shall control over any other terms except that, to the limited extent that any separate writing of the Parties: (i) relates expressly and directly hereto; (ii) is mutually executed by respective officers of Seller and Buyer; and (iii) is intended by the parties to replace or supersede rather than to supplement a specific promotion of these sales terms, then such specific, replacing or superseding term shall control over the term hereof in question but not otherwise.

If Buyer does not accept these Jebro Incorporated Standard Terms of Sale (January 1, 2019), by the execution of the Purchase Agreement or otherwise in writing (including electronic) without alteration hereof or addition hereto, the Buyer shall be deemed to have accepted these Jebro

Incorporated Standard Terms of Sale (January 1, 2019) by purchasing or taking delivery of, goods from Seller. Any acceptance of materials from Jebro Incorporated is expressly limited to the terms and conditions set forth herein.

Without limitation on Seller's rights, no term in Buyer's purchase order or any other document, correspondence, or communication from Buyer which conflicts with the terms of the Purchase Agreement is, or shall be, accepted by Seller except in a separate written agreement executed by an officer of Seller. Headings are provided for convenience, and are not part of the Agreement of the parties. The Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019), shall not be strictly construed against either party—but shall instead be reasonably construed. Seller's rights and remedies hereunder are in addition to, and not in lieu of, Seller's other rights and remedies.

No modification of this contract, nor any representation or promise of any agent, shall be binding upon Seller unless such modification, representation or promise shall be in writing signed and accepted by an authorized representative of Seller, in the same manner as the original contract.

If any provision or provisions in the Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019), is held to be prohibited, invalid, or unenforceable by or against either Party in any jurisdiction, such provision shall be rendered ineffective to the extent of such prohibition, unenforceability, or invalidity without invalidating the remaining provisions of the Purchase Agreement, including these Jebro Incorporated Standard Terms of Sale (January 1, 2019), or affecting the validity or enforceability of such provision in any other jurisdiction.

END OF DOCUMENT