

MPACT TERMS AND CONDITIONS

1. **TERMS AND CONDITIONS OF PURCHASE.** (a) Any Products a buyer (“Buyer”) purchases from mPact Environmental Solutions, LLC, a South Carolina limited liability company (“Seller”) by electronic, phone, paper or any other form of transmission, are purchased subject to these “Terms and Conditions”. By purchasing or receiving Products from Seller, as additional consideration for Seller fulfilling Buyer’s purchase order, Buyer expressly agrees to be bound by these terms and conditions. No other terms or conditions including, without limitation, Buyer’s standard printed terms and conditions, whether printed on Buyer’s proposal, order acknowledgement, invoice or otherwise, will have any application to any purchase between Buyer and Seller unless specifically accepted in writing by Buyer and Seller; (b) These Terms and Conditions shall be governed by, and interpreted under, the substantive laws of the State of South Carolina; (c) Forecasts. “Forecasts” as used herein shall mean Buyer’s projected or assumed needs. Buyer may provide Seller with Forecasts of its future anticipated deliverable requirements. Seller acknowledges that any such Forecasts, including, without limitation, estimated annual volumes, are for informational purposes only and are based on a number of factors regarding any such Forecasts, including, without limitation, with respect to the accuracy or completeness of such Forecasts and (d) “Products,” as used in these Terms and Conditions means any products, goods, materials, services or supplies Buyer purchases from Seller.
2. **PRICE.** Quoted prices are based upon present taxes (other than sales taxes), freight rates, United States Tariff classifications and import duties. Buyer shall pay any increased costs resulting from such changes or from Buyer’s selection of means of transportation. Buyer shall reimburse Seller for all taxes or other charges by any national, state or municipal government upon the sale, use, production, or transportation of Products, which Seller is required to pay.
3. **PURCHASE ORDERS:** Seller has full discretion to accept or deny any purchase order. Purchase orders must include: (i) Buyers purchase order number, or one will be assigned to Buyer by Seller, (ii) product name, (iii) product quantity, (iv) package type, (v) price per unit, which should equal the price quoted by Seller, (vi) full delivery address, (vii) shipment method -carrier, provided that Seller may refuse to use any carrier which cannot comply with Seller’s delivery requirements, (viii) account number to bill freight against (carrier account number), (ix) Buyer’s phone number, and (x) any other special delivery requirements agreed upon by both parties.
4. **PRICE ADJUSTMENTS.** Seller may adjust Product prices at any time, but Products ordered by Buyer before a price increase and scheduled for delivery within thirty (30) days after ordering shall not be subject to said price increase.
5. **PRICING AND PAYMENT.** Payment for Products is due upon Seller’s acceptance of Buyer’s purchase order, unless otherwise agreed in writing by the Parties. Seller has no obligation to ship Products until payment is received. Payment for all Past due balances are subject to a late payment charge of one and one-half percent (1.5%) per month. Buyer may, at its option, make payment by check, bank transfer payable to a designated EFT or wire address, or any other means acceptable to Seller.
6. **REFERENCE AUTHORIZATION.** In the event Buyer requests a credit application, Buyer authorizes Seller to inquire into all banking and business references provided by Buyer to Seller in Buyer’s Credit Application.

7. **SHIPMENT/TITLE AND RISK OF LOSS.** Title and risk of loss for Products transfers to Buyer at Seller's shipping point. In the event the Parties agree to an alternative method of delivery, title and risk of loss transfers to Buyer when the Products are delivered to such alternative shipping point. Products shall be delivered to Buyer Ex Works INCOTERMS 2010 at Seller's shipping point.
8. **WARRANTY.** Product warranties, if any, are provided on Product labels. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR PUNITIVE DAMAGES OR DAMAGES OF ANY KIND OR NATURE ALLEGED TO HAVE RESULTED FROM ANY BREACH OF WARRANTY. SELLER DOES NOT WARRANT THE MERCHANTABILITY OF THE PRODUCTS OR THEIR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL HAVE NO DUTY TO DEFEND, INDEMNIFY, AND HOLD HARMLESS BUYER FROM AND AGAINST ANY OR ALL DAMAGES OR COSTS INCURRED BY BUYER ARISING FROM THE INFRINGEMENT OR VIOLATION OF ANY PATENTS, TRADEMARKS, COPYRIGHTS OR OTHER PROPRIETARY RIGHTS BY ANY PRODUCTS. SELLER MAKES NO WARRANTY, EXPRESS OR IMPLIED. NOTWITHSTANDING ANY OTHER TERMS OR CONDITIONS TO THE CONTRARY, SELLER'S LIABILITY UNDER THIS SECTION SHALL NOT EXCEED THE PURCHASE PRICE OF THE PRODUCT GIVING RISE TO THE ALLEGED LIABILITY.**
9. **LIMITATION ON LIABILITY.** IN NO EVENT WILL 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 OF SERVICES THAT ARE THE SUBJECT OF ANY CLAIMS MADE BY BUYER.
10. **INDEMNITY.** Buyer agrees to indemnify and hold Seller and its officers, directors, servants, employees, agents and advisors harmless from and against any and all claims, damages, fees, costs, expenses (including, but not limited to, reasonable attorneys' fees and costs) or liabilities that may result, in whole or in part, from (i) any third party using the Products provided under these Terms and Conditions, (ii) any misuse of the Products by Buyer, (iii) any resale of the Products by Buyer, (iv) any misappropriation or misuse of Seller's trademarks, trade names, copyrights, patents or other intellectual property by Buyer, and (v) any negligence or wilful misconduct by Buyer leading to bodily injury or property damage, (vi) any violation or breach of any federal, state or local rule, law, regulation or ordinance governing the purchase, use and/or storage of the Products, and (vii) any breach of the warranties and representations contained in this Agreement. ("Claims"). Seller shall inform Buyer within thirty (30) days after it receives notice of any Claim(s), provided that failure to timely notify Seller shall not absolve Buyer of its indemnity obligations. Seller shall have the option of choosing counsel to defend the Claims.

11. **SHORTAGES/REJECTION OF DELIVERY.** All claims for shortages or rejection of delivery must be made by Buyer to Seller in writing within a period of forty-eight (48) hours from receipt of Products and must state in reasonable detail the grounds therefore. Unless such notice is given within the stated period of time, Buyer agrees that it shall be conclusively presumed that Buyer has fully inspected the Products and acknowledged that NO shortage or grounds for rejection exists.
12. **SECURITY INTEREST.** Buyer grants Seller a security interest in all Products sold hereunder and to all Products now or hereafter acquired by Buyer from Seller, and to any proceeds thereof, until the purchase price and any other amounts due to Seller have been paid in their entirety. Buyer hereby authorizes Seller to prepare and file any financing statement listing the Products as collateral and to file any such financing statement in such filing offices as the Seller may deem appropriate. Buyer further agrees promptly to execute any other documents requested by Seller in order to protect Seller's security interest. Upon any default by Buyer of any of its obligations to Seller, Seller shall have all the rights and remedies of a secured party under the Uniform Commercial Code, which rights and remedies shall be cumulative and not exclusive.
13. **FORCE MAJEURE.** Any non-performance or delay in performance of any obligation of Seller under these Terms and Conditions will be excused to the extent that such failure or non-performance is caused by "Force Majeure." "Force Majeure" means any cause preventing performance of an obligation under these Terms and Conditions which is beyond the reasonable control of either Party, and which, after due diligence, could not be overcome, including without limitation, fire, flood, pandemic, epidemic, sabotage, shipwreck, embargo, explosion, accident, riot, acts of governmental authority, and acts of God. In no event shall Seller's ability to sell products, nor Buyer's ability to obtain products, at a lower price, constitute Force Majeure.
14. **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 Seller's recommendations and all applicable federal, state and local 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 not to contract with, nor permit any third party to re-sell the Products contracted between Buyer and Seller.
15. **LABELING REGULATIONS.** Buyer shall comply with any and all regulations promulgated by a domestic or foreign jurisdiction imposing labeling requirements on the Products. Buyer shall not replace or remove any labels on the Products.
16. **COMPLIANCE WITH LAW.** Buyer warrants and represents that it understands some or all of the Products purchased are governed by the EPA, South Carolina DHEC and other environmental regulatory bodies. Buyer agrees to comply with the laws, regulations and requirements of the United States. This includes, without limitation, the applicable export control and economic sanctions laws, regulations and requirements administered by the Environmental Protection Agency, Commerce Department's Bureau of Industry and Security and the Treasury Department's Office of Foreign Assets Control as they may govern the export and re-export of items supplied under these Terms and Conditions. These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited. Buyer further agrees

that it will not make any payment, directly or indirectly, that would cause a violation of the anti-bribery laws of any country or jurisdiction, including without limitation the U.S. Foreign Corrupt Practices Act which, *inter alia*, prohibits certain payments to foreign government officials for the purpose of obtaining or retaining business. The Federal Equal Credit Opportunity Act (ECOA) prohibits creditors from discriminating against credit applications on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith, exercised any right under the Consumer Credit Protection Act. The federal agency that administers compliance with law concerning the creditor is the Federal Trade Commission, Division of Credit Practices, 600 Pennsylvania Avenue, NW, Washington, SC 20580.

17. EVENTS OF DEFAULT. Buyer shall be in default under these Terms and Conditions upon the happening of any of the following events or conditions: (a) default by Buyer on payment of any installment, invoice, bill or any other indebtedness or obligation now or hereafter owed by Buyer to Seller, (b) default in the performance of any obligation, covenant or liability contained in these Terms and Conditions or any other agreement or document between Buyer and Seller, (c) any inaccuracy with respect to any warranty, representation or statement made or furnished by Buyer, (d) dissolution, termination of existence, insolvency, business failure, or discontinuance of Buyer's business or the appointment of a receiver for any part of the property of, or assignment for the benefit of creditors by, Buyer or the commencement of any proceedings under any bankruptcy reorganization or arrangement laws by or against Buyer or the attachment, levy, seizure or garnishment of any of Buyer's property, rights, assets (contingent or otherwise) including the Products, or (e) any change in control of the ownership or management of Buyer, unless prior to the occurrence of such change of control Seller shall have been notified in writing and Buyer shall have obtained Seller's prior written approval to such change in control.

18. REMEDIES OF SELLER.

a. In General. Upon the occurrence of any event of default or any time thereafter, Seller may, at its option and without notice to Buyer, exercise one or more of the following remedies as Seller, in its sole discretion, shall elect: (1) declare immediately due and payable all outstanding invoices under this or any other contract and demand or, without demand, sue for amounts then due or thereafter accruing under this invoice or under any other invoice, bill or other document evidencing Buyer's indebtedness to Seller, (2) suspend deliveries as to any or all Products, (3) take possession of the Products wherever found and for this purpose enter upon any premises of Buyer and remove the Products, without court order or other process of law, without any liability for damages, suit, action or other proceeding by Buyer as a result of such entry and/or removal, (4) cause Buyer, at its expense, to promptly return the Products to Seller in good, like-new condition, (5) sell the Products, or any part thereof at public or private sale (for cash or credit) at such time or times as Seller shall determine, free and clear of any rights of Buyer, and if notice thereof is required by law, any notice in writing of any such sale by Seller to Buyer not less than ten (10) days prior to the date thereof shall constitute reasonable notice thereof to Buyer, and (6) exercise any and all rights accruing to Seller under any applicable contract or law upon a default by Buyer, including all rights and remedies accorded to sellers or secured parties under the Uniform Commercial Code.

b. Mitigation of Damages. Should Seller repossess any of the Products because of Buyer's default, Seller may make a commercially reasonable effort to sell such Products at a reasonable price to a third party, provided, however, that Seller shall have no obligation to actively seek out and solicit potential third party Buyers for said Products.

c. Collection Costs. In the event of any default of this Agreement on the part of Buyer, Buyer shall pay any and all collection costs, including reasonable attorneys' fees and costs, incurred by Seller.

d. Rights and Remedies Not Exclusive. No right or remedy conferred upon or reserved to Seller by these Terms and Conditions shall be exclusive of any other right or remedy provided herein or by law. All rights or remedies conferred upon Seller by these Terms and Conditions and by law shall be cumulative and in addition to any other right or remedy available to Seller.

- 19. TIME OF THE ESSENCE.** Time is of the essence with respect to each of the provisions of these Terms and Conditions.
- 20. ENTIRE AGREEMENT/WAIVER/AMENDMENTS.** The parties intend these Terms and Conditions to be the complete statement of the terms of their agreement. These Terms and Conditions replaces and supersedes any prior agreements between them with respect to the subject matter hereof. No waiver of any duty, warranty or responsibility of either party shall be effective unless signed in writing by both parties. No course of prior dealing or usage of trade shall be relevant to amend or interpret these Terms and Conditions. These Terms and Conditions may not be changed, modified or amended except by an instrument in writing signed by both Seller and Buyer. Invoice or purchase order terms inconsistent with these Terms and Conditions shall be disregarded unless otherwise agreed by both parties in writing.
- 21. ASSIGNMENTS.** The rights and obligations under these Terms and Conditions shall not be assigned, in whole or in part, by Buyer without the prior written consent of Seller.
- 22. GOVERNING LAW.** These Terms and Conditions shall be construed and enforced in accordance with the laws of South Carolina without regard to the conflicts of law provisions thereof. ALL SALES TRANSACTIONS EXCLUDE THE APPLICATION OF THE 1980 UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALES OF GOODS, IF OTHERWISE APPLICABLE. All claims, actions, disputes, controversies or suits shall be litigated exclusively in the courts of South Carolina. Each party specifically consents to service of process by and the jurisdiction of and venue in those courts and Buyer, if not a resident of the United States, hereby appoints the Secretary of State of South Carolina as its agent for service of process in the United States.
- 23. INCORPORATION OF MANUFACTURER TERMS.** Sales of Products may be subject to other terms, conditions or policies established (and modified from time to time) by the manufacturer or publisher of the Products, which may be (i) included with the Products, (ii) on the Products' labeling, or (iii) available on Seller's website including without limitation the domain names [www. www.mpactusa.com](http://www.mpactusa.com) and/or any equivalent or successor thereof, which may be amended by Seller from time to time at its sole discretion.
- 24. CONSTRUCTION.** The Parties have had an opportunity to review these Terms and Conditions with legal counsel, and the general rule of construction favoring the non-drafting party over the drafting party shall not apply.
- 25. NOTICES.** All notices required or permitted herewith shall be in writing and shall be deemed duly given when personally delivered or sent by registered or certified mail, return by letter, or by confirmed facsimile to the addresses set forth in these Terms and Conditions, or to such other address as either party may hereafter designate in writing by like notice.