



APPENDIX A – TERMS AND CONDITIONS OF PURCHASE ORDER

KOST, or its affiliates (“**Kost**”) agree to purchase and Seller (as defined in the PO) agrees to supply the goods (the “**Goods**”) and/or services (“**Services**”) set out in the purchase order (“**PO**”) to which these terms and conditions (“**Terms**”) are attached, subject to the following:

- 1. Kost.** The affiliates of Kost include all of Kost’s named companies around the world as well as affiliates operating under the following names: Recochem Inc., Adam’s Polishes, B&B Blending, Paint Over Rust, International Coolant Formulations, Luyten, Red Rocks, Ultra Clear, Auto-Chem and Napierville Refineries.
- 2. Acceptance of Order.** These Terms, the PO and any attachments or schedules attached thereto (collectively, the “**Order**”) constitute the full and complete agreement between the parties in relation to the purchase by KOST of the Goods and Services from Seller. Within ten (10) days of receipt of the present PO and its Terms, the Seller shall transmit to KOST a written acknowledgement of the present PO which will act as the acceptance of the present PO and of all of its Terms by the Seller. No terms and conditions of any offer, letter, contract, purchase order, invoice or other document submitted or issued by Seller in connection with this Order shall amend, add to, vary or modify these Terms. Any modification of the Terms will be deemed refused by KOST unless there is a formal acceptance in writing by KOST. Failing the receipt, by KOST, of the written acknowledgement of the Seller, the delivery, even partial, of the Goods or Services, will be considered as the acceptance of the PO, including all its Terms, by the Seller. If a written agreement signed by both parties is in existence covering the purchase of Goods and Services (“**Master Agreement**”), covered hereby, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms.
- 3. Cancellation and Changes.** KOST may, at any time, upon notice to Seller, without cause and without liability to KOST, cancel or change the Order, in whole or part, prior to shipment. The Order may not be otherwise amended unless there is a written document signed by both parties. Notwithstanding any other provisions of these Terms, KOST may terminate this Order immediately, without liability, and without limiting any of KOST’s other rights or remedies, upon written notice to Seller if: (a) Seller is in breach of any of its obligations under these Terms; (b) Seller is in breach of any of its representations or warranties; (c) an action or claim against Seller may, in KOST’s reasonable opinion, harm Seller’s continued business operations; (d) Seller becomes insolvent or bankrupt; or (e) either party is unable to carry out its obligations under the Order by reason of a force majeure event, meaning any delay or state of affairs beyond the control of a party which causes either party to be unable to fulfill, or to be delayed or restricted in the fulfillment of, an obligation.
- 4. Prices.** The Goods and Services covered by these Terms are those specifically identified in the PO. The prices shall be deemed to include any charges and expenses related to packing, crating or cartage, storage, transportation, handling, unloading, customs, installation, insurance, brokerage fees, freight, duties and other related fees. Unless expressly provided in the PO, all prices are in US dollars.
- 5. Payment.** KOST shall pay Seller the prices for the Goods and/or Services set out in the PO within sixty (60) days following the later of: (i) acceptance by KOST of Goods and/or Services under the Order; or (ii) receipt by KOST of an undisputed invoice. Payment or any part thereof may be withheld by KOST if, in KOST’s sole discretion: (i) Seller has not fulfilled its obligations under the Order; or (ii) any portion of the Goods and/or Services are damaged, lost or otherwise not accepted by KOST. Seller’s invoices to KOST must charge applicable taxes on any Goods or Services supplied to KOST. Applicable taxes must be shown in a separate line item in any invoice submitted to KOST. KOST may set off, deduct, or credit any amounts owed to it by Seller, or otherwise make a reduction, deduction, withholding or abatement, against amounts it owed to Seller under the Order. Without limiting the foregoing, KOST may deduct from payments otherwise due to Seller, such amounts as KOST may be obligated to withhold under any law, and may remit any such amounts that relate to income tax or other tax to the relevant governmental authority. Seller acknowledges that KOST may make such payments from time to time and that such payment shall reduce KOST’s financial obligation to pay Seller under this Agreement accordingly.
- 6. Shipping.** Seller shall pack, mark and prepare the Goods for shipment in a manner which will prevent damage or deterioration, comply with applicable laws and regulations and conform to KOST’s and carrier’s instructions and requirements. Goods must be shipped in CHEP or CPC pallets with packing slips attached. Seller shall provide any applicable material safety data sheets and other relevant documentation, including BOL (Bill of Lading), certificate of compliance and certificate of analysis. All shipping documents must include KOST’s part number, PO number and description. Goods must show KOST’s part number. Scale ticket and wash ticket are required for any bulk receiving. The net quantity and unit of measure must be indicated on the scale ticket in a readable way. If the Goods are shipped via rail, the railcar reporting marks must be indicated on the BOL, certificate of analysis, invoice and other relevant documentation.
- 7. Delivery.** Time is of the essence in respect of the Order. Except as otherwise provided in the PO, the delivery terms shall be DDP (Incoterms 2020) to the delivery location set out in the PO. Seller warrants that the Goods and/or Services will be delivered in accordance with delivery dates specified in the PO. Delivery appointments shall be arranged at least 48 hours before the delivery date specified or delivery may be refused. Seller shall notify KOST in writing of any actual or anticipated delays immediately upon discovery. In the event of any delay, KOST may, at its option, terminate all or any portion of the Goods and/or Services being supplied under the Order by giving written notice to Seller, without further liability on the part of KOST. The Seller is liable for loss and additional charge if delivery of the Goods is delayed beyond the schedule provided under this PO. The Seller shall, upon KOST’s request, suspend shipment and delivery of the Goods and all work and operations herein for such period as KOST may request at no additional cost to KOST.
- 8. Inspection and Acceptance.** Any Goods and/or Services are subject to inspection and acceptance by KOST, its agents or its clients. KOST reserves the right to reject and refuse acceptance of any Goods or Services that are considered by KOST defective or not in accordance with any specifications (including any specifications made available to Seller by KOST) or documentation provided by Seller. Goods not accepted by KOST will be returned to Seller at Seller’s risk and expense. Services not accepted by KOST shall be remedied or re-performed at Seller’s expense. Payment shall not: (a) constitute acceptance of the Goods or Services; (b) impair KOST’s right to inspect; or (c) limit any of KOST’s remedies. KOST, its agents, its clients and/or its consultants, shall have access at all reasonable times to the plant and premises of the Seller. Inspection and/or acceptance by KOST, its agents or its clients does not relieve Seller of any warranties or obligations hereunder. No payment will be made to the Seller in respect of any of the Goods or Services which are rejected after inspection.
- 9. Title and Risk of Loss.** Notwithstanding anything else in this Order, title to and risk of loss of the Goods will not pass to KOST until the Goods have been delivered to the destination specified in the PO and KOST has inspected and accepted the Goods or on payment of the Goods by KOST, whichever occurs first.
- 10. Substitutions.** Seller shall not provide substitute goods as and for the Goods stipulated in the Order without the prior written consent of KOST.
- 11. Representations and Warranties.** Seller represents and warrants that: (a) it has all right, title and interest necessary for the provision of the Goods and proper performance of the Services; (b) there are no patents, copyrights, trademarks, trade secrets, or other industrial or intellectual property rights or any other rights of any third parties restricting the sale, use, repair or replacement of the Goods or any part thereof or the provision of the Services and the Goods and Services shall not infringe any patents, copyrights, trademarks, trade secrets, or other industrial or intellectual property rights or any other rights of any third parties; (c) the Goods and Services (as applicable) shall be free from liens and defects in design, manufacture, material, workmanship, and third party claims of title, right or interest; (d) the Goods shall be packaged and labelled in accordance with industry standards and applicable laws and regulations; (e) the Goods are new and of best and merchantable quality; (f) all Goods, and materials provided therewith, shall be fit for their intended purpose; (g) the Goods and Services shall be in conformance with any samples, specifications, drawings and any documentation provided by Seller, applicable quality standards and the terms and conditions of the Order; and (h) the Services will be performed in a timely, workmanlike, professional and competent manner, with all due skill and care, and in accordance with applicable industry standards. If, any time prior to two (2) years from the date of acceptance (“**Warranty Period**”), it appears that the Goods or Services, or any part thereof, do not conform to the warranties or other requirements of the Order, and KOST so notifies Seller of such discovery, Seller shall promptly correct such nonconformity to the satisfaction of KOST at Seller’s sole expense



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and the Warranty Period shall be extended accordingly. If Seller fails to correct any nonconformity to the satisfaction of KOST, KOST may reject or revoke acceptance and either: (a) purchase goods and/or services in substitution for those rejected and Seller will be liable to KOST for any costs for procuring such similar goods or services; (b) correct Seller's nonconforming Goods or Services by the most expeditious means available, the costs of which shall be borne by Seller; or (c) retain the nonconforming Goods or Services and an equitable adjustment reducing the PO price to reflect the diminished value of such nonconforming Goods or Services will be made to the Order. Seller's liability hereunder shall extend to all damages caused by the breach of any of the foregoing representations, warranties and requirements, including incidental damages, such as removal, inspection, costs of return or warehousing. This provision shall have no effect upon, nor shall it limit, Seller's obligations to indemnify KOST under the Order.

12. **Equipment.** All tools, patterns, gauges, molds, printing plates, or other equipment paid for by KOST under this Order or furnished by KOST to the Seller are the property of KOST and shall be delivered to KOST upon request. Where KOST has furnished molds, printing plates or other equipment for use in executing KOST's orders, the Seller agrees to carefully check and approve such equipment before using them. Such provision of equipment by KOST shall not release the Seller from its obligations under the present Terms.
13. **Compliance with Law.** Seller and its suppliers, partners, directors, officers, employees, agents and permitted subcontractors must comply with all applicable laws and regulations, including export control, anti-corruption and anti-bribery, in relation to the provision of the Goods and the performance of any Services, including having and maintaining in good standing all licenses, permits and other authorizations that may be required as a condition of the conduct of Seller's business activities.
14. **Performance of Services.** In the event the PO contemplates the performance of any Services by Seller or requires entry onto KOST's premises, Seller and its suppliers, partners, directors, officers, employees, agents and permitted subcontractors shall comply with KOST's applicable site and safety rules. All intellectual property rights created by the Seller in the performance of the Services are assigned and shall be assigned to KOST and Seller shall provide irrevocable and unconditional waivers of moral rights upon KOST's request.
15. **Confidentiality.** During the term of the Order and thereafter, Seller agrees to ensure that it and its suppliers, partners, directors, officers, employees, agents, and permitted subcontractors maintain as confidential and secure all material and information that are the property of KOST and made available to, or accessed by, Seller, not disclose such material or information to any third party and not use such material or information for any purpose other than performing the Order. KOST reserves all rights in all material or information provided by KOST to Seller under the Order and no right, title, license or other interest is granted to Seller unless expressly agreed to by the parties in writing.
16. **Indemnification.** Seller shall be solely responsible for and will further indemnify, defend (at KOST's option) and hold harmless KOST, its affiliates and each of their directors, officers, employees, representatives and contractors and clients from and against any losses, damages, liabilities, claims, actions, demands, suits, judgments and expenses, including investigation expenses and legal fees and costs, arising from or alleged to arise from: (i) any breach by Seller of any representation, warranty, covenant, term or condition of the Order; (ii) any claim that any Good and/or Service constitutes an infringement, violation or misappropriation of any third party's rights, including any intellectual property right; or (iii) any negligent or willful act or omission of Seller or its representatives, including but not limited to personal injury, product liability and property damage.
17. **LIMITATION OF LIABILITY.** IN NO EVENT WILL KOST OR ITS AFFILIATES, OR EACH OF THEIR DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES OR CONTRACTORS ("KOST PARTIES") BE LIABLE FOR ANY LOST PROFITS OR INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES AND IN NO EVENT SHALL THE KOST PARTIES' LIABILITY TO SELLER EXCEED OUTSTANDING AMOUNTS PAYABLE TO SELLER PURSUANT TO THE ORDER FOR GOODS AND/OR SERVICES INSPECTED AND ACCEPTED BY KOST.
18. **Insurance.** Seller shall obtain and maintain in good standing during the term of the Order and for a period of two (2) years thereafter (a) comprehensive general liability insurance having a limit of not less than \$5,000,000 per occurrence, and in the aggregate for products and completed operations, insuring against claims for bodily injury and property damage arising out of products and completed operations and sudden and accidental pollution liability; and (b) automobile liability insurance insuring against claims for bodily injury and property damage arising out of the Seller's use or operation of any licensed vehicles, including non-owned and hired vehicles, for the performance of the Services and having a limit of (i) not less than \$10,000,000 per occurrence if the Services include transportation of hazardous substances or dangerous goods as defined by applicable regulations; or not less than \$5,000,000 per occurrence if the vehicles are brought within the perimeter of KOST's active operations. Such policies shall be issued by a company satisfactory to KOST. The Seller shall furnish KOST with a certificate of insurance certifying the existence of the aforementioned insurance. All such policies and the certificate of insurance shall provide that coverage thereunder shall not be terminated or changed without a minimum thirty (30) days prior written notice to KOST. If requested by KOST, Seller shall also furnish KOST with a clearance certificate or letter confirming that Seller has Workers' Compensation coverage and such coverages shall not be allowed to change or expire until all Goods and Services have been completed and accepted.
19. **Term and Survival.** The Order shall terminate upon the later of: (i) receipt by Seller of payment for all of the Goods and Services; or (ii) acceptance of the Goods and Services by KOST, unless earlier terminated by KOST in accordance with these Terms. The provisions of these Terms which from their context or application are intended to survive the termination of the Order shall so survive, including but not limited to Sections 11, 4-18 and this Section 19.
20. **Assignment and Subcontracting.** The Order or any right or obligation hereunder shall not be transferred, assigned or subcontracted by Seller without the prior written consent of KOST. Seller shall remain fully responsible for the work and performance of any of such subcontractor or assignee. Any transfer, assignment, sublease made without express KOST's consent with be deemed null and void. KOST may assign the Order without Seller's consent and upon such assignment the assignee and Seller shall be the parties to the Order and KOST will be released and forever discharged from any liabilities or obligations of the Order as though the assignee had been an original party hereto. The Order inures to the benefit of and is binding upon the parties and their respective successors and permitted assigns.
21. **Books and Records.** Seller shall keep and maintain at its office, full and complete accounts, invoices, receipts and records relating to Seller's performance under the Order for a period of seven (7) years. Such accounts, invoices, receipts and records shall be open to review, audit and copying by KOST, upon request, at all reasonable times, whether before or after the term of the Order.
22. **Governing Law.** The Order shall be governed by the laws of the State of Ohio and the laws of the United States applicable therein. Each of the parties irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of the State of Ohio to determine all issues arising from the Order and agree that all disputes of any kind arising in relation to this Agreement shall be determined only in those courts. The *United Nations Convention on Contracts for the International Sale of Goods* (also called the Vienna Convention) will not be applicable to the Order.
23. **Amendment.** If KOST amends these Terms and provides written notice to Seller of such amendment, these Terms are amended and incorporated into each and every new PO issued after notice is given. Terms are available on www.KOST.com or upon request.
24. **Language.** The parties hereto have requested that the Order and all correspondence and all documentation relating to the Order, be written in the English language.
25. **Severability.** If any provision of the Order is found by a court of competent jurisdiction to be invalid, illegal or unenforceable, the other provisions of the Order shall not be affected or impaired, and the offending provision shall automatically be modified to the least extent necessary in order to be valid, legal and enforceable.
26. **Waiver.** No waiver of any provision of the Order shall bind a party unless consented to in writing by that party. No waiver of any provision of the Order shall be a waiver of any other provisions, nor shall any waiver be a continuing waiver, unless otherwise expressly provided in the waiver.



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27. **Relationship between the Parties.** KOST and Seller are independent contractors. The Order does not constitute KOST and Seller as agents, legal representatives, sales representatives, partners, employees, servants or joint venturers of each other for any purpose.