

SUPPLY AGREEMENT

This _____ Supply Agreement (the “Agreement”) is made and entered into as of _____, 2023 (the “Effective Date”), by and between _____ (the “Seller”) and Dubois Chemicals, Inc. (the “Buyer”). Seller and Buyer may be hereinafter referred to collectively as the “Parties” and each, individually, as a “Party”.

RECITALS

WHEREAS, Seller is in the business of selling
_____ here (the “Product”); and

WHEREAS, Buyer wishes to purchase from Seller certain quantities of Product, subject to the terms and conditions contained in this Agreement; and

WHEREAS, Seller wishes to sell to Buyer certain quantities of Product, subject to the terms and conditions contained in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein expressed, and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Term.** This Agreement commences on the Effective Date and shall continue for a term of one year, which shall expire on _____ (the “Initial Term”), and upon expiration of the Initial Term, will renew automatically for a successive period of twelve (12) months (each individually, the “Renewal Terms”). Either party may terminate this Agreement without further liability to the other party upon 90 days prior written notice to the non-terminating party, which notice shall be given in accordance with Section 8 of this Agreement.
2. **Product.** Seller agrees to sell and Buyer agrees to purchase, in accordance with this Agreement, the Product, which shall conform to the specifications set forth in Exhibit A attached.
3. **Quantity.** Buyer agrees to purchase and Seller agrees to sell to Buyer _____ during the Term and any Renewal Term, subject to the right of termination set forth in Section 1 above.
4. **Nominations and Forecasts.** No later than the fifteenth (15th) calendar day of each calendar month during the Initial Term or any Renewal Term, as the case may be, Buyer will provide Seller a rolling forecast of quantities of Product for the following three (3) calendar months. Seller shall confirm within three (3) business days of receipt of such forecast that it can meet Buyer’s schedule.
5. **Price.** The price for the Product shall be _____ for the Term. Thereafter, the Parties shall meet no later than ninety days prior to the end of the Term of

any Renewal Term, as the case may be, to agree upon a price for the next Renewal Term in good faith.

6. Meet or Release. If Buyer receives a bona fide written offer to purchase a quantity of a product substantially similar to the Product to be sold to Buyer hereunder that Buyer would otherwise purchase from Seller at a lower price than that being offered by Seller hereunder, and the Product being offered is of equal quality and is being offered on terms substantially similar to this Agreement, and at a price that excludes any forward fixed pricing (a “Competitive Offer”), then Buyer shall notify Seller, in writing, of such Competitive Offer within 30 calendar days of receipt of the same. Within fifteen calendar days of receipt of notice of said Competitive Offer, Seller will either (i) meet the net price for the Product in the Competitive Offer or (ii) release Buyer from its obligations to purchase Product under this Agreement.

7. Delivery and Freight Costs. Seller shall be responsible for arranging delivery of the Product to Buyers’ nominated destination. Delivery terms shall be _____. All freight charges incurred and paid by Seller relating to the transportation of Product from Seller’s facility to Buyer’s nominated destination shall remain the sole responsibility of Seller; and risk of loss with respect to the Product will transfer to Buyer when such Product is delivered to Buyer’s nominated destination to the extent Buyer or Buyer’s agents unload said Product at its nominated destination. To the extent to the Product is unloaded by Seller or Seller’s freight carrier, risk of loss shall remain with Seller until such time as the Product is unloaded successfully into Buyer’s nominated destination.

8. Notice. All notices sent pursuant to this Agreement shall be sent via e-mail and regular mail to the addresses below:

(a) If to Seller: _____
Attn.: _____
_____, _____ - _____
Email: _____

(b) If to Buyer: _____
Attn.: _____
_____, _____ - _____
Email: _____

10. Additional Terms and Conditions. Additional terms and conditions (the “Terms and Conditions”) applicable to this Agreement are annexed hereto as Exhibit B. The Terms and Conditions are incorporated by reference and expressly made a part of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

Seller

By: _____

Printed
Name: _____

Title: _____

Buyer

DuBois Chemicals, Inc.

By: _____

Printed
Name: _____

Title: _____

Exhibit A

Exhibit B

Terms and Conditions Applicable to Agreement

1. TERMS. THESE TERMS CONSTITUTE BUYER'S OFFER AND MAY BE ACCEPTED BY SELLER ONLY IN ACCORDANCE WITH THE TERMS HEREOF. SELLER'S ACCEPTANCE OF THESE TERMS AND ANY ORDER HEREUNDER SHALL OCCUR EITHER THROUGH COMMENCEMENT OF PERFORMANCE OR ACKNOWLEDGMENT OF THE ORDER. BY ACCEPTING AN ORDER HEREUNDER, SELLER WAIVES ALL TERMS AND CONDITIONS CONTAINED IN ITS QUOTATION, ACKNOWLEDGMENT, INVOICE OR OTHER DOCUMENTS WHICH ARE DIFFERENT FROM OR ADDITIONAL TO THOSE CONTAINED HEREIN AND ALL SUCH DIFFERENT OR ADDITIONAL TERMS AND CONDITIONS SHALL BE NULL AND VOID. NO ADDITION TO, WAIVER OR MODIFICATION OF, ANY OF THE PROVISIONS HEREIN CONTAINED SHALL BE OF ANY FORCE OR EFFECT UNLESS MADE IN WRITING AND EXECUTED BY AN OFFICER OF BUYER. HOWEVER, TO THE EXTENT THAT THE TERMS HEREIN CONFLICT WITH THOSE OF THE AGREEMENT ABOVE, THE TERMS OF THE ABOVE AGREEMENT SHALL CONTROL AND SUPERSEDE THE CONFLICTING TERMS HEREIN.
2. PRICE. The prices agreed upon shall in the Agreement above include all applicable taxes and other duties, levies, surcharges or other charges of similar import. No charge will be allowed for freight, delivery, packing, crating, drayage or storage unless stated herein.
3. Entirety of the Agreement.
 - (a) These *Terms and Conditions of Sale*, together with any terms stated in any agreement incorporating these *Terms and Conditions of Sale*, constitute the entire agreement between Seller and Buyer with respect to the goods sold and supersedes and replaces any prior or contemporaneous agreement between Seller and Buyer with respect thereto (hereinafter, collectively, "Agreement").
 - (b) Buyer objects to and will not be bound by any additional, different, or inconsistent terms or conditions in Seller's invoice or other documents from Seller, and shipment pursuant to an invoice of Seller that contains additional, different, or inconsistent terms does not constitute acceptance of such terms.
 - (c) If the provisions of an agreement incorporating these *Terms and Conditions of Sale* and these *Terms and Conditions of Sale* directly conflict, then the provisions of the agreement incorporating these *Terms and Conditions of Sale* will prevail; furthermore, the provisions of the following will prevail, ranked in order of importance: (i) an agreement incorporating these *Terms and Conditions of Sale*, (ii) these *Terms and Conditions of Sale*, (iii) additional, valid documentation signed by an authorized representative of Seller and Buyer.
 - (d) No conditions, understandings, or agreements purporting to amend, waive, modify, extend, or vary any terms of the Agreement will be binding or of any force or effect unless hereafter made in writing and signed by an authorized representative of Seller and Buyer.
 - (e) The Agreement is intended as the final expression of Seller and Buyer and there are no oral representations, stipulations, warranties, agreements, or understandings with respect to the subject matter of the Agreement that are not fully expressed therein.
 - (f) Neither the Agreement nor its execution has been induced by any representation, stipulation, warranty, agreement, or understanding of any kind other than those expressed in writing.
 - (g) No prior course of dealing or performance or usage of trade not expressly set forth in the Agreement will be admissible to explain, supplement, modify, or contradict any terms or conditions of the Agreement.
 - (h) By executing the Agreement, acknowledging receipt thereof, or engaging in conduct called for by the Agreement, including shipment of any goods, Seller agrees, at minimum, to these *Terms and Conditions of Sale*.
2. Relationship of the Parties.
 - (a) Seller and Buyer may be referred to hereinafter collectively as "Parties" and individually as a "Party".
 - (b) For purposes of the Agreement, "Affiliate" or "Affiliates" means, with respect to a Party, any other person or entity directly or indirectly controlling, controlled by, or under direct or indirect common control with such Party; for purposes of this definition, "control", when used with respect to a person or entity, means the power to direct the management and policies of such person or entity directly or indirectly, whether through the ownership of voting securities, by contract, or otherwise.
 - (c) Each Party assumes all its duties under the Agreement as an independent contractor and nothing contained in the Agreement will be construed as inconsistent with such independent contractor relationship; neither Party is an employee or agent of the other Party and as such, neither Party will have the power or authority, express or implied, to pledge credit, to enter into any agreement, or to proffer or give any representation, warranty, or guarantee on behalf of the other Party.
 - (d) Each Party acknowledges and agrees it will not present itself to any third party as having authority to bind or contract on behalf of the other Party, nor any Affiliate thereof, and will make no implicit or explicit representation to that effect.
 - (e) The Agreement is not intended to create nor constitute a joint venture, pooling arrangement, partnership, agency, master-servant, or a business entity, organization, or combination of any type, whatsoever.

3. Delivery.

- (a) All sales are freight shall be prepaid by Seller. Seller will pay all other delivery and miscellaneous charges and inspection fees, if any, levied or imposed on the goods per delivery; and if Buyer prepays such charges at Seller's request or on behalf of Seller, then Seller will reimburse Buyer therefor.
- (b) Seller will deliver the goods, or facilitate delivery of the goods via exchange, to Buyer's destination as soon as reasonably practicable; provided, however, Buyer acknowledges and agrees that shipment dates are based on Seller's reasonable judgment and are subject to production limitations and factory schedules, and that delivery dates are not guaranteed.
- (c) Seller shall be responsible for all demurrage and/or detention charges incurred under or relating to this Agreement, unless proximately caused by Buyer's conduct.
- (d) To the maximum extent permitted by law, Seller will release and defend, indemnify, and save harmless Buyer, its Affiliates, and its and their officers, employees, and agents from and against all suits, actions, losses, damages, claims, or liability of any character, type, or description, including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, for injury or death to any person, or injury to any property, received or sustained by any person or persons or property, arising out of, or occasioned by deliveries to be made under the terms of this Agreement or in connection with this Agreement, except to the extent adjudicated to have been caused by the gross negligence or willful misconduct of Buyer.

4. Title and Risk of Loss.

- (a) Title with respect to the goods will transfer to Buyer when such goods are unloaded at Buyer's designated location.

5. Weights and Measures.

- (a) Buyer's weights measurements for goods sold by volume, taken at Buyer's designated location, will control unless proven to be in error.
- (b) The Parties acknowledge and agree claims for shortages or overages of one-half percent (.5%) or less of the quantity to be delivered are disallowed.

6. Taxes.

- (a) Any tax, duty, or other governmental charge on the manufacture, sale, and/or shipment of the goods, or any component thereof, imposed by federal, state, provincial, or local authorities, will be added to the price of the goods and paid by Seller.

7. Payment.

- (a) Unless otherwise agreed in writing and signed by an authorized representative of each Party, payment will be made against Seller's invoice via electronic funds transfer such that funds are available to Seller no later than sixty (60) calendar days from date of invoice, terms net cash, regardless of whether such day is a business day.
- (b) Seller may not set off any loss, damage, liability, or claim that Seller may have against Buyer against any performance or payment due to Buyer under the Agreement or any other contract or order with Buyer.

8. Warranties.

- (a) Seller warrants (i) that the goods sold pursuant to the Agreement will conform to the specifications set forth in Exhibit A, attached hereto and incorporated by reference for all purposes, (ii) that Seller will have good title to and the right to transfer such goods; and (iii) that the goods sold pursuant to this Agreement will not contain and shall be free of perfluorooctanoic acid ("PFOA"), perfluorooctane sulfonate ("PFOS") and or any other chemicals which are known as perfluoroalkyl and polyfluoroalkyl substances ("PFAS").

9. Remedies of Buyer.

- (a) Upon delivery, Buyer will promptly notify Seller in writing of any and all claims, including, but not limited to, alleged defective goods, shortage, breach of warranty, or otherwise, and unless objection thereto is made in writing and received by Seller within sixty (60) days from the date of delivery.

10. Notice.

- (a) Notices and other communications required or permitted under the Agreement will be in writing and addressed to the addressee(s) set forth in the Agreement, or at such other address as a Party may designate in writing from time to time.
- (b) Notices and other communications required or permitted under the Agreement will be deemed given only if (i) delivered personally, (ii) mailed by first-class, certified or registered U.S. mail, return receipt requested, postage prepaid, (iii) sent by courier service, (iv) sent via electronic means expressly stipulated in the Agreement, or (v) sent via such other means as may be specified in writing and signed by an authorized representative of each Party.
- (c) Notices and other communications required or permitted under the Agreement will be deemed received on the business day on which such notice or communication was received; provided, however, any notice or communication received on a non-business day or after 5:00 P.M. local time will be deemed received the next business day.

11. Indemnification.

- (a) **Buyer will release and defend, indemnify, and save harmless Seller, its Affiliates, and its and their officers, employees, and agents from and against all suits, actions, losses, liabilities, damages, and claims of any character, type, or**

description (whether for personal injury, death, disease, property damage, including, but not limited to, environmental contamination, or otherwise), including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, arising out of, or occasioned by, the transportation, delivery, storage, handling, or use, singly or in combination with other substances, of the goods to the extent adjudicated as caused by the gross negligence or willful misconduct of Buyer.

- (b) **Seller will release and defend, indemnify, and save harmless Buyer, its Affiliates, and its and their officers, employees, and agents from and against all suits, actions, losses, liabilities, damages, and claims of any character, type, or description (whether for personal injury, death, disease, property damage, including, but not limited to, environmental contamination, or otherwise), including, without limiting the generality of the foregoing, all expenses of litigation, court costs, and attorneys' fees, arising out of, or occasioned by: (i) the transportation, delivery, storage, handling, or use, singly or in combination with other substances, of the goods for all occasions not encompassed by Section 11(a) above; (ii) any third-party claims arising out of or in any way related to a breach of Seller's warranties as set forth in Section 8 above.**
- (c) **To effectuate the indemnity obligations in Sections 3(d), 11(a), and 11(b) herein, the indemnitee must (i) provide the indemnitor prompt written notice of the claim, (ii) accede control and direction of the investigation, preparation, defense, and settlement of the claim to the indemnitor, and (iii) reasonably cooperate with the indemnitor in such defense and settlement of the claim.**
- (d) **Section 11(c) herein notwithstanding, (i) an indemnitee may participate, at its sole cost and expense, in the defense of any indemnified claim and (ii) the indemnitor will not settle any indemnified claim that would not result in a complete and final release of the indemnitee or would require the indemnitee to admit fault or liability or be subject to any equitable remedy, without the prior written consent of the indemnitee.**

12. Insurance.

- (a) Sellers agrees at its sole cost and expense to maintain the following minimum amounts of insurance coverage and related requirements.
- (b) Workers' Compensation Insurance as required by law.
- (c) Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 aggregate and include products and completed operations coverage, contractual liability.
- (d) Automobile Liability Insurance covering all owned, hired and non-owned vehicles with a minimum limit of \$1,000,000.
- (e) By policy endorsement on commercial general liability, automobile liability, and any umbrella or excess liability insurance policies name Buyer and its subsidiaries and affiliates, and their respective agents, employees, officers and directors ("Parties") as additional insured, and the additional insured status shall apply to the full policy limits purchased by Seller even if those limits are in excess of those required herein, and such policies shall state that Seller's insurance is primary and non-contributory as to any other insurance or self-insurance maintained by Parties.
- (f) Seller hereby waives for itself and its affiliates, and where allowed by law, shall cause its insurers on all insurance policies required herein, to waive all rights of recovery against Parties.
- (g) The obligation of Seller to provide the required insurance shall not limit in any way the liability or obligations assumed by Seller.

13. Technical Information and Safety.

- (a) **Each Party will maintain compliance with all applicable safety and health related governmental requirements concerning the goods and will take all steps required by applicable law to inform, warn, and familiarize its employees, agents, contractors, and customers concerning all hazards associated with the goods, including transportation, storage, handling, use, and disposal thereof.**

14. Survivability. **The provisions of the Agreement which, by the nature of their content, are intended, expressly or impliedly, to continue and have effect regardless of the termination of the Agreement whether by default or otherwise, will survive and continue to bind the Parties, including, but not limited to, Sections 3(f)(6), 3(f)(9), 9(c), 11, and 12 herein.**

15. Confidentiality. The Parties acknowledge and agree the Agreement, the terms and conditions hereof, and all information and data exchanged by the Parties in accordance with the Agreement will be maintained in strict and absolute confidence, except to the extent disclosure is necessary to perform a Party's obligations or as required by law.

16. Assignment.

- (a) The Agreement will not be assignable or transferable by either Party without the prior written consent of the other Party, which consent will not be unreasonably withheld, and any attempted assignment or transfer without such consent will be void.
- (b) All covenants and provisions of the Agreement by and for the benefit of the Parties will bind and inure to the benefit of their respective successors and assigns as permitted by the provisions of this Section 17.

17. No Third-party Beneficiaries. The Agreement is intended solely for the benefit of the Parties and their permitted assigns and will not impart rights enforceable by any other person or entity, except as expressly provided in the Agreement.

18. Construction and Interpretation. The Parties acknowledge and agree that each has had adequate time to review all provisions of the Agreement with their own legal counsel and that the Agreement was not prepared by either Party to the exclusion of the other Party and as such, the Agreement will not be construed against either Party by reason of its preparation.
19. Non-waiver.
- (a) No waiver by either Party of one or more defaults by the other Party in the performance of any provisions of the Agreement will operate or be construed as a waiver of any other or further default or defaults, whether of a like or different character.
 - (b) No indulgence, leniency, or extension of time granted by either Party to the other Party will operate or be construed as an estoppel against the granting Party.
20. Severability. The invalidity or unenforceability of any particular provision of the Agreement will not affect the other provisions hereof, and the Agreement will be construed in all respects as if such invalid or unenforceable provision was omitted.
21. Headings. The titles and headings in the Agreement have been included solely for ease of reference and will not be considered in the interpretation or construction of the Agreement.
22. Conspicuousness. The Parties acknowledge and agree all provisions of the Agreement comply with any and all requirements of conspicuousness under the laws of the State of Texas.
23. Counterparts. The Agreement may be executed and delivered in the original, by Portable Document Format (PDF), or by any other generally accepted electronic means, in one or more counterparts, and by the different Parties in separate counterparts, each of which when executed and delivered will be deemed an original, but all of which taken together will constitute one and the same agreement.
24. Compliance. The Parties acknowledge and agree (i) that each will maintain a *Code of Conduct* or similar policy, (ii) that in the performance of the Agreement, each will comply with the Foreign Corrupt Practices Act, 15 U.S.C. §§ 78dd-1, et seq., and all other applicable law concerning anti-bribery and anti-corruption, (iii) that each will not engage in any direct or indirect sales to any *Specially Designated National* (SDN) or prohibited country or regime identified by the Office of Foreign Assets Control, U.S. Department of the Treasury, in violation of U.S. law, and (iv) that the Agreement neither contemplates nor involves the sale or purchase of tin, tantalum, tungsten, or gold (hereinafter "Conflict Minerals") or products containing Conflict Minerals, (v) Seller warrants and represent that the sale of the Product contemplated hereunder shall in no way violate any law, statute, ordinance, regulation or similar regulatory edict, including, but not limited to, anti-dumping regulations.
25. Jurisdiction: Venue.
- (a) All provisions of the Agreement will be governed by and construed in accordance with the laws of the State of Ohio, excluding any choice of law rules that may direct the application of the laws of any other jurisdiction.
 - (b) The rights and obligations of the Parties arising from the Agreement will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, application of which is expressly excluded pursuant to Article 6 thereof.
 - (c) Any suit, action, or proceeding relating to or arising from the Agreement must be brought exclusively in the state or federal courts having jurisdiction and venue for Hamilton County, Ohio, and each Party waives, to the fullest extent permitted by applicable law, any objection that it may now or hereafter have to the laying of venue of such suit, action, or proceeding in such court or that any such suit, action, or proceeding which is brought in such court has been brought in an inconvenient forum.
 - (d) **Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury with respect to any action, claim, or proceeding arising out of or in any way relating to the Agreement or the transactions contemplated thereunder.**
26. Dispute Resolution.
- (a) With respect to any claims, counterclaims, demands, causes of action, disputes, controversies, and other matters in question involving the Parties and arising out of or relating to the Agreement, including any questions concerning its existence, validity, or termination, any provision hereof, the alleged breach thereof, or in any way relating to the subject matter of the Agreement or the relationship between the Parties created by the Agreement, and not resolved in the ordinary course of business (hereinafter "Dispute"), a Party must initiate the dispute resolution procedures set forth in this Section 27.
 - (1) A Party desiring to initiate dispute resolution must provide written notice of the Dispute to the other Party (hereinafter "Dispute Notice").
 - (2) The Dispute Notice will include (i) a statement of the issuing Party's position and a summary of arguments supporting that position, and (ii) the name(s) and title(s) of the executive who will represent such Party in the negotiations and of any other person who will accompany the executive.
 - (3) Executives appointed to represent the Parties pursuant to any Dispute Notice must have the authority to settle the controversy and must be of a level of management higher than those directly involved in the Dispute.

- (4) If one Party has issued a Dispute Notice, then the other Party will likewise promptly issue (i) a statement of its position and a summary of arguments supporting that position, and (ii) the name(s) and title(s) of the executive who will represent such Party in the negotiations and of any other person who will accompany the executive; thereafter, the Parties will promptly attempt in good faith to resolve the Dispute by negotiations between the executives so appointed.
- (b) Should a Dispute fail to be resolved pursuant to Section 27(a) herein within thirty (30) days of receipt of the Dispute Notice, either Party may seek whatever remedies available at law or in equity subject to the limitations in Section 26 herein and in the event of litigation, the prevailing Party will be entitled to all costs and expenses associated therewith, including attorneys' fees.