

**PALMER OF TEXAS
GENERAL TERMS AND CONDITIONS**

1. The Agreement. The agreement between Palmer of Texas Tanks, Inc. (each referred to as "Supplier") and Buyer with respect to the sale of Product (the "Product") shall consist only of these terms or any terms mutually agreed to in writing hereafter by Supplier and Buyer. Supplier objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's Purchase Order (the "PO") or in any other communication from Buyer to Supplier. The agreement shall be for the benefit of Supplier and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by an authorized representative of Supplier, to the extent they differ from, modify, add to or detract from the agreement, shall not be binding on Supplier. There are no agreements, promises or understandings, either verbal or written, which are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions. Buyer's acceptance of any proposal or quotation attached hereto must be made in writing and forwarded to the contact person listed. Prices quoted in any proposal or quotation are offered for a period of 30 days unless otherwise stated; after which, the offered terms expire.

2. Termination or Modification. The agreement may be modified or terminated only upon Supplier's prior written consent.

3. Terms of Payment. Terms of payment are net 30 days, subject to approval by Supplier's credit department. Buyer specifically agrees that there will be no setoff of any claims or back charges against invoices. In addition, should Supplier seek collection of late payments through litigation, Buyer shall be responsible for the full cost of such litigation, including, but not limited to, reasonable attorneys' fees and court costs. If a shipment is delayed by Supplier at the request of Buyer, payment therefore shall become due on the date when Supplier is prepared to make shipment thereof. Supplier is entitled to perform periodic credit reviews of Buyer. Whenever, in the sole discretion of Supplier, the financial condition of Buyer does not justify the continuation of production or shipment on the specified terms of payment, Supplier may require full or partial payment in advance. All accounts are payable in United States Dollars, free of collection, exchange or any other changes. Any sales, excise or other sales-related taxes that may be applicable to any

sale hereunder shall be Buyer's sole responsibility, unless otherwise agreed to in writing by Supplier.

4. Delivery. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Supplier of all information to be furnished by Buyer and the absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond Supplier's reasonable control. Supplier shall in good faith endeavor to meet estimated delivery dates. Supplier reserves the right to withhold delivery of the Product if, for any reason, Buyer fails to pay to Supplier any portion of the purchase price for the Product(s) in the amount(s) and at the time(s) specified. Supplier reserves the option, unless otherwise specifically agreed in writing, to make partial shipments. Payments for partial shipments are due on the basis of dates of invoices covering them. All other claims for shortages or damages in transit must be made upon receipt of Product and must be noted on the delivery ticket or bill of lading. Under no circumstances shall Supplier be liable for any damages or losses arising out of or resulting from any delay of any kind whatsoever, unless there is specific written agreement between the Supplier and the Buyer to the contrary.

5. Risk of Loss. Unless other terms are expressly agreed to by Supplier upon acceptance of Buyer's PO, Buyer assumes all risk of loss of Product upon delivery of Product by Supplier to Buyer's facility (F.B.O. Destination).

6. Returns. Goods may not be returned to Supplier without Supplier's prior written approval. Stock items, when returned, will be credited at the lowest prevailing price, and subject to a minimum charge of 20% for handling and restocking plus any reconditioning charges. Return transportation charges must be prepaid. Non-standard or specialty items are not subject to cancellation, change, reduction in amount, nor return for credit without Supplier's prior written consent and upon terms which fully indemnify Supplier.

7. Limited Warranty. Products are warranted, within industry allowances for specifications and materials, to be free of defects in manufacture, materials or workmanship under normal use and service to the original Buyer. Normal use and service excludes damage incurred during shipment. **THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY OTHER WARRANTY EXPRESSED OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** This express warranty is contracted for one (1) year from the date of delivery of new products manufactured and sold by Supplier. To be valid, a warranty claim must be made in writing within the

one (1) year warranty period. The original Buyer's sole and exclusive remedy for breach of this warranty is repair, replacement or allowance of credit, all at Supplier's sole discretion. Buyer shall not commence any replacement or repair without Supplier's prior written consent. Supplier's liability for breach of this express warranty shall not exceed the purchase price of the products sold. **UNDER NO CIRCUMSTANCES SHALL SUPPLIER BE LIABLE FOR ANY OTHER DIRECT, CONSEQUENTIAL, INDIRECT, OR INCIDENTAL DAMAGES, INCLUDING ATTORNEYS' FEES, LOST PROFITS, DELAY DAMAGES, OR ANY UNAPPROVED LABOR EXPENDED IN REPAIRING OR REPLACING DEFECTIVE PRODUCT. THE PARTIES AGREE THAT THE FOREGOING WARRANTY AND WARRANTY LIMITATIONS ARE INCORPORATED INTO SUPPLIER'S OFFER FOR SALE, AND THEREFORE, SHALL BE INCORPORATED INTO THE FINAL CONTRACT FOR SALE (OR PURCHASE ORDER) NOTWITHSTANDING ANY LANGUAGE TO THE CONTRARY IN THE FINAL CONTRACT FOR SALE (OR PURCHASE ORDER).**

8. Force Majeure. Supplier's failure to deliver Product by reason of any of the following shall not constitute an event of default or breach of any terms: strikes, picket lines, boycott efforts, fires, floods, freeze, accidents, war (whether or not declared), revolution, acts of terrorism, riots, insurrections, acts of God, acts of government (including without limitation any agency or department of the United States of America or any other country), acts of the public enemy, scarcity or rationing of gasoline or other fuel or vital products, inability to obtain raw materials or labor, or other causes which are reasonably beyond the control of the defaulting party. Supplier shall promptly notify Buyer of any such delay and its specific cause.

9. Confidentiality. Any specifications, samples, designs, formulations, trade secrets, patents, financial data, or other information that Buyer or Supplier (the "Disclosing Party") identifies as or otherwise deems confidential (the "Confidential Information") and discloses to the other Party ("Receiving Party") in connection with this contract or any PO shall remain the exclusive property of the Disclosing Party and shall, along with any information derived from the same, be kept confidential by the Receiving Party and its employees and agents and shall not, without the Disclosing Party's prior written consent, be disclosed to any third party or used except for purposes of the PO. The Receiving Party agrees not to chemically analyze or reverse engineer any sample or to assist

and/or allow any third party to do so without the express written consent of the Disclosing Party.

Notwithstanding the foregoing, such information shall not be deemed confidential to the extent that the Receiving Party can demonstrate by written record that it was previously known by the Receiving Party, became generally available to the public through no fault of the Receiving Party, was disclosed to the Receiving Party by a third party without breach of any confidentiality obligation, or is specifically required to be disclosed by law or legal process. The Buyer and Supplier agree that the covenant of confidentiality and nondisclosure set forth above shall survive termination of this contract and shall remain in effect for so long as the Confidential Information remains confidential. The Parties agree that this covenant shall supersede any contrary duration term set forth in any previously executed Confidentiality / NonDisclosure Agreement.

10. Governing Law and Jurisdiction. This contract shall be governed by, interpreted and enforced in accordance with the laws of the State of Texas, without regard to conflicts of law principles.

11. Miscellaneous.

a) Failure of Supplier to insist upon performance of any provisions of these terms or to exercise any rights hereunder shall not be construed as a waiver or relinquishment of the future performance of any such term or condition or the future exercise of such right.

b) Any enforceable term, provision, undertaking or restriction contained in these terms are held by a court of competent jurisdiction to be invalid, void or unenforceable (in whole or in part), the remainder of the terms, provisions, undertakings and restrictions will remain in full force and effect and will in no way be affected, impaired or invalidated.

c) Any notice or request required or permitted to be given in connection with these terms shall be sent by mail, prepaid, return receipt requested, by fax, with receipt confirmed, or by express delivery service to the address set forth on the PO or to any other business address furnished in writing by the intended recipient to the sender. The date of notice shall be deemed to be the date on which such notice has been sent by fax, received by mail, or by express delivery service.

d) Section headings are for convenience only and are not to be construed as part of this contract.