

Telfer Pavement Technologies, LLC

TERMS AND CONDITIONS OF SALE OF PRODUCT

June 2017

The seller of the product, Telfer Pavement Technologies, LLC, shall hereinafter be referred to as "Telfer." The terms and conditions set forth in this document ("Terms and Conditions") are intended to establish standard terms and conditions for all sales of Telfer's products ("Products") to customers (each a "Customer"). Notwithstanding the foregoing, unless specifically referenced in a sales agreement, these Terms and Conditions shall not apply if there is a sales agreement in place between Customer and Telfer which covers the sale of the applicable goods, provided that the sales agreement is signed by both parties.

1. **PRICE; TAXES** – Unless otherwise specifically agreed to by Telfer and Customer in writing, Telfer's pricing in effect at the time of shipment shall apply. Price quotes are subject to credit approval or other arrangements satisfactory to Telfer to establish Customer creditworthiness. Any tax, excise or governmental charge imposed upon the value added to or the production, sale, storage, use or transportation of any Product sold hereunder, or imposed upon crude oil or any other raw materials from which such Products are made, which Telfer may be required to pay shall be paid in accordance with Telfer's quotation. Customer shall provide Telfer with properly completed exemption certificates for any tax from which Customer claims exemption.
2. **PAYMENT TERMS** – Subject to ongoing credit approval by Telfer, and unless otherwise specified on Telfer's invoice or agreed to by Customer and Telfer in writing, terms of payment shall be net 30 days from date of invoice. Telfer reserves the right to withhold shipment for Customer's: (a) late payment; (b) non-payment; or (c) failure to provide reasonable assurance of payment upon Telfer's request. Any payment that is not received by the date required herein shall accrue interest at a rate of eighteen per cent (18%) per annum of the outstanding balance or the maximum rate allowed by applicable law, whichever is less, from the date such payment is due until the full invoiced amount and accrued interest is fully paid. In addition, Customer shall be responsible for Telfer's costs of collection of any past due amounts, including reasonable attorney fees. In the event Customer shall fail to make timely payment of any monies due and owing to Telfer, Telfer may set off, withhold or recoup any payments due under this or any other agreement between the parties.
3. **DELIVERY; TITLE; RISK OF LOSS** – Unless specifically agreed to otherwise in writing, if Telfer arranges transportation, title to the Products and risk of loss shall pass to Customer FOB Destination in accordance with the applicable quotation, with selection of carrier and routing of shipments being at Telfer's sole option. Unless specifically agreed to otherwise in writing, if Customer arranges transportation, title to the product and risk of loss shall pass to Customer FOB Telfer's facility in Martinez, CA.
4. **LIMITED WARRANTY – TELFER WARRANTS THAT AT TIME OF SHIPMENT: (a) PRODUCT SOLD HEREUNDER SHALL CONFORM TO THE APPLICABLE FEDERAL, STATE OR LOCAL SPECIFICATIONS FOR THE PROJECT, OR IN THE ABSENCE OF SUCH SPECIFICATIONS, TELFER'S CURRENT STANDARD SPECIFICATIONS FOR SUCH PRODUCT(S) OR SUCH OTHER SPECIFICATIONS AS SHALL HAVE BEEN MADE EXPRESSLY A PART OF THIS AGREEMENT; (b) TELFER HAS GOOD TITLE TO THE PRODUCT; AND (c) THE PRODUCT IS FREE AND CLEAR OF ALL LIENS AND ENCUMBRANCES CREATED BY TELFER. TELFER MAKES NO WARRANTY OF ANY RESULTS CUSTOMER MIGHT OBTAIN IN ANY PARTICULAR APPLICATION. TELFER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR PARTICULAR PURPOSE OR OTHERWISE.**
5. **LIMITATION OF REMEDIES - CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF WARRANTY SHALL BE REPLACEMENT OF DEFECTIVE OR NONCONFORMING PRODUCT BY TELFER WITHOUT ADDITIONAL CHARGE, OR IN LIEU THEREOF, AT TELFER'S OPTION, TELFER MAY REFUND THE PURCHASE PRICE UPON RETURN OF THE DEFECTIVE OR NONCONFORMING PRODUCTS AT TELFER'S EXPENSE.**

6. **LIMITATION OF LIABILITY – NOTWITHSTANDING ANY OTHER PROVISION, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, TELFER’S TOTAL LIABILITY TO CUSTOMER FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES (COLLECTIVELY A “CLAIM”) ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT AND/OR THE SALE, PURCHASE AND USE OF PRODUCTS HEREUNDER, WHETHER BASED IN CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN RESPECT TO WHICH SUCH CLAIM AROSE. CUSTOMER ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY IS REASONABLE AND THAT THE PRICE OF TELFER’S PRODUCTS HAS BEEN DETERMINED BASED UPON THE FOREGOING LIMITATION OF LIABILITY.**
7. **COMMENCEMENT OF ACTION - ANY CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ARISING OUT OF SALE OF THE PRODUCTS WHICH CUSTOMER MAY HAVE AGAINST TELFER MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.**
8. **WAIVER OF INCIDENTAL AND CONSEQUENTIAL DAMAGES – NOTWITHSTANDING ANY OTHER PROVISION, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL TELFER BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION THE SALE OR USE OF PRODUCTS), WHETHER THE ACTION IN WHICH RECOVERY OF ANY SUCH DAMAGES IS SOUGHT IS BASED UPON CONTRACT, TORT, STATUTE OR OTHERWISE, EVEN IF TELFER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**
9. **PRODUCT QUANTITY –** Customer shall pay for the actual quantity of Products supplied as stated on the bill of lading, including any weigh back certificates if applicable.
10. **SAFETY, HEALTH AND INDEMNITY –** Customer acknowledges that Telfer has furnished product literature or information such as Safety Data Sheets (SDS) or Material Safety Data Sheets (MSDS), that include warnings and safety and health information related to the goods furnished hereunder. Customer shall: (a) familiarize itself with such information; (b) adopt and follow safe handling , storage, transportation, use, treatment and disposal practices with respect to the goods furnished hereunder, including, without limitation, special care and practices as Customer’s use of the goods requires including, without limitation, all such practices required by applicable laws; (c) instruct its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use transportation and disposal of the goods furnished hereunder (including, without limitation, information contained in Telfer’s most recent SDS or MSDS); and (d) comply with applicable safety and environmental laws and take action necessary to avoid spills or other dangers to persons, property or the environment. Telfer may suspend shipment of Products and/or cancel this Agreement on five (5) days’ notice if Customer fails to comply with any of its obligations under this paragraph 10. With the exception that this provision shall in no event be construed to require indemnification by Customer to a greater extent that permitted under the law, Customer shall indemnify, defend and save harmless Telfer, and its members, officers, agents, directors, partners, employees, affiliates, parents and subsidiaries, and each of them, of and from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys’ fees, losses or liabilities, of every kind and nature whatsoever (“Claims”) arising out of or in any way relating to Customer’s actual or alleged failure to comply with any of its commitments under this paragraph 10. The foregoing obligations shall apply notwithstanding that Customer is not negligent or actively involved in the events that give rise to the Claims. The obligations under this paragraph and shall extend to Claims occurring after this Purchase Order is terminated or completed as well as while it is in force. To the greatest extent permitted by law, the duties to indemnify, defend and hold harmless shall apply regardless of any active and/or passive negligent act or omission of Telfer or of any other person to be indemnified hereunder. Customer, however, shall not be obligated under this Agreement to indemnify, defend and hold harmless Telfer against Claims arising from its sole negligence or willful misconduct. The duty to defend is a separate covenant. The foregoing duties are not limited, waived or impaired by workers compensation statutes or insurance or by any other insurance coverage.
11. **FORCE MAJEURE –** (a) Telfer shall be relieved from liability hereunder for failure to perform any or all of its obligations for the time and to the extent of such failure to perform where Telfer’s failure is occasioned by any cause or causes of any kind or character beyond the reasonable control of Telfer,

however such damages may be characterized, whether provided by California Commercial Code sections 2613 – 2615, or by other applicable law, or resulting from any “Force Majeure,” including, without limitation: acts of god; accidents; fire; explosion; flood or hurricanes; strikes, lockouts or other industrial disturbances; riots or civil commotion; war whether declared or undeclared; or compliance with any law, rule or regulation; shortage or breakdown or other failure of facilities used for manufacture or transportation; shortage of labor; inability to secure, in Telfer’s sole discretion, all at reasonable prices, transportation, power, fuel, materials or supplies; or total or partial shutdown due to Telfer’s normal plant turnaround or as required by Telfer’s operations. If Telfer is rendered unable by Force Majeure to carry out its obligations hereunder, Telfer shall give notice to Customer, and upon the giving of such notice the obligations of Telfer, insofar as they are affected by such Force Majeure shall be suspended during the continuance of the Force Majeure event. Upon the cessation of the cause or causes for any such failure or delay, performance shall be resumed but such delay shall not, except by mutual agreement, operate to extend the term of this Agreement or obligate Telfer to make up deliveries missed. (b) Regardless of the occurrence or non-occurrence of any of the causes set forth in paragraph (a) above, if for reasons beyond Telfer’s control, supplies of any Product deliverable hereunder, or of crude petroleum or other feedstock from which such Product is derived, from any of Telfer’s existing sources are curtailed or cut off or are inadequate to meet Telfer’s own requirements and its obligations to its customers, Telfer’s obligation hereunder during such period of curtailment, cessation or inadequacy shall at its option be reduced to the extent necessary in Telfer’s sole judgment to allocate among Telfer’s own requirements and its customers (whether under contract or not), such Product as received and as may be available in the ordinary and usual course of Telfer’s business from any such existing sources of supply at the location(s) from which deliveries hereunder are normally shipped. Telfer shall not be obligated to purchase or otherwise obtain other supplies of such Product, crude petroleum or other feedstock from which such Product is derived to make up inadequate supplies or to replace the supplies so curtailed or cut off. Telfer shall not be obligated to make up deliveries omitted or curtailed hereunder, and any such deficiencies in deliveries shall be canceled from the contract with no liability to either party therefor.

12. **COMPLIANCE WITH LAWS AND REGULATIONS** — Customer agrees to comply with all laws, rules and regulations in any way relating to Customer’s purchase, ownership, transportation, receipt, handling, storage, processing, alteration, use, disposal or resale of the Products, alone or in combination with other substances or processes and shall indemnify, defend and hold Telfer harmless against all losses, claims, causes of action, penalties and liabilities arising out of Customer’s failure to comply with the foregoing.
13. **US SANCTIONS AND EMBARGOES** – Customer shall ensure that no volumes of the products will reach any countries, entities or individuals which are under sanctions and/or import or export restrictions of the United States or the country from which Telfer ships the Products.
14. **MISCELLANEOUS** — This Agreement shall not be assigned in whole or in part by either party without the written consent of the other party, except that Telfer may, upon written notice to Customer, assign its obligations hereunder to any affiliate of Telfer. No waiver by either party of any breach of any of the terms and conditions hereunder contained shall be construed as a waiver of any succeeding breach of the same or any other term and condition. This Agreement shall be governed by and construed in accordance with the laws of the State of California to the exclusion of its rules on conflicts of law. Telfer and Customer explicitly exclude the application of the United Nations Convention on the International Sale of Goods (1980). All legal proceedings arising out of or relating to this Agreement shall be brought in the courts of the State of California, County of Sacramento, or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of California, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the proceeding shall be heard and determined only in any such court and agrees not to bring any proceeding arising out of or relating to this Agreement in any other court. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.