



## Terms and Conditions of Sale

The following terms and conditions apply to the purchase of Products from Tersus Environmental, LLC (Tersus). By placing your order, you, the Buyer, agree to be bound by these terms and conditions.

**Entire Agreement:** Except as otherwise agreed upon in writing by the Buyer and Tersus, these Terms and Conditions of Sale ("Terms") constitute the final expression of the agreement between the Buyer and Tersus with respect to the subject matter hereof and a complete, fully integrated, and exclusive statement of their agreement in this regard. There are no understandings, agreements, covenants, representations, or warranties of any kind, explicit or implied, not expressed herein. No provision of any purchase order or other document issued by the Buyer will alter or add to these Terms, other than general commercial terms that vary from purchase order to purchase order, such as location, dates, and price, and any such provision or modification will be void and of no effect. No modification or extension of these Terms by the Buyer will be binding unless it is in writing and is signed by an authorized representative of Tersus, and no modification of these Terms will be affected by the parties' course of dealing, usage, or trade custom. In addition, no application of §2.207 of the Uniform Commercial Code (or its local equivalent) to "knock out" or otherwise modify, amend, supplement, or supersede any conditions of these Terms will have any effect. By accepting delivery of the Product, the Buyer will be considered to have assented to these Terms. If the Buyer and Tersus engage in any electronic transactions, including, but not limited to, electronic data interchange or facsimile exchanges, such electronic exchanges will be considered valid and legally binding and will be subject to these Terms.

**Separate Transactions:** All Purchase Orders will be subject to written acceptance by Tersus. Each shipment will constitute a separate and independent transaction. If the Buyer is in default of any of these Terms, Tersus may, without waiving its right to terminate these Terms, defer further shipments until the default is remedied (in which event Tersus may elect to extend these Terms for a period equal to the time during which shipments were so deferred); or Tersus may decline further performance of these Terms. Tersus may furthermore delay or refuse to ship a Product to the Buyer if the Buyer delays delivery, is in breach of any provision of these Terms, or if, in Tersus's opinion, the delivery or use of the Product may negatively impact environmental health or poses a safety hazard. Tersus may, but will not be obligated to, grant credit terms to Buyer. Acceptance of any order is subject to final credit approval by Tersus. If, in the judgment of Tersus, the financial responsibility of the Buyer becomes impaired at any time, Tersus may, without notice to the Buyer, suspend credit, cancel any unfilled orders, and/or decline to make further deliveries under these Terms, except upon the receipt, before shipment, of payment in full or satisfactory security for such payment. The Buyer agrees, upon request, to provide Tersus with its most recent financial statements and such other evidence of corporate and financial standing as Tersus may reasonably request from time to time to evaluate the Buyer's credit.

**Payment:** Payment in full is due in U.S. Dollars prior to shipment unless the Buyer has been approved for Tersus credit terms or COD payment. Tersus will accept payment via wire transfer or company check. Payment terms for approved open accounts are Net 30 days. Payment is not contingent on the Buyer's ability to collect or obtain funds from any other party. The Buyer agrees to pay a charge on all amounts past due at the rate of two percent (2%) per month (24% annually). In the event of non-payment, the Buyer agrees to pay Tersus' costs for collection, including reasonable attorney fees, court costs, and other expenses incurred by Tersus for such collection action, and, in addition, the reasonable value of Tersus' time and expenses spent for such collection action, computed according to Tersus' prevailing fee schedule and expense policies, as well as all applicable interest charges. An early payment discount of 1.5% Net 10 is available for cash, check, or Automated Clearing House (ACH) payments only.

**Preliminary Notice:** Please be aware that a Preliminary Notice or "Notice to Owner" may be served on behalf of Tersus for the project associated with this order. The Preliminary Notice IS NOT A LIEN. However, it GRANTS us the RIGHTS to file a Mechanics Lien/Construction Lien if needed.

**Product Returns:** No product sold under this agreement will be returned to Tersus without prior written permission. Approved product returns must be in their original condition, with unused and unopened bags or containers, and are subject to a 25% restocking fee, as specified in the product return approval. Return freight charges will be on the Buyer's account. Shipping charges are non-refundable. No returns will be accepted after thirty (30) days from the date of delivery.

Should Tersus order products based on an estimate provided by the Buyer or order products not typically carried in its inventory, the Buyer is obligated to purchase all such products. This obligation stands unless Tersus can resell the products at the same price and under substantially the same terms and conditions within thirty (30) days after receiving said products.

**Pricing:** The price for each Product purchased is reflected on your order based on the current rate schedules from our suppliers and are valid until the expiration date shown in this Quotation. In addition to the quoted Product price, the Buyer may pay a container deposit, cleaning fee, and shipping and handling charges according to your selected shipping method, plus all applicable taxes. Sales tax charges are estimated based on the delivery location provided. The actual sales tax rate is calculated at the time of invoice. Variations are due, but not limited to, county and or local sales tax rates.

**Sales/Use Tax:** The requirement for Tersus to collect state and local sales tax may change between the date of our quotation and shipment because of the United States Supreme Court 2018 ruling on South Dakota v. Wayfair, Inc., Et al., No. 17-494. Tersus is currently registered to collect sales tax and will automatically charge and withhold the applicable sales tax for orders delivered to addresses within **California, Colorado, Florida, Illinois, Indiana, Kansas, Massachusetts, Michigan, Missouri, New Jersey, North Carolina, Ohio, Pennsylvania, South Carolina, Tennessee, Texas, Wisconsin, and Wyoming**, unless the Buyer submits a valid Resale Certificate or Tax-Exempt Certificate, and indicates which products are covered by it at the time an order is placed. For all other locations, the Buyer will be responsible for remitting applicable sales/use tax.

**VAT (European Countries):** Prices quoted are exclusive of applicable VAT (ex-VAT) in Euros. Any increase in VAT or any new tax imposed between the time of placing the order and the time of delivery will be borne by Buyer. Tersus will add VAT or other applicable sales tax to our invoice at the appropriate prevailing rate in effect at the time of invoice.

**Shipping Methods and Schedules:** Tersus will attempt to ship the Products within the estimated times reflected on your order but will not be liable for any failure to do so. If Tersus learns it cannot ship within the estimated times, you will be advised via email or phone call of the new estimated shipment date. Unless the Buyer specifies in writing the desired method of transportation at the time of his/her acceptance of Tersus' quotation, Tersus will use its judgment in selecting the carrier and route. Delivery schedules are estimated and assume the timely receipt of all necessary information and documentation from the Buyer, and Tersus assumes no responsibility for delays. All shipments and requested lead times are subject to Tersus' ability to: (a) obtain necessary materials and Products, and (b) schedule or provide transportation. If the Buyer delays the delivery of any Product, Tersus may invoice the Buyer for the Product, and hold it at the Buyer's risk and expense pending further instructions.

Additional shipping charges may be assessed for any accessorial requested at the time of delivery. Please communicate any requirements for delivery to the customer service department at the time the order is placed. Standard delivery is between 8am to 5pm, Monday through Friday. Accessorial equipment can include, but is not limited to, lift gate and pallet jack at delivery, inside delivery, time definite deliveries, and delivery appointments. Shipping charges are non-refundable.

**Delivery:** Unless otherwise agreed to in writing by Tersus, (a) all prices are net, FOB Origin and (b) title to and risk of loss of the Product will pass to the Buyer at the FOB point. Tersus is not responsible for any loss, damage, or delay that may occur after Products have been accepted for shipment by the carrier.

The Buyer will cooperate fully with Tersus' efforts to deliver the Product and will be appropriately prepared to safely and promptly receive the Product when it is delivered.

The Buyer is responsible for checking Products to ensure that the correct volume, concentration levels, and type of Products have been received. Any shortage, excess, incorrect shipment, or defect must be reported to Tersus within seven (7) days of receipt of the Product by the Buyer. Tersus will not be responsible for any Claim for shortages or failure to meet specifications after this time. In the case of bulk tanker shipments, the weight of the Product reported by Tersus at the origin point will govern,

For bulk deliveries, the Buyer will provide adequate access to on-site tanks, or other suitable receptacles, to allow for the efficient unloading of the Product.

Late delivery or failure to supply shall in no event entitle the Buyer to vary or cancel these Terms, or to claim damages in respect thereof. Delivery of the Products to the Buyer's location will constitute delivery to the Buyer, and all risk of loss or damage shall thereupon be assumed by the Buyer.

**Events Beyond Tersus' Control:** Tersus will not be responsible if events beyond its control occur that make it impossible or commercially unreasonable for Tersus to perform, including "Acts of God" or "force majeure" events, vendor delays, and raw material shortages. Should shipments be held or stored beyond the delivery date for the convenience of the Buyer, Tersus may, at its discretion, assess reasonable charges for any expense arising from such a delay.

**Cancellation:** Orders may not be canceled that have already been processed.

**Limited Warranty:** Tersus warrants that the Product(s) sold match those specified on the invoice. Tersus makes no other warranty of any kind respecting the Product, and expressly disclaims all other warranties of whatever kind respecting the Product, including all warranties of merchantability and its fitness for a particular purpose. The buyer's sole remedy for breach of this limited warranty will be the refund of the purchase price, provided that any unused portion of the Product is promptly returned to Tersus. Under no circumstances will Tersus be liable for any consequential or other damages.

Replacement of, or credit for, defective Product is subject to and conditional upon:

1. Buyer's account with Tersus being current and in good standing;
2. Written notice from the Buyer within seven (7) days of delivery of any Product that does not meet specifications;
3. Proper storage of the Product in accordance with instructions;
4. Decontamination of storage receptacles in accordance with statutory regulations and use of best practices prior to placing any Product in the receptacle; and
5. Use of Product for intended purpose.

This limited warranty excludes damage to or alteration of Product arising from circumstances outside the control of Tersus, including, without limitation, mixing with other chemicals.

The Buyer agrees to use the Product in accordance with:

1. Any instructions provided to it by Tersus;
2. All federal, state and local laws and regulations governing the storage, use and maintenance of the Products; and
3. Best industry practices.

**Limitation of Remedies and Liability:** The remedies provided herein are your sole and exclusive remedies for breach of this agreement by Tersus. In no event will Tersus be liable to you for any damages, including incidental, consequential, special, or indirect damages. In no event will Tersus' liability to you ever exceed the total compensation received by Tersus for the products purchased.

**Information and Suggestions Provided by Tersus:** The information and suggestions provided by Tersus are furnished to help you evaluate the feasibility of using our technology at your site as a complimentary service and are therefore given on the express understanding and agreement of the recipient without warranty (expressed or implied) or liability of any kind. We are not a professional engineering firm and do not provide professional advice. Product sheets, brochures, instructions, technical advice, suggested recommendations by our staff, or other information provided by Tersus and/or the Companies we represent are provided as guidelines for the convenience of the Buyer only and should not be construed as a substitute for appropriate engineering council and geologic design by qualified professionals.

Correspondence and quotations should not be construed as a representation of suitability. Site-specific conditions vary and requirements for the use and the effectiveness of our Products will differ according to these specific circumstances. Our Products may not be suitable for some applications. Engaging professionals knowledgeable in soil and groundwater remediation and the use and application of our technology is highly recommended.

#### **General Provisions:**

1. **Notice:** Notice will be deemed properly given if hand delivered or sent by email, facsimile, overnight courier mail, or registered mail with a return receipt. A safety data sheet ("SDS") will be deemed properly given if sent via USPS or electronic mail.
2. The Buyer will not use the Tersus trademarks as part of the Buyer's name, nor register any name, including domain names, or use any trademarks that resemble those of Tersus. The Buyer acknowledges that he/she does not have the right to use Tersus' trademarks and that he/she may not use them without the prior written consent of Tersus.
3. "Reverse Engineering": The Buyer agrees not to perform actions that could enable the Buyer or a third party, person(s), corporation(s) or employee(s) of such entities to duplicate, reformulate, or imitate Tersus' Product(s).
4. The relationship of the parties herein is that of Buyer and Seller. Nothing in these Terms, and no course of dealing between the parties, will be construed as creating or implying an employment or agency relationship or a partnership or joint venture relationship between the parties or between one party and the other party's employees or agents. Accordingly, neither party will be obligated to bind the other party in any way, or to incur any liability or

otherwise act on behalf of the other party. Each party will be solely responsible for the payment of its employees' salaries (including the withholding of income taxes and social security), workers compensation, and all other employment benefits.

5. These Terms may be executed in one or more counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same document, without the necessity of producing the others. Signature by facsimile or by e-mail in portable document format (.pdf) will also bind the parties to these Terms.