



**Conditions of Sale  
Molycop USA  
as at April 2, 2020**

1. Acceptance: Any quotation by Moly-Cop USA LLC ("Seller") on the face hereof is merely an invitation for an offer from the buyer identified on the quotation ("Buyer"). Any resulting Buyer offer ("Order") must be accepted in writing by Seller. The Order is subject to these Conditions of Sale, and these Conditions of Sale must be attached to such Order. "Contract" means the Order as accepted in writing by Seller together with these Conditions of Sale. "Products" means the goods and services to be supplied by Seller pursuant to the Contract. The Contract constitutes the entire agreement between Seller and Buyer with respect to the Products, and supersedes all prior offers, negotiations, or agreements with respect thereto. Any terms or conditions proposed by Buyer which supplement, conflict with, or are in any way different to the Contract are hereby rejected. **IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT ALL BUYER ORDERS RESULTING HEREFROM MUST INCLUDE ALL TERMS AND CONDITIONS PRINTED HEREON.**
2. Prices: Prices will be Seller's prices in effect at time of shipment unless otherwise indicated in the Contract. Unless otherwise agreed in writing, the price charged for the Products shall be exclusive of any freight and insurance (and related costs), taxes, and customs duties.
3. Transportation Charges: Delivered prices or prices involving competitive transportation adjustments shall be subject to appropriate adjustment to reflect changes in transportation charges.
4. Taxes: No tax imposed in respect to the sale of the Products shall be included in any quotation by Seller. Any such tax shall be added to and paid by Buyer together with the purchase price. Buyer agrees to pay all applicable taxes, including without limitation sales, use, and excise taxes, and all applicable customs duties.
5. Payments: If Buyer fails to comply with any provision of the Contract or any other agreement between Buyer and Seller (including without limitation the making of timely payments), Seller may, at its option, defer shipments, or, without waiving any other rights it may have, terminate the Contract. All deliveries shall be subject to approval of Seller's Credit Department. Seller reserves the right before making any delivery to require payment in cash or security for payment, and if Buyer fails to comply with such requirement, Seller may terminate the Contract.
6. Security Interest: Buyer hereby grants to Seller a security interest in the Products to secure the payments of Buyer's obligations to Seller. Buyer hereby grants to Seller the authority and power of attorney to execute such financing statements and related documents on Buyer's behalf and in Buyer's name, and to perform such other acts as are necessary to perfect Seller's security interest in the Products to the fullest extent provided by law.
7. Passage of Title: Title to the Products shall not pass to Buyer until Seller has received payment in full for those Products. All risk of loss of, damage to or destruction of Products shall pass to Buyer upon delivery to the carrier at the point of shipment, at which point Seller shall have no further liability therefore. Neither Buyer nor the consignee shall have the right to divert or re-consign such shipment to any destination other than that specified in the bill of lading without permission of Seller or unless otherwise agreed. Seller reserves right to select the mode of transportation.
8. Limited Warranty: Subject to Section 9 hereof, Seller warrants that (i) Seller has good title and will convey good title to the Products; (ii) the Products are free from third party encumbrances; and (iii) the Products are of merchantable quality. Seller makes no warranties, express or implied, with respect to Products that are misused, abused, or operated on mechanical equipment that has been improperly designed or maintained. **THE WARRANTY SET FORTH HEREIN IS EXCLUSIVE AND IS IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY. SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND NOT SET FORTH HEREIN (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATIONS OR WARRANTIES AS TO MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**
9. Nuclear Application Exclusion: Buyer acknowledges and agrees that the Products are not for use in any nuclear and related application, and that Buyer will not use, cause to be used, or make available for use the Products in connection with any nuclear application, including without limitation use in connection with any nuclear reactor, nuclear power generating system, or nuclear waste (or spent fuel) disposal project. **NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE CONTRACT, IF BUYER USES THE PRODUCTS IN ANY NUCLEAR APPLICATION, ANY AND ALL WARRANTIES SET FORTH HEREIN ARE VOIDED AND DISCLAIMED BY SELLER, AND BUYER ACKNOWLEDGES AND AGREES THAT SUCH PRODUCTS ARE FURNISHED BY SELLER WITHOUT WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, OR ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, BUYER HEREBY WAIVES ANY AND ALL CLAIMS AND REMEDIES, INCLUDING WITHOUT LIMITATION ANY STATUTORY OR COMMON-LAW CLAIM FOR CONTRIBUTION, OR INDEMNIFICATION AGAINST SELLER WITH RESPECT TO USE OF THE PRODUCTS IN CONNECTION WITH ANY NUCLEAR APPLICATION.**
10. Limitation of Buyer's Remedies: Seller's liability under the Contract shall be limited to its obligation to replace that portion of the Products proven, in Seller's sole determination, to have failed to meet specifications or to have been defective in quality or workmanship at the time of their delivery, or, at Seller's option, to allow a reasonable credit therefore. Seller's total cumulative liability in any way arising from or pertaining to any Product shall not in any case exceed the purchase price paid by Buyer for such Product. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, IN CONTRACT OR IN TORT REGARDLESS OF THE CAUSE OF SUCH DAMAGES. "INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSS OR DAMAGES" INCLUDES WITHOUT LIMITATION ANY LOSS OF INCOME, PROFIT, OR BUSINESS, ANY LOSS OF GOODWILL OR REPUTATION, OR ANY LOSS OF VALUE OF INTELLECTUAL PROPERTY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF ANY PRIOR COURSE OF DEALING BETWEEN THE PARTIES.**
11. Failure or Delay in Delivery: Buyer acknowledges and agrees that no delivery dates are guaranteed. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CLAIMS FOR INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL LOSS OR DAMAGES OR ANY OTHER DAMAGES RESULTING FROM ANY FAILURE OR DELAY IN DELIVERY, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES AND REGARDLESS OF ANY PRIOR COURSE OF DEALING BETWEEN THE PARTIES.**
12. Claims by Buyer: Any claim by Buyer must be made within sixty (60) days of receipt of shipment, which Buyer and Seller agree is a reasonable time, or such claim shall be barred. Seller must be given an opportunity to investigate the claim before Buyer disposes of the subject Products. Seller shall incur no liability for damage, shortages, or other cause alleged to have occurred or existed at or prior to delivery to the carrier unless Buyer shall have entered full details thereof on its receipt to the carrier. A variation between Seller's and Buyer's scale weight or theoretical weight determination up to one percent (1%) shall be a permissible variation.
13. Default
  - a. Buyer will be in default if (i) Buyer breaches the Contract; (ii) payment for the Products has not been received by Seller by the due date of payment; (iii) Buyer makes an assignment for the benefit of its creditors, becomes the subject of any proceeding by or against Buyer (whether voluntary or involuntary) in bankruptcy or insolvency or winding up or for the appointment for a liquidator, or receiver, or Buyer becomes unable to pay its material debts as they become due; or (iv) Seller forms the opinion that Buyer's credit worthiness or credit standing alters from that indicated in its Commercial Credit Application.
  - b. If Buyer defaults, Seller may, at its sole option: (i) treat the whole of the Contract and any other agreement with Buyer as repudiated and sue for breach of contract; (ii) refuse to supply any goods to Buyer; (iii) without notice to Buyer withdraw or vary any credit Seller has provided to Buyer; (iv) without notice to Buyer make all monies owed by Buyer to Seller on any account immediately due and payable; and/or (v) exercise all right provided by law to a secured creditor in respect of Section 6 hereof.
14. Seller's Right of Termination: Notwithstanding anything to the contrary in the Contract, Seller may terminate this contract in whole or in part upon thirty (30) days' written notice to Buyer, whereupon Seller shall have no further obligations under the Contract. If the Contract is made in compliance with any governmental rule or regulation, plan, order or other directive, upon the termination thereof Seller shall have the option have the option of canceling the Contract in whole or in part.
15. Buyer's Right of Termination: Buyer may terminate this contract in whole or in part upon thirty (30) days' written notice to Seller. Title to all complete and partially completed Products and any raw materials or supplies acquired by Seller especially for the purpose of performing the Contract shall transfer to Buyer, and Buyer shall pay to Seller the sum of the following: 1) the Contract price for all Products that have been completed prior to termination; 2) the cost to Seller of the materials or work in process shown on the books of Seller in accordance with the accounting practice consistently maintained by Seller plus a reasonable profit thereon, but in no event more than the Contract price; 3) the cost of materials and supplies (including all storage and delivery costs) acquired especially for the purpose of performing this contract; and 4) all other incidental charges and expenses (including without limitation reasonable cancellation charges, if any, paid by Seller on account of any commitment(s) made in connection with the Contract).
16. Mechanical Properties/Chemical Analysis: Data referring to mechanical properties or chemical analysis are the result of tests performed on specimens obtained from specific locations of the product(s) in accordance with prescribed sampling procedures. Any warranty thereof is limited to the values obtained at such locations and by such procedures. There is no warranty with respect to values of the materials at other locations.
17. Intellectual Property: Buyer shall indemnify, defend, and hold harmless Seller and its affiliates and parent, and their directors, officers, employees, and agents, against all claims and all losses and damages (including reasonable attorneys' fees and court costs) incurred by Seller as a result of documents provided by Buyer to Seller for the purposes of or in the course of the supply of Products breaching a third party's intellectual property rights, including without limitation patents, copyrights, and trademarks, and other intellectual property rights ("Intellectual Property Rights"). Seller reserves the right to control, actively participate in, or monitor, through its own counsel, at Buyer's expense, any claim of infringement of Intellectual Property Rights or other such action brought against it. All Intellectual Property Rights as well as know-how incorporated into any Products and documents, tools, specifications, or other information transmitted in connection with the Contract shall remain the sole property of Seller. Seller shall indemnify Buyer against reasonable damages awarded against Buyer in any finally adjudicated patent infringement suit brought in a court of competent jurisdiction against Buyer by any third person claiming that Products infringe any valid and enforceable United States patent, provided, however, that Buyer gives Seller prompt notice of any such patent infringement suit, gives Seller the opportunity to defend such suit on behalf of Buyer, and fully cooperates with Seller with respect to such defense.
18. Seller's Remedies. No remedy of Seller referred to in the Contract is intended to be exclusive, but each shall be cumulative and in addition to any remedy otherwise available under applicable law. Buyer shall pay Seller all costs and expenses (including reasonable attorneys' fees and court costs) incurred by Seller in connection with the recovery of monies owed by Buyer to Seller or in otherwise enforcing Seller's rights against Buyer under the Contract. Buyer acknowledges and agrees that damages may be an inadequate remedy in the event of breach of the Contract and that any such breach may cause Seller great and irreparable injury and damage, and that Seller may be entitled, without waiving any additional rights or remedies otherwise available to Seller, to seek injunctive and other equitable relief in the event of a breach or intended or threatened breach of the Contract.

19. Confidentiality. Buyer shall not publicly disclose the existence of the Contract or the terms and conditions thereof. If Buyer receives any confidential information from Seller, Buyer must take reasonable steps to protect such information and may not use, copy, or disclose such information other than is required for Buyer to fulfill its obligations under the Contract. Upon Seller's request, Buyer shall immediately return or destroy any documents, drawings, other technical data, and other confidential information.
20. Permissible Variations: The Products shall be subject to Seller's standard manufacturing variations, tolerances, and classifications.
21. Technical Advice: In no event shall Seller be responsible for the results of any technical advice in connection with the design, installation or use of the Products.
22. Force Majeure: The parties will be excused from their respective performances under the Contract (except Buyer's payment obligations) if performance is due to any act of God, war, terrorism, riot, fire, flood or other casualty, compliance with governmental requests, laws, regulations, orders or actions, labor troubles (including without limitation any labor shortage, strike or other labor dispute), unavailability of or delays in raw material, supply, fuel, power or transportation, breakdown of equipment, explosion, accident or any other unforeseen circumstances or causes beyond such party's reasonable control. If such event affects Seller, Seller may, without liability, allocate and distribute Products among its customers in such proportions as Seller, in its sole discretion, determines.
23. Waiver: Failure or inability of Seller to enforce any right hereunder shall not waive any right with respect to any other or future rights or occurrences.
24. Governing Law: The Contract shall be governed by and construed and enforced in accordance with the laws of the State of Missouri, without regard to its conflict of laws principles. The Convention on Contracts for the International Sale of Goods shall not apply to the Contract. The parties agree that any state or federal court located in Kansas City, Missouri shall have exclusive jurisdiction over any disputes or controversies arising out of or in connection with this Contract, and the parties submit to the jurisdiction of such courts.
25. Miscellaneous: Buyer may not assign the Contract without the prior written consent of Seller. The Contract shall be binding upon and shall inure to the benefit of the parties and their permitted successors and assigns. If a provision of the Contract shall be held invalid, illegal, or unenforceable for any reason, the validity, legality, and enforceability of such provision in every other respect and of the remaining provisions of the Contract shall not be impaired. No change or modification to the Contract shall be binding on Seller unless in writing and signed by Seller.
26. Compliance: Buyer acknowledges that bribery and corruption are strictly prohibited under the Applicable Laws. Buyer warrants to Seller that it will comply with, and will ensure that its employees, contractors and other agents comply with, all of the provisions of the Applicable Laws in connection with the conduct of Buyer and its business. Seller may, without limiting any of its rights arising under this Contract or otherwise and without any liability to Buyer or any of Buyer's affiliates, immediately terminate this Contract if Seller is satisfied, in its sole discretion that Buyer or any of its affiliates has failed to comply with an Applicable Law or this clause 14. For the purposes of this clause, "Applicable Laws" means any law applicable to Seller, Buyer or the activities described in this Contract that relates to the prohibition of bribery or corruption including, but not limited to, the United States Foreign Corrupt Practices Act, the United Kingdom Bribery Act 2010, the Canadian Criminal Code and the Canadian Corruption of Foreign Public Officials Act. Buyer further warrants that neither Buyer nor any of its directors or officers is, nor to the knowledge of Buyer, are any of its employees, contractors or agents or any other person acting on behalf of the foregoing: a) listed on, or owned or controlled directly or indirectly, by any persons identified on, the "Specially Designated Nationals and Blocked Persons" list maintained by the Office of Foreign Assets Control of the United States Department of the Treasury ("OFAC"), or owned or controlled directly or indirectly by any person for the benefit of any country or territory, person or entity with respect to which United States persons are prohibited from doing business under any law, regulation or executive order administered pursuant to the OFAC regulations or which are otherwise subject to any United States sanctions administered by OFAC, or subject to any similar sanctions or measures imposed by the United Nations, the European Union or the United Kingdom ("Sanctions") or any similar list maintained by the United Nations, the European Union or the United Kingdom; b) located, organized or resident in a country or territory that is, or whose government is, the subject of Sanctions; or c) has in the past directly or indirectly supported or facilitated any person, government, entity or project subject to Sanctions, and this warranty continues to apply for the term of this Contract. Seller may, without limiting any of its rights arising under this Contract or otherwise and without any liability to Buyer or any of Buyer's affiliates, immediately terminate this Contract if Buyer is in breach of this warranty at any time.