

**EXHIBIT A - STANDARD TERMS AND CONDITIONS OF SALE****Lanexis**

Providing Solutions

8 THE GREEN STE R DOVER, DE 19901, USA

Refractory | Industrial Flooring | Corrosion Protection | Acid Resistant Linings Experts

**STANDARD TERMS AND CONDITIONS OF SALE**

These terms apply to any purchase, order, quote, invoice or sale between the Buyer of any products & services sold by Lanexis USA INC.

**1. BUYER'S AND SELLER'S ACCEPTANCE OF TERMS AND CONDITIONS**

The terms and conditions of this acknowledgment shall supersede any provisions, terms or conditions contained in any purchase order or other writing which the Buyer may give or receive, and the rights of the parties shall be governed exclusively by the terms and conditions hereof. Seller's acceptance of Buyer's order for the products described herein is expressly made conditional on assent by Buyer to all terms and conditions herein expressed, and either Buyer's failure to object in writing within seven (7) days from the date hereof, or Buyer's acceptance of all or any part of said products, whichever first occurs, shall be deemed to constitute such assent.

All terms and conditions of this acknowledgment are fully set forth herein and shall constitute the whole agreement between Seller and Buyer; and no agent, employee, representative or other party is authorized to bind the Seller by any agreement or warranty not expressed herein. No additions to or modifications of the terms and conditions hereof shall be effective unless reduced to writing and signed by an officer (Vice President or President) of the Seller.

**2. PRICES**

**a) SUBJECT TO CHANGE** - Price at time of shipment will apply. The Seller reserves the right to correct any

typographical or clerical errors in prices or specifications contained in this acknowledgment.

**b) F.O.B. POINT** - Unless otherwise stated, all prices are F.O.B. shipping point.

**c) TAXES & TARIFFS** - All prices stated are subject to any tax or other governmental charge payable by Seller upon the production, processing, import, sale, shipment and/or use of the products herein specified imposed by Federal, state, or municipal authority, or international government authority, and such additional tax or other governmental charge shall be added to the price herein stated and shall be paid by the Buyer.

**d) PACKAGING** - All prices are based on shipment in full standard Seller's packages. If special packaging is required, it must be requested by Buyer and shall be at Buyer's expense.

**e) PAYMENT TERMS** - All terms are net 30 days from invoice date unless otherwise specified. Amounts outstanding for more than 30 days shall bear interest at the rate of 2% per month (annual rate of 24%).

**f) ADDITIONAL CHARGES** - Seller may impose additional charges to buyer if legal action is necessary to recover past due invoice amounts; these charges may include all cost of suit, reasonable attorney's and collection agency fees and service charges.

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**EXHIBIT A - STANDARD TERMS AND CONDITIONS OF SALE****3. DELIVERY**

The Seller will make every reasonable effort to complete delivery as near the time intended as possible, but in no event will the Seller be held responsible for delays in performance resulting in whole or in part from any causes beyond the reasonable control of the Seller including, but not limited to, acts of God, fire, accident, strikes, or other differences with employees, breakdown of machinery or equipment, war, riot, or other civil disturbances, explosion, embargo, delays, losses or damages in transportation, shortages of labor or materials, delays in shipment or receiving of materials from suppliers, or acts of civil or military authority. The Seller shall be excused from making deliveries to the extent the time of completion of delivery of the product herein described for a period equal to the time of such interference. If delivery of any special item or items is delayed by Buyer for more than 30 days after completion, Seller may invoice for such items and hold Buyer's disposition for a reasonable period of time. Buyer shall make payment for such special items within 30 days from the date of invoice.

**4. TRANSPORTATION**

**A. F.O.B. POINT** - Since all prices are F.O.B. shipping point, all orders will be shipped on a freight collect basis via carriers offering the best combination known to Seller of availability, service, and rates. Any freight rates quoted are from reliable sources, but cannot be guaranteed as to correctness.

**B. DAMAGE OR LOSS IN TRANSIT** - Upon the Seller's delivery of the product described herein to a carrier shipment to Buyer, the risk of loss shifts to Buyer, and any damage or loss in transit is the responsibility of the Buyer. Seller assumes no liability for failure or delay in delivery due to carrier breakdowns or any cause beyond its control.

**C. NOTICE OF CLAIM** - Any claim on account of short count or for any other cause shall be deemed as waived by Buyer unless made within thirty (30) days from date of delivery of products to which claim relates.

**5. PREPAID AND ADD ON FREIGHT CHARGES**

A 22% surcharge will be added to all freight charges that are prepaid by Lanexis on Buyer's behalf and added to an invoice.

**6. OWNERSHIP OF SPECIAL ITEMS**

Payment of the Seller's charges for mold, tool, dies, jigs, fixtures, and/or equipment necessary for the production of this order will not convey ownership to Buyer and such items shall remain the property of Seller.

**7. GOVERNING LAW**

These Terms and Conditions and all sales of Products shall be governed by the laws of the State of Texas USA without regard to conflict-of-law rules.

Any dispute arising out of or relating to any Product, order, invoice, sale, or these Terms and Conditions shall first be discussed in good faith by authorized representatives of the parties. If not resolved within thirty (30) days, the dispute shall be finally resolved by binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. The seat of arbitration shall be Houston, Harris County, Texas, U.S.A. The arbitration shall be conducted in English by one arbitrator. The Federal Arbitration Act shall govern the arbitration provision. Judgment on the award may be entered in any court of competent jurisdiction.

Seller may seek injunctive relief, recovery of unpaid amounts, or protection of confidential information or intellectual property in any court of competent jurisdiction in Texas.

**EXHIBIT A - STANDARD TERMS AND CONDITIONS OF SALE****8. TECHNICAL ADVICE**

Any technical advice provided by Seller is furnished solely as an accommodation to Buyer; and Seller assumes no obligation or liability for the advice given or results obtained, all such advice being given and accepted at Buyer's sole risk.

**9. RETURN OF SHIPMENT AND/OR "LEFTOVERS"**

No returns whatsoever may be made by Buyer until Seller's representative has inspected products to be returned and has authorized in writing the terms and conditions for the specific return. The return shipment will be made on freight prepaid basis at the Buyer's expense. Items returned must be received in a resalable condition within 60 days after original shipment. A minimum of 30% restocking charge will be made on all items accepted for restocking.

**10. WARRANTY**

Seller warrants only that the Products shall materially conform to Seller's written specifications or applicable Technical Data Sheet at the time of shipment.

SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, COURSE OF DEALING, USAGE OF TRADE, TECHNICAL ADVICE, FIELD OBSERVATION, OR ORAL STATEMENT.

Buyer's sole and exclusive remedy, and Seller's sole obligation, shall be replacement of the nonconforming Product or credit of the purchase price paid for the specific Product, at Seller's option.

Seller shall not be responsible for removal, installation, reinstallation, field labor, contractor charges, freight, customs charges, downtime, dry-out, start-up, or third-party costs.

No claim shall be valid unless Buyer gives written notice within thirty (30) days after delivery and preserves the Product for Seller's inspection.

No claims of any kind, including but not limited to incidental, consequential, contingent, negligent, or punitive damages, will be honored for an amount which is greater than the purchase price of the products with respect to which damages are claimed and any right of the Buyer to consequential or incidental damages of any nature, howsoever arising, is specifically excluded. In no event regarding any claim arising from or relating to this agreement will Seller have any liability if Buyer fails to follow the written instructions— including but not limited to drying schedules and MSDS's—for the product.

**11. Limitation of Liability**

To the fullest extent permitted by law, Seller shall not be liable for indirect, incidental, special, consequential, exemplary, punitive, or commercial-loss damages, including loss of profits, loss of use, downtime, loss of production, business interruption, or cost of substitute goods.

Seller's total cumulative liability arising from or relating to any Product or sale shall not exceed the net invoice price paid for the specific Product giving rise to the claim.

These limitations apply whether the claim is based in contract, warranty, tort, negligence, strict liability, or otherwise.

**EXHIBIT A - STANDARD TERMS AND CONDITIONS OF SALE****12. CREDIT APPROVAL**

Shipments and deliveries shall, at all times, be subject to the approval of the Seller's credit department. If the Buyer should fail to pay according to the terms appearing on this acknowledgment, or, if in the opinion of the Seller, the financial responsibility of the Buyer at any time hereafter should become impaired, the Seller reserves the right, without prejudice to any claims for damages Seller may be entitled to make, to defer shipments or deliveries hereunder or under any other contract with Buyer, except upon receipt of satisfactory security or cash before shipment.

**13. CANCELLATION OF ORDER**

If Buyer requests cancellation of order, and order is for items normally stocked, cancellation charges will be limited to actual in and out freight incurred and a minimum of 30% of sales prices for restocking charge if order has been readied for shipment and/or shipped.

If order is for special non-stock items, cancellation charges will consist of actual in and out freight charges incurred and the full sales price less value to Seller, if any. Charges for Orders cancelled in process of manufacture will be determined at the lesser of full sales price or prorate of percent complete less salvage value to Seller, if any.

**14. PARAGRAPH TITLES**

The paragraph titles appearing in this acknowledgment are included only for convenience and are not to be construed as a part hereof or a modification of the scope of the particular paragraph to which they relate.

**15. ALLOWABLE OVERAGES AND TOLERANCE**

**A. BRICK** - In the case of refractory brick and shapes, Lanexis USA Inc. reserves the right to ship and invoice additional quantities in accordance with the following, with the pieces being the quantity ordered, and the percentage being the overage allowance:

- 1-100 pieces, 10%; 101-1,000 pieces, 7%; 1,001-5,000 pieces, 3%; over 5,000 pieces, 1%.
- Quantity of Brick will be rounded up for a "whole" pallet

**B. Specialties** - In the case of refractory specialties, Lanexis USA Inc. reserves the right to ship and invoice additional quantities in accordance with the following, with the weight being the quantity ordered, and the percentage being the overage allowance:

- 1-550 pounds, 100%; 551-10,000 pounds, 10%; over 10,000 pounds, 3%.

**C. Tolerance** - All orders will be furnished subject to SELLERS or manufacturers standard allowable tolerances.

**16. INSTALLATION METHOD**

Buyer acknowledges that installation methods, site conditions, workmanship, storage, handling, dry-out, heat-up, operating conditions, and compatibility with other materials materially affect Product performance and are outside Seller's control.

Seller shall not be liable for any claim, loss, damage, delay, or failure arising from improper selection, storage, handling, installation, application, dry-out, heat-up, operation, maintenance, misuse, alteration, or use inconsistent with Seller's SDS, TDS, labels, or written instructions.

**EXHIBIT A - STANDARD TERMS AND CONDITIONS OF SALE****17. RESALE, WARNINGS AND NO MODIFICATION**

If Buyer resells, supplies, transfers, or distributes any Product, Buyer shall provide all downstream purchasers, users, contractors, installers, and transferees with Seller's current SDS, TDS, labels, warnings, storage instructions, handling instructions, and use limitations.

Buyer shall not remove, alter, obscure, translate, relabel, repack, private-label, modify, mix, or alter any Product, label, warning, country-of-origin marking, batch code, or traceability marking without Seller's prior written consent.

Buyer shall ensure that any resale or transfer is subject to terms no less protective of Seller than these Terms and Conditions.

**18. CLAIMS**

Buyer shall immediately notify Seller in writing of any product complaint, injury allegation, exposure allegation, property damage, safety incident, regulatory inquiry, threatened claim, lawsuit, recall request, or allegation that any Product is defective.

Buyer shall not admit liability, settle any claim, issue any recall, make any public statement on Seller's behalf, or agree to any corrective action without Seller's prior written consent, except where required by law.

Buyer shall defend, indemnify, and hold harmless Seller, its affiliates, officers, directors, employees, agents, insurers, successors, and assigns from all claims, damages, liabilities, losses, costs, expenses, attorneys' fees, and expert fees arising out of or relating to:

- (a) Buyer's breach of these Terms or the Distributor Agreement;
- (b) improper storage, handling, transport, resale, installation, application, dry-out, heat-up, operation, or use;

- (c) failure to provide SDS, TDS, warnings, labels, or instructions downstream;
- (d) unauthorized product claims, technical statements, warranties, or representations;
- (e) alteration, relabeling, repackaging, modification, or misuse of Products;
- (f) Buyer's negligence, misconduct, or violation of law; or
- (g) claims caused by Buyer, its customers, contractors, installers, sub-distributors, or downstream parties.

This indemnity shall not apply only to the extent a final adjudication determines that the claim was caused solely by Seller's breach of the limited warranty stated herein.

**19. INSURANCE**

Buyer shall maintain commercially reasonable insurance, including commercial general liability and product liability coverage. If Buyer installs, applies, supervises, or performs field services relating to Products, Buyer shall maintain products-completed operations.

**20. REGULATORY AND SAFETY COMPLIANCE**

Buyer shall comply with all applicable laws, regulations, SDS, TDS, labels, warnings, storage requirements, handling instructions, and use limitations relating to the Products.

Buyer shall be responsible for all local, state, and downstream compliance obligations applicable to Buyer's sale, storage, handling, installation, resale, distribution, or use of Products, including occupational safety, chemical warnings, California Proposition 65 warnings where applicable, and customer/contractor warning obligations.

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