



***THIS PURCHASE ORDER IS SUBJECT TO THE  
TERMS AND PROVISIONS CONTAINED HEREIN***

**AMALGAMATED SUGAR COMPANY  
TERMS AND CONDITIONS OF PURCHASE**

**1. ACCEPTANCE**

This Order must be accepted as written, by written acknowledgment mailed to Amalgamated Sugar Company (“Buyer”) within ten (10) days of Order’s date, or by commencement of performance. After acceptance, this Order with any attachments will constitute the entire agreement of the parties. Any addition to, change in, modification of, revision of or waiver of this Order will be invalid and rejected unless specifically agreed to in writing by Buyer. If there is a contract signed by both parties governing this transaction, the terms of that contract shall govern. Except where inconsistent with the terms and conditions contained herein, this Order shall be governed by the Uniform Commercial Code provisions applicable to transactions in goods, regardless of whether this Order is characterized as a transaction in goods or a transaction in services.

**2. PRICES**

Buyer will not be billed at prices higher than those stated on the front of this Order unless other prices are specifically agreed to in writing by both parties. The prices will include all charges for packing, hauling, storage and transportation to the point of delivery. Seller will pay delivery charges in excess of those that Buyer has agreed to pay. Seller agrees that any price reduction made with respect to the items covered by this Order subsequent to its placement, but prior to payment, will be applicable to this Order.

**3. SALES TAX**

The prices stated include all taxes except those which Seller is required by law to collect from Buyer. Such taxes, if any, will be separately stated in Seller’s invoice and will be paid by Buyer unless an exemption is available. This Order is exempt from sales and use taxes if so indicated on the face hereof.

Buyer has received Direct Pay Authority from the State of Idaho which allows it to remit all sales taxes for items purchased directly to the State Tax Commission. However, independent contractors involved in the construction of improvements to real property must include sales taxes due and payable to them in their bid.

**4. DELIVERY**

Time is of the essence in this Order and substitutions will not be accepted. The entire Order must be shipped by the date requested. If Seller’s shipments fail to meet the delivery schedule Buyer, without limiting any other rights or remedies that it may have at law or in equity, may direct expedited routing of such shipments and any excess costs incurred as a result thereof will be debited to Seller’s account. Buyer will not be obligated to accept untimely, excess or under



shipments, and such shipments in whole or in part may, at Buyer's option, be returned to Seller, or held for disposition at Seller's expense and risk.

## **5. RISK OF LOSS**

Seller will bear all risk of loss of all goods covered by this Order until such goods have been delivered to the designated location.

## **6. MODIFICATION OF ORDER**

Buyer may modify this Order at any time by submitting a written notice or new Order to Seller. If such modification affects the cost or time of performance and if Seller makes a written claim for an equitable adjustment within thirty (30) days after receipt of notification of change, an equitable adjustment will be made by Buyer.

## **7. INSPECTION AND TESTS**

All goods ordered hereunder will be subject to inspection and testing by Buyer at all reasonable times and Seller agrees to permit access to its facilities at all reasonable times for inspection of goods by Buyer's agents or employees. It is expressly agreed that inspection and/or payments prior to delivery will not constitute final acceptance and that goods will be subject to final inspection after delivery to Buyer. If the goods delivered do not meet the specifications or otherwise do not conform to the requirements of this Order, Buyer will have the right to reject them. Goods which have been delivered and rejected in whole or in part may, at Buyer's option, be returned to Seller for reimbursement, credit or replacement, or may be held for disposition at Seller's expense and risk.

## **8. WARRANTIES**

Seller warrants that all goods and services furnished hereunder will conform to applicable specifications, instructions, drawings, data and samples, will be merchantable, of good quality and workmanship and free from defects, will be fit and sufficient for the purpose intended by Buyer, and will be free from all liens and encumbrances. These warranties will be in addition to all other warranties, express, implied, or statutory. All warranties will survive acceptance of and payment for any and all goods ordered pursuant hereto.

## **9. DRAWINGS AND SPECIFICATION REVIEW**

If during the term of this Order, Buyer's representatives review drawings, specifications, or other data developed by Seller in connection with the Order and make suggestions or comments or approve such documents and data, such actions are only expressions of opinion by Buyer and will not serve to relieve Seller of any of its responsibilities or obligations under this Order.

## **10. CONFIDENTIALITY**

Seller, on behalf of itself and its employees, agrees that any ideas, know-how, concepts, information, or processes received from Buyer or created by Seller in connection with the



performance of this Order shall be the property of Buyer and shall be preserved in the strictest of confidence of Seller and shall not be used or disclosed by Seller to third persons except to the extent that such use or disclosure is necessary for the proper performance of this Order. If disclosure to third persons is necessary, Seller shall ensure that such third persons hold such information in strictest confidence.

Buyer shall hold in confidence any confidential information received from Seller, except when such information is no longer confidential, is independently developed by Buyer, or is required by court order to be disclosed. If Buyer's agents or contractors need access to such information, Buyer will require them to maintain confidentiality as set forth above.

## **11. SUBCONTRACTING**

Seller agrees to obtain Buyer's prior written consent before subcontracting this Order or any substantial portion hereof, provided, however, that this limitation will not apply to the purchase of standard commercial supplies or raw materials.

## **12. TERMINATION**

Buyer may terminate the performance of work under this Order in whole or in part at any time, by written notice to Seller. Upon receipt of such notice, Seller will, unless the notice directs otherwise, immediately discontinue all work and the placing of all orders for materials, facilities, and supplies in connection with the performance of this Order and will promptly cancel all existing orders and terminate all subcontracts insofar as such orders or subcontracts are chargeable to this Order. Upon the termination of work under this Order, full and complete settlement of all claims of Seller with respect to the terminated work will be made as follows:

- (i) As compensation to Seller for such termination, unless such termination results from the default of Seller, Buyer will pay to Seller the percentage of the total Order price corresponding to the proportion of the amount of work completed on the date of termination to the total work to be done as Seller's full compensation for the work completed under this Order, and
- (ii) Upon Buyer's payment to Seller in accordance with this paragraph, title to all equipment, materials, work-in-progress, finished products, plans, drawings, specifications, information, special tooling, and other things for which Buyer has paid will automatically vest in Buyer.

Nothing contained in this paragraph will be construed to limit or affect any remedies which Buyer may have as a result of a default by Seller.

## **13. DEFAULT – CANCEL**

Buyer reserves the right, by written notice of default, to cancel this Order without liability to Buyer, in the event of any happening of any of the following: insolvency of Seller, the filing of a voluntary petition in bankruptcy by Seller, the filing of an involuntary petition to have Seller declared bankrupt, the appointment of a receiver or trustee for Seller, the execution by Seller of an



assignment for the benefit of creditors, the discontinuance of business by Seller, or the sale by Seller of the bulk of its assets other than in the usual course of business. If Seller fails to perform as specified herein, or if Seller breaches any of the terms hereof, Seller will be liable to Buyer for all damages, losses, and the right, without liability to Buyer upon written notice to Seller, to cancel this Order in whole or in part and/or to obtain goods ordered herein from another source with any excess cost resulting therefrom to be chargeable to Seller. The remedies provided in this paragraph will be cumulative and in addition to any other remedies provided at law or in equity.

#### **14. FORCE MAJEURE**

Neither party hereto will be liable for defaults or delays due to Acts of God or the public enemy, acts or demands of any government or governmental agency, strikes, fires, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence. Each party will notify the other in writing of the cause of any such delay within five (5) business days after the beginning hereof. If any such delay of Seller exceeds, or is likely to exceed, thirty (30) days, Buyer shall have the right to terminate this Order. Where only a portion of Seller's capacity to perform is so impaired, Seller shall make a fair allocation of its remaining production among the various customers then under contract for similar goods or services.

#### **15. COMPLIANCE WITH LAWS**

Seller agrees to comply with the provisions of all present and future federal, state, and local laws and ordinances and all orders, rules and regulations issued thereunder applicable and required by this Order and its performance. Unless Seller is exempt, the following orders, rules, and regulations and any other applicable equal opportunity requirements, all of which are hereby incorporated by this reference will apply: Section 202 of Executive Order 11246; the affirmative action clauses for the handicapped (41 C.F.R. 60-741.4) and for veterans (41 C.F.R. 60-250.4); the clauses requiring utilization of minority businesses (41 C.F.R. 1-1.1310-2), small businesses (32 C.F.R. 7-104.14 and 41 C.F.R. 1-1.710-3) and female-owned businesses (Executive Order 12138).

#### **16. MATERIAL SAFETY DATA SHEETS**

Material Safety Data Sheets shall be provided by Seller, upon delivery to Buyer of any goods required to have such sheets.

#### **17. OCCUPATIONAL SAFETY AND HEALTH ACT OF 1970**

Seller warrants and represents that the machinery, equipment, or other materials covered hereby shall, upon delivery to Buyer, be in compliance with the standards required by the Occupational Safety and Health Act of 1970, as well as the standards required by comparable state and local laws, if any, for such machinery, equipment, or other materials in effect at the time of such delivery. Seller warrants that in furnishing goods and services, all applicable American standards (including, but not limited to, ANSI, ASME, ASTM, and NEMA) have been complied with at the time of delivery.



## **18. NOTICE OF LABOR DISPUTES**

Whenever Seller has knowledge that any actual or potential labor dispute is delaying or threatens to delay the timely performance of this Order, Seller will immediately give written notice thereof including all relevant information with respect thereto, to Buyer.

## **19. INDEMNIFICATION AND INSURANCE**

Seller agrees to indemnify, and hold harmless Buyer, its successors, assigns, customers, and users of its products, against all suits at law or in equity and from all damages, claims and demands arising out of the death or injury of any person or damage to any property alleged to have resulted from the goods hereby ordered, and/or resulting from any act or omission of Seller, its agents or employees, and upon tendering of any suit or claim to Seller, to defend the same at Seller's expense as to all costs, fees, and damages. The foregoing indemnification will apply whether Seller or Buyer defends such suit or claim and whether the death, injury, or property damage is caused by the sole or concurrent negligence of Seller, except that such indemnification shall not apply if the death, injury, or property damage is caused by the sole negligence of Buyer.

To the extent that Seller's agents, employees, or subcontractors enter upon premises occupied by or under the control of Buyer, or any of its customers or suppliers in the course of the performance of this Order, Seller will take all necessary precautions to prevent the occurrence of any injury (including death) to any persons, or of any damage to any property, arising out of any act or omission of Seller, its agents, employees, or subcontractors, and except to the extent that any such injury or damage is due solely and directly to Buyer's negligence, will indemnify, defend and hold Buyer, its officers, employees, and agents harmless from any and all costs, losses, expenses, damages, claims, suits, or any liability whatsoever, including attorney's fees arising out of any act or omission of Seller, its agents, employees, or subcontractors.

During the term of this Order, Seller shall maintain the following insurance policies in the following amounts and with the following terms and conditions: (1) Commercial General Liability covering all operations on an occurrence basis against claims for bodily injury, property damage (including the loss of use thereof), personal injury and advertising injury with limits of no less than \$2 million; (2) Auto Liability covering liability arising out of any auto, including owned, non-owned and hired autos, with limits no less than \$1 million single limit each accident; and (3) worker's compensation and employer's liability insurance covering all employees engaged in the performance of this Order for claims arising under any applicable Worker's Compensation and Occupational Disease Acts, with worker's compensation at the statutory limits and employer's liability for bodily injury by accident, bodily injury by disease and aggregate of at no less than \$1 million. Buyer shall be named as an additional insured on the Commercial General Liability and Auto Liability policies. Waiver of Subrogation shall be granted in favor of Buyer on the Commercial General Liability, Auto Liability and Worker's Compensation policies. Seller's coverage naming Buyer as additional insured shall include an endorsement specifying that the Seller's coverage is primary and non-contributory to any other coverage available to Buyer, including, without limitation, coverage maintained by Buyer wherein Buyer is the named insured, and that no act or omission shall invalidate the coverage. Seller will furnish certificates evidencing such insurance which expressly provide that no expiration, termination, or modification will take place without thirty (30) days prior written notice to Buyer. Seller shall ensure that its



subcontractors and independent contractors have insurance coverage and endorsements consistent with these requirements, including the additional insured and waiver of subrogation requirements. Any acceptance of policies or certificates of insurance by Buyer, or failure of Seller to provide policies or certificates of insurance, shall in no way limit or relieve Seller of its duties and responsibilities.

## **20. PATENT INDEMNIFICATION**

Seller will indemnify and hold harmless Buyer, its successors, assigns, customers, and users of its products, against all suits at law or in equity and all loss, liability and damage, including costs and expenses, resulting from any claim that the manufacture, use, sale, or resale of any goods supplied under this Order infringe any patent or patent rights, and Seller will when notified, defend any action or claim of such infringement at its own expense.

## **21. ASSIGNMENT**

Neither this Order nor any rights or obligations herein may be assigned by Seller without Buyer approval.

## **22. CONTROLLING LAW**

All questions concerning the validity and operation of this Order and the performance of the obligations imposed on the parties under this Order will be governed by the laws of the place of delivery.

## **23. REMEDIES**

The remedies provided herein will be cumulative and in addition to any other remedies provided by law or equity. A waiver of a breach of any provision hereof will not constitute a waiver of any other breach hereof.

## **24. LANGUAGE**

All correspondence pertaining to this Order, or to any of the terms and conditions covered by this Order, will be in the English language.

## **25. ATTORNEY FEES**

In any proceeding brought to enforce this Order, the prevailing party will be entitled to recover reasonable expenses of litigation, including attorney's fees.

## **26. SETOFF**

All debts and obligations of Buyer and Seller to each other are mutual and subject to setoff. For purposes of this paragraph, Buyer and Seller shall be deemed to include each party's respective subsidiaries and affiliates which directly or indirectly control or are controlled by that party through 100% equity in ownership.