

PREFERRED SALE AGREEMENT TERMS AND CONDITIONS

- 1. Payment Terms.** Buyer will be invoiced monthly for the greater of (i) Minimum Monthly Quantity or (ii) or the actual tonnage delivered to Buyer, unless American Crystal has notified Buyer that an insufficient quantity of Byproducts was available to satisfy the Minimum Monthly Quantity, in which case Buyer shall only be invoiced for that portion of the Minimum Monthly Quantity that was available. Buyer agrees to pay American Crystal within 15 days following the date of the invoice. Finance charges of 1.5% per month (or the highest rate allowed by applicable law) will be charged on past due invoices. In the event an account is past due, American Crystal may (i) suspend future deliveries until such time as the account is current, or (ii) terminate the Agreement, and/or (iii) take any other action permitted by applicable law or American Crystal's credit policy, as the same may be amended from time to time, including but not limited to legal action to collect the amounts owed to American Crystal hereunder. American Crystal shall be entitled to recover from Buyer the costs of collection, including legal fees, incurred to collect past due amounts from Buyer.
- 2. Byproduct Delivery.** Byproducts will be delivered to Buyer FOB American Crystal's factory as specified on the face of this Agreement. American Crystal will load the Byproducts into Buyer's vehicle. Unless Buyer can establish to American Crystal's satisfaction that a greater load weight is legally permitted, American Crystal will load a maximum of 50,000 lbs of Byproduct per vehicle. American Crystal reserves the right to load less than 50,000 lbs if American Crystal determines, in its sole discretion, that Buyer's truck cannot handle such volume. The weight of Byproduct sold to Buyer will be measured (a) by the loader scale per bucket loaded into Buyer's vehicle, (b) by the fixed scale deck located on the factory site, or (c) if a loader bucket or fixed scale is not available, a 25 ton/load average will be charged unless the Buyer shows truck cannot hold 25 ton and reserves a lower amount for Byproduct, Buyer acknowledges that American Crystal's loader scales are not state certified and may be imprecise. By accepting the load, Buyer represents and warrants to American Crystal that the actual weight of the vehicle plus the load does not exceed the legally permissible gross vehicle weight rating (GVWR) for Buyer's vehicle, and Buyer will be liable for the payment of any citation or other damages incurred by American Crystal as a result of a breach of this representation and warranty. Title and risk of loss to the Byproducts shall pass from American Crystal to Buyer at the time the Byproducts are loaded into Buyer's vehicle. American Crystal shall have no liability to Buyer for any delays in the availability, loading and/or delivery of Byproducts. Byproducts will be loaded on a daily reservation "first come, first serve" basis. In the event Buyer fails to take delivery of the reserved volume of Byproducts within 24 hours after Buyer receives notice of availability from American Crystal, the Byproducts may be sold to another party. In the event Buyer fails to take delivery of the contracted Minimum Monthly Quantity of Byproducts in any month, Buyer will be liable for the payment of liquidated damages as provided in paragraph 8 hereof, and American Crystal may (i) consider this Agreement terminated with respect to the quantity not taken, and/or (ii) terminate this Agreement with respect to all remaining deliveries to be made in future months.
- 3. No warranty.** The Byproducts are being sold to the Buyer "AS IS, WHERE IS AND WITH ALL FAULTS" and Buyer acknowledges that American Crystal makes no representation or warranty as to the quality, value or condition of the Byproducts. ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED. Buyer assumes full responsibility for issues resulting from the use of the Byproducts, including damage, injury or illness to persons, property (including livestock to which the Byproducts are fed) or the environment. Buyer hereby acknowledges that the Byproducts may contain residual agricultural chemicals (including but not limited to Clopyralid) and assume the risk associated therewith.
- 4. Buyer's Operations.** Buyer agrees to operate in a professional manner while removing the Byproducts and agrees to follow any guidelines and safety and security requirements that may be established by American Crystal with regard to activities occurring on American Crystal property. Buyer agrees to procure and maintain continuing automobile and general liability insurance and provide American Crystal with evidence of such insurance upon request. Buyer agrees that all equipment used for transporting Byproducts will be in good working order and agrees to use only sealed trucks or trailers to prevent any spilling or leaking of water from the Byproducts during transport. Buyer shall be responsible for clean-up and removal of any Byproducts that may spill during transport.
- 5. Regulatory Compliance.** Buyer agrees to use and handle the Byproducts in a manner that is protective of surface and groundwater. Buyer agrees and understands that it shall be responsible for the proper management of the Byproducts and such management shall be in accordance with reasonable management practices and safeguards that shall be employed by the Buyer to prevent surface and groundwater contamination. Buyer acknowledges that any contamination of groundwater and/or surface water supplies as a result of the Buyer's handling or mishandling of the Byproducts could subject the Buyer to enforcement actions. Buyer and American Crystal must complete the Form 5 attached to this Agreement for each location where the Byproducts will be stored or used by Buyer. Buyer agrees to use the Byproducts only in the location(s) specified in the Form 5. Buyer and American Crystal must complete a new Form 5 prior to storing or using the Byproducts in a new location. Buyer grants American Crystal the right to inspect its facilities where the Byproducts will be stored or used, upon reasonable notification by an American Crystal representative.

- 6. Term and Termination.** The term of this Agreement commences on the date of last signature on the cover page hereto and continues through the last date of delivery noted on the cover page of this Agreement, unless earlier terminated as provided herein (the "Term"). This Agreement may be terminated: (i) by mutual agreement of the parties, or (ii) upon written notice by American Crystal in the event the Buyer defaults in its performance hereunder.
- 7. Indemnification.** Buyer shall defend, indemnify and hold harmless American Crystal, its members, directors, officers, employees, agents and representatives against any and all liabilities, costs and damages, including reasonable attorneys' fees, arising from or in connection with: (i) Any breach by Buyer of any provision of this Agreement; (ii) Injury or death to persons or damage to property arising from the negligent or intentional act or omission of Buyer, Buyer's employees, and subcontractors, in connection with or resulting from the transportation and/or use of the Byproducts; (iii) Any claim, demand, cause of action, loss, expense or liability on account of actual or alleged contamination, pollution, or public or private nuisance, arising directly or indirectly out of the transportation and/or use of the Byproducts. Buyer's indemnification obligation under this Section shall survive termination of this Agreement.
- 8. Liquidated Damages.** American Crystal and Buyer intend that Buyer will take delivery of the Minimum Monthly Quantity of the Byproducts set forth herein during the term of this Agreement. Should Buyer fail to take delivery of the Minimum Monthly Quantity, Buyer shall be deemed to be in breach of this Agreement and shall be responsible for paying liquidated damages to American Crystal in the amount of the purchase price per ton multiplied times the difference between the Minimum Monthly Quantity and the actual tons delivered to Buyer during that month. The liquidated damages shall be due and payable upon receipt of an invoice from American Crystal. The parties acknowledge and agree that American Crystal's damages resulting from Buyer's failure to take delivery of the Minimum Monthly Quantity will be difficult to calculate, and the liquidated damages provided herein are a reasonable estimation of the actual damages that may result from Buyer's breach. Buyer's payment of liquidated damages is the Buyer's sole liability for Buyer's failure to take delivery of the Minimum Monthly Quantity. The obligation to pay liquidated damages hereunder shall survive the termination or expiration of this Agreement.
- 9. Force Majeure.** American Crystal shall not be in breach of this Agreement or be liable for any delay in delivery or any non-delivery of Byproducts arising from Acts of God, wars or the consequences thereof, revolutions, riots, civil commotions, strikes, lockouts or other labor troubles (whether or not within American Crystal's power to settle), fire, floods, droughts, storms, accidents, breakdown of machinery, regulation or action of any governmental authority, or, without limiting the foregoing, any other circumstances of like or different kind beyond the reasonable control of American Crystal. If American Crystal's delivery is delayed in whole or in part by reason of any such circumstances, the Buyer shall nevertheless be obligated to accept later deliveries of Byproducts; provided, however, that if by reason of any such circumstances American Crystal does not deliver Byproducts within 30 days of the date delivery would otherwise be due, the delayed quantity shall be omitted from the Agreement and neither party shall be liable to the other party for the quantity so omitted, and the total quantity to be delivered hereunder shall be reduced by such quantity. If by reason of any of the foregoing circumstances American Crystal's supply of the Byproducts herein specified shall be sufficient to meet some but not all of the Minimum Monthly Quantity, then American Crystal shall have the right, at its option and without liability, to apportion its available sales supply among any and all purchasers in such a manner as American Crystal believes to be equitable. Nothing in this paragraph shall relieve the Buyer of its obligation to pay for Byproducts as to which the risk of loss has passed to the Buyer hereunder. Buyer and American Crystal acknowledge and agree that American Crystal is engaged in the business of processing pressed pulp into pulp pellets and from time to time such pulp pellet production may result in American Crystal being unable to provide the Minimum Monthly Quantity of pressed pulp to Buyer. Such inability to provide the pressed pulp to Buyer shall not result in a default under the terms of this Agreement and shall be considered an event of force majeure hereunder.
- 10. Miscellaneous Provisions.** This Agreement shall be governed in all respects by the laws of the State of Minnesota, excluding its conflict of laws rules. This Agreement constitutes the entire agreement of the parties and supersedes all prior agreements, and negotiations, whether written or oral, with respect to the subject matter hereof. No provision of this Agreement may be amended, modified or waived except by a writing signed by an authorized representative of the party against whom such amendment, modification or waiver is asserted; provided that American Crystal reserves the right to amend the Terms and Conditions from time to time by providing written notice of the amendment to Buyer. No waiver or any failure or omission to enforce any provision of this Agreement or any claim or right arising hereunder shall be deemed to be a waiver of any other provision of this Agreement or any other claim or right arising hereunder. Buyer may not assign this Agreement without American Crystal's written consent. The parties may execute the Agreement in any number of counterparts, all of which taken together shall constitute one and the same instrument. Delivery of an executed signature page by electronic means shall have the same effect as manual delivery of an originally executed signature page. Each party agrees that any electronic signatures of the parties included in the Agreement are intended to authenticate this writing and to have the same force and effect as manual signatures. "Electronic signature" means any electronic symbol or process attached to or logically associated with a record and executed and adopted by a party with the intent to sign such record pursuant to the Minnesota Uniform Electronic Transactions Act (Minn. Stat. Ann. § 325L.01 et seq.) as amended from time to time.