

## BYPRODUCTS SALE TERMS AND CONDITIONS

- 1. Purchase and Sale.** American Crystal will offer Byproducts for sale from time to time using an electronic notification system by which Buyer and other interested persons will receive an electronic notification (text message or e-mail) of available Byproducts. The notification will provide an internet link that identifies the quantity of available Byproducts by location, the price for the Byproducts, and any limitation on purchased quantities. The purchase and sale of Byproducts will be deemed complete and binding on Buyer at such time as Buyer reserves a specified quantity of Byproducts through the electronic reservation system. Buyer understands that the Byproducts will be sold on a first come, first served basis, to any interested buyers. Buyer hereby agrees that the authorized persons listed on the cover page of this Agreement may make purchases on the Buyer's behalf, and purchases made by such authorized persons will be binding on Buyer. Only persons so authorized may purchase Byproducts for Buyer. Buyer may not resell, offer for resale, transfer or offer for transfer any Byproducts purchased by Buyer and Buyer represents that any Byproducts purchased by Buyer shall be used solely by Buyer and not by any other person or entity.
- 2. Payment Terms.** Buyer will be invoiced as of the first day of each month for the actual tonnage of Byproducts delivered to Buyer during the prior month. Buyer agrees that amounts invoiced are due and payable to American Crystal no later than the 25<sup>th</sup> day of the month that the invoice is issued. 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; (ii) terminate this Agreement and remove Buyer from the electronic notification and reservations system, 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.
- 3. Byproduct Delivery.** Byproducts will be delivered to Buyer FOB the specified American Crystal factory pursuant to a mutually agreed upon delivery schedule. Buyer must take delivery and remove the Byproducts within 24 hours after American Crystal confirms Buyer's purchase of Byproducts. 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 for pressed pulp, tailings and wet pulp, or (b) by state certified truck scales for pellets and dry pulp. 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. In the event Buyer fails to take delivery of the contracted volume of Byproducts within 24 hours, the Byproducts may be sold to another party and Buyer will be liable for the payment of liquidated damages as provided in paragraph 4 hereof. Buyer may be removed from the electronic notification and reservation system in the event Buyer fails to take timely delivery of a contracted volume of Byproducts or otherwise breaches this Agreement.
- 4. Liquidated Damages.** American Crystal and Buyer intend that Buyer will take delivery of the Byproducts purchased by Buyer during the term of this Agreement. Should Buyer fail to take delivery of purchased Byproducts, 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 equal to the (i) the purchase price per ton or (ii) \$1.00 per ton, whichever is greater, multiplied times the actual tons not taken by 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 purchased Byproducts 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 Byproducts. The obligation to pay liquidated damages hereunder shall survive the termination or expiration of this Agreement.
- 5. 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 injury or illness to persons, property, 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.
- 6. 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.

**7. Regulatory Compliance.** Buyer agrees to use and handle the Byproducts in a manner that is protective of surface and groundwater, and in accordance with all applicable regulatory requirements. 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 must annually complete the Form 5 attached to this Agreement for each location where the Byproducts will be stored and/or used by Buyer. Buyer agrees to store and/or use the Byproducts only in the location(s) specified in the Form 5 completed for that year.

**8. Term and Termination.** The Agreement is effective as of the date of last signature and continues through the last date of delivery noted on the cover page of this Agreement, or until such earlier time as either party provides the other party with written notice of termination of the Agreement, in which case the Agreement shall be terminated effective as of the date the notice is given. Notice may be given by text message, e-mail or other written form addressed to the party to which notice is being given at the address provided on the cover page of this Agreement. Termination of the Agreement shall not affect Buyer's obligation to pay for any Byproducts delivered prior to the termination.

**9. 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.

**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.