

Pan American Lubricants

TERMS AND CONDITIONS OF SALE

1. Order subject to acceptance - All orders by any person ("Buyer") are subject to approval and acceptance in writing by Pikhust, LLC, a Nebraska limited liability company d/b/a Pan American Lubricants (hereinafter any one or more of the foregoing entity(s) may be referred to individually and/or collectively as "Pan American").
2. Payment - Payment terms for credit-approved orders are net 30 or terms agreed upon in writing by Pan American. A late payment charge of 1.5% per month will be added to all outstanding balances after thirty (30) days from date of invoice. Buyer agrees to reimburse Pan American for all collection costs including reasonable attorney fees, court costs, non-sufficient funds other bank charges which are necessary to enforce payment of invoiced amounts. All prices are exclusive of sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any governmental authority on any amounts payable to Buyer. Buyer shall be responsible for all such charges, costs, and taxes.
3. Entire Agreement/Precedence - All products and services furnished by Pan American are sold on the terms and conditions stated herein ("Terms") unless otherwise agreed to by Pan American in a signed writing. By engaging with Pan American for purchase or lease of goods or services, the "Buyer" agrees to all the terms and conditions contained herein. Submission of an order by Buyer to Pan American shall constitute Buyer's assent to these Terms. No modifications of any of these terms shall be affected by Buyer's purchase order, shipping request or similar form containing printed terms and conditions conflicting or inconsistent with the terms herein. These Terms shall take precedence over and supersede any terms and conditions previously communicated between Pan American and Buyer.
4. Delivery, Title, Risk of Loss and Security Interest - Delivery dates are approximate and are based upon prompt receipt of all necessary information from Buyer. Pan American strives to meet customer requirements but cannot be held responsible for delays in shipping outside its control. No liability shall be incurred by Pan American by reason of not filling any order or portion thereof due to such delays outside its reasonable control. In the event of any such delay, there will be no termination and the date of delivery shall be extended for a period equal to the time lost by reason of the delay. Unless otherwise agreed to in writing by Pan American, Pan American shall deliver the goods, using Pan American's standard methods for packaging and shipping such goods, to the most recent location for shipment indicated by Buyer. Title and risk of loss pass to Buyer F.O.B. point of shipment to Buyer. As collateral security for the payment of the purchase price of the goods, Buyer hereby grants Pan American a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under his provisions constitutes a purchase money security interest under the Nebraska Uniform Commercial Code.
5. Inspection/Acceptance/Return - Buyer shall be conclusively deemed to have inspected and accepted the goods after three (3) business days following receipt ("Inspection Period") unless Buyer notifies Pan American in writing of any nonconforming goods during the Inspection Period and furnishes such written evidence or documentation of the same. If Buyer timely notifies Pan American of any nonconforming goods, Pan American may, in its sole discretion (i) replace such nonconforming goods with conforming goods, or (ii) credit or refund the price for such nonconforming goods.
6. Warranty and Disclaimer - Pan American warrants to Buyer that for six (6) months from the date of shipment of the goods (or three (3) months in the case of a replacement product) (collectively, the "Warranty Period"), the goods will materially conform to Pan American's published specifications in effect as of the date of order. The warranties under this section do not apply where the goods have been: (i) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental conditions, use contrary to any instructions issued by Pan American, or improper testing, installation, storage, handling, repair, or maintenance; (ii) reconstructed, repaired, or altered by anyone other than Pan American or its authorized representative; or (iii) used with any third-party product, hardware, or product that has not been previously approved in writing by Pan American. **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH HEREIN, PAN AMERICAN MAKES NO EXPRESS OR IMPLIED WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY AGAINST**

INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY PAN AMERICAN, OR ANY OTHER INDIVIDUAL OR ENTITY ON PAN AMERICAN'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN HEREIN OF THIS AGREEMENT.

7. Limitation of Liability. - Buyer assumes all risk and liability for the use of Pan American's products, whether used individually or in combination with other products. In case of Pan American's breach of warranty or any other breach of the transaction contemplated by these terms and conditions (including without limitation, any repair made or undertaken to be made under warranty), the exclusive remedies therefore shall be: replacement of, or credit for, the purchase price of the defective products upon the return of the defective products. Selection among the exclusive remedies described above shall in each case be at Pan American's sole discretion and subject to Buyer's compliance with Pan American's return policies. **IN NO EVENT SHALL PAN AMERICAN OR ANY OF ITS REPRESENTATIVES BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE, OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF (I) WHETHER SUCH DAMAGES WERE FORESEEABLE, (II) WHETHER PAN AMERICAN WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (III) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. PAN AMERICAN'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID TO PAN AMERICAN PURSUANT TO THIS AGREEMENT IN THE TWO (2) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM.**
8. Export Classification and Responsibility - Buyer understands and is informed that products and items produced or supplied by Pan American are subject to US export laws and are controlled accordingly. The items purchased by the Buyer are authorized for export only to the country of ultimate destination for use by the ultimate consignee or end-user(s) identified in the Buyer's order to Pan American. The items sold by Pan American to the buyer may not be resold, transferred or otherwise disposed of, to any other country or to any other person than the authorized ultimate consignee or end-user(s), either in their original form or after being incorporated into other items, without first obtaining approval from the U.S. Government or as otherwise authorized by U.S. law and regulations.
9. End User Certification - The Buyer represents and warrants that goods or products supplied by Pan American are not intended for end use in any of the following applications: Any nuclear, biological or chemical weapons, or the missile systems that deliver them; for the design, development, production, testing, stockpiling or use of any weapons of mass destruction; or for any other use that the U.S. government prohibits.
10. Restricted Party Designation - The Buyer represents and warrants it is not on any "restricted persons list" or similar list or database maintained by the United States of America ("Restricted Persons List") shall immediately notify Pan American if the Buyer is, or becomes, listed on any Restricted Parties List, or if the Buyer's import or export privileges are otherwise denied, suspended or revoked, in whole or in part, by any Government entity or agency. The Buyer will immediately notify Pan American if it, an employee, or any other person that directly or indirectly controls, is controlled by, or is under common control with Buyer (collectively, "Affiliates") is included on any Restricted Parties List.
11. Indemnification - Buyer shall indemnify and hold harmless Pan American and its affiliates and shall pay to Pan American the monetary value of any losses and damages, including reasonable attorney's fees and court costs, arising directly or indirectly from or in connection with (i) Buyer or its Affiliate's use of the products and (ii) any negligence or willful misconduct of Buyer or its Affiliates in connection herewith.
12. Returns and Cancellation - Products may not be returned for credit without prior written authorization from Pan American. Requests for returns must be made within thirty (30) days from the date of shipment. Items not ordinarily in Pan American's stock or and those with modified items are not returnable. Products authorized for return in writing is subject to a restocking charge of not less than 40% of the purchase price. Freight and any reconditioning costs as may be necessary in Pan American's sole discretion shall be borne by the purchaser. Merchandise must be unopened and in original condition. Merchandise received which is improperly packaged or received damaged will not be credited. Merchandise must be returned within fourteen (14) days of issuance of RGA. No RGA's will be issued against unpaid invoices. All cancellations must be approved by Pan American in its sole discretion. Restocking charges will be determined and

applied to Buyer based on whether the product ordered is a “stock” versus “non-stock item.” A minimum restocking charge of forty percent (40%) of Buyer’s purchase price for the entire order will apply if: (i) Pan American has commenced or completed production of the ordered product(s) or (ii) the order is canceled less than 15 calendar days prior to Pan American’s shipment of such product(s).

13. Failure to “Pick Up” - Buyers who purchase product from Pan American on “ex-works” or similar terms will be charged a weekly inventory fee of two percent (2.0%) of the purchase price of product which is not “picked up” from Pan American carbons facilities within 5 business days of Pan American notification of order “ready for pickup” status to the buyer.
14. Force Majeure - Pan American shall not be liable or responsible to the Buyer, nor deemed to have defaulted on its obligations hereunder when prevented, hindered, delayed, or impeded by any cause beyond its reasonable control (other than financial or economic incapacity) such as, but not limited to acts of God, acts of public enemy, war, terrorist act, epidemic, pandemic, quarantine, natural catastrophe, insurrections, riots, strikes, labor disputes, work stoppages, fires, explosions, floods, electric power failure, late or defective delivery or shortage of materials, semi-finished or finished products necessary to make the goods catastrophic breakdown of or damage to plants, mines, quarries, equipment or facilities, interruptions in or exigencies of transportation, embargoes, orders, actions or non-actions of civil or military authorities, or governmental requirements or restrictions, which, directly or indirectly, prevent, hinder, delay, or impeded, in whole or in part, Pan American from performing its obligations hereunder (herein referred to as “Force Majeure”). Nothing withstanding the foregoing, Buyer shall in any event, be liable to Pan American for the invoice price of all goods shipped by Pan American.
15. Court Terms, Legal Fees and Costs - The terms and conditions of sale shall be construed in accordance with the laws of the State of Nebraska without giving effect to any conflict of laws provisions thereof. Any and all actions of law, suits in equity or other judicial proceedings for any breach of or enforcement of these terms and conditions of sale, or any provision hereof, shall be instituted and maintained only in the court of competent jurisdiction located in Omaha, Nebraska. Each party hereby waives any right to any change of venue. If any action at law or in equity is necessary to enforce or interpret these terms and conditions of sale or if it is determined that Buyer is in breach of same, then Pan American shall be entitled to all attorney’s fees and costs in addition to any other relief to which Pan American may be entitled.
16. General - Pan American shall comply with applicable federal, state and local laws and regulations. If necessary, delivery will be equitably adjusted to compensate Pan American for the cost of compliance with any laws or regulations. The delegation or assignment by Buyer of any or all of its duties or rights hereunder without Pan American’s prior written consent shall be void. These Terms benefit solely Pan American and Buyer. Nothing in these Terms, express or implied, confer any rights on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.
17. Legal Construction - If any one (1) or more of the provisions contained in these Terms shall for any reason be held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability shall not affect any other provision of these Terms and these Terms shall be construed as if the invalid, illegal or unenforceable provision had never been contained in it.
18. Waiver - Waiver by Pan American of any breach of these Terms shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. No waiver shall be affected unless it is in writing and signed by a duly authorized representative of Pan American.
19. Intellectual Property - No patents, copyrights, trademarks, or other intellectual property is being sold, assigned, or otherwise transferred to Buyer. Without limiting the generality of the foregoing, Pan American shall retain and own all right, title and interest in and to all inventions, discoveries, know-how, works of authorship, drawings, designs, processes, and ideas developed, discovered or conceived by Pan American or its Affiliates, including but not limited to those developed, discovered, and/or conceived in connection with the manufacture of the ordered products. It is expressly acknowledged that no drawings, designs, specifications, or anything else provided by Pan American to Buyer shall be deemed to be “work made for hire” as that term is used in connection with the U.S. Copyright Act. Without limiting the generality of the foregoing, all intellectual property rights (including but not limited to copyright) in and to any and all drawings and designs provided by Pan American in response to a Buyer requirement or request are and shall remain owned by Pan American, its Affiliates, or other third party who is Pan American’s licensor, if applicable. Pan American reserves all rights and waives no claims. By way of example, no license to manufacture is conveyed as part of the sale or otherwise. Pan American will not provide any manufacturing

drawings/documents, or any other kind of drawings/documents other than mutually-agreed drawings/documents to the extent expressly agreed to between the parties in writing as being part of the contract deliverables.

20. Confidential Information - All non-public, confidential, or proprietary information of Pan American, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by Pan American to Buyer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use in providing the sale of goods under these Terms and may not be disclosed or copied unless authorized in advance by Pan American in writing. Upon Pan American's request, Buyer shall promptly return all documents and other materials received from Pan American. Pan American shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.
21. Order-related Changes - Any and all order-related changes requested by Buyer (whether with respect to changes in quantity, drawings, designs, specifications, material, packing, time and place of delivery, mode of transportation, or otherwise) are subject to Pan American's approval in writing in its sole discretion. If any change causes an increase in the cost of, or the time required for, the performance of any part of the order, Pan American may make an equitable adjustment to the price and/or delivery schedule.