



## GENERAL TERMS AND CONDITIONS OF SALE FOR GRIGNARD PURE™, NORTH AMERICA

EFFECTIVE DATE: JANUARY 18, 2021

**GENERAL, INTERPRETATION AND COMPLETENESS:** This contract is deemed made in the state of Seller's principal place of business and shall be interpreted under the Uniform Commercial Code and other laws of said state in force at the date of contract. Products are sold only on the terms contained in this document. Different or additional terms, previously or hereafter proposed by Buyer, are not agreed to by Seller. This contract contains the final and entire agreement between Seller and Buyer and no understandings, representations, agreements, modifications, alterations or additions shall be effective unless in writing and signed by Seller and Buyer.

**RECITALS:** Pursuant to the terms of this Contract Seller and Buyer desire to establish a relationship in which Buyer will purchase Grignard Pure™<sup>1</sup> (the "Product") from Seller.

**TITLE, RISK OF LOSS AND INSURANCE:** Title to each shipment of the products sold hereunder and risk of loss thereon passes to Buyer when such products are delivered by Seller or its agent to a common carrier or licensed trucker consigned to Buyer, or his agent, but they remain subject to Seller's rights of stoppage in transit and of reclamation. If a strike, embargo, governmental action or any other cause beyond Seller's control prevents shipment or delivery to Buyer or his Agent, or if shipping instructions for any shipment are not received before shipment date, or if payment is to be made on or before delivery, title and risk of loss passes as soon as the shipment has been set aside by Seller and invoiced to Buyer (subject to Seller's rights as an unpaid Seller), payment shall be made in accordance with invoice as though the products had been delivered and accepted by Buyer and the Seller shall be under no duty to carry insurance thereafter.

**PRICES AND TERMS:** All prices quoted are F.O.B. point of shipment and Seller's standard terms of net 30 days after shipment, subject to the approval of its credit department. On all invoices not paid by maturity date, Seller reserves the right to charge a service fee from the maturity date of said invoice at the maximum lawful interest rate permitted by law, or such lower rate as Seller, in its sole discretion may determine. Pro-rata payments shall become due as shipments are made. If Buyer delays shipment or delivery, seller reserves the right to bill upon the date of originally scheduled shipment date and payment shall become due based upon the date of which Seller is prepared to make shipment. Buyer shall be liable for the price of all products substantially conforming to the contract, notwithstanding that Buyer may not have accepted, or may have revoked acceptance of same Seller may, at any time and from time to time, in its sole discretion, limit or cancel the credit of Buyer as to time and amount and as a consequence, may demand payment in cash before shipment of any unfilled portion of this contract and failure of Buyer to make any such payment within 10 days after demand shall constitute an event of default under this contract. Approval of credit for one or more shipments or contracts shall not be deemed a waiver of the provisions of this paragraph. Buyer hereby represents to Seller that is now solvent and agrees that each acceptance of delivery of the products sold hereunder shall constitute reaffirmation of this representation at such time. For any overdue payments, buyer shall pay, in addition to the overdue payment, any collection, attorneys' fees and court costs incurred in connection with collection.

**SALES AND SIMILAR TAXES:** Unless otherwise stated, the Seller's prices do not include sales, use, excise or similar taxes. Consequently, in addition to the prices specified herein, the Buyer hereunder shall pay the amount of any applicable present or future sales, use, excise or other similar tax applicable to the sale of the products.

**DELIVERY:** Seller shall not be liable for any default, delay or reduction in performance or inability to perform occasioned by any cause beyond its control or beyond the control of its suppliers or contractors, including, but not limited to strike, embargo, governmental action or inability to obtain materials. If performance by Seller is delayed by reason thereof, time for performance shall be extended for a period of time equal to the duration of such cause. If as a result of any such cause, Seller is unable to perform this contract in whole or in part, then to the extent that it is unable to perform the contract shall be deemed terminated without liability to either party, but shall remain in effect as to the unaffected portion thereof, if any.

**INSURANCE:** Commencing upon the first purchase of the Product through the later of: 1) twelve (12) months from the last delivery of the Product to Buyer or 2) while the Product is being utilized by Buyer, Buyer shall obtain and maintain at its sole expense the following insurance coverages: (i) employer's liability insurance with limits of at least \$1,000,000 for each occurrence and (ii) Commercial General Liability ("CGL") insurance, including Blanket Contractual Liability and Broad Form Property Damage, with limits of at least \$1,000,000 combined single limit for bodily injury and property damage per occurrence; \$2,000,000 in the annual aggregate.

Buyer will have all CGL insurance policies endorsed to name Luminator as an additional insured. All such insurance shall be primary with respect to the Buyer's activities and Luminator policies will be non-contributing and shall contain a provision waiving the insurer's right of subrogation against Luminator. Buyer will furnish Luminator with certificates of insurance that evidence the

minimum levels of insurance set forth herein. Luminator shall be notified in writing at least thirty (30) days prior to cancellation of or any change in the policy. Insurance companies providing coverage under this Agreement must be rated by A-M Best with at least an A-VII rating

**SEVERABILITY OF BREACH:** Any defect in quality, delay in delivery or non-delivery shall affect only the particular shipment so defective or delayed or not delivered and shall not affect the balance of this contract or any other contract. Any shipment not in dispute shall be paid for on the due date, as provided in this contract, without offset, defense or counterclaim and regardless of any controversy relating to any other shipment or undelivered product.

**DEFAULT BY BUYER:** If Buyer fails, with or without cause, to furnish Seller with instructions for, or refuses to accept deliveries of any product herein sold, or is otherwise in default under or breaches or repudiates this or any other contract with Seller or fails to pay when due any invoice under said contract, all of the foregoing being known as events or event of default, then in addition to any and all other remedies which Seller may have hereunder or by law Seller without notice (1) may invoice and declare due and payable all undelivered products, whether finished or unfinished, under this or any other contract with Seller and/or (2) may defer shipment and delivery hereunder and under any other contract until such event (2) of default is (are) removed and/or (3) may cancel any undelivered portion of this and/or any other contract in whole or in part (Buyer remaining liable for damages including but not limited to the difference between the resale price of such undelivered portion and the contract price thereof) and/or (4) may declare forthwith due and payable all outstanding invoices of Buyer under this or any other contract and/or (5) may at any time and from time to time sell all or any products of Buyer or products held for Buyer for the account of Buyer at public or private sales, Buyer is to be responsible for the costs and expenses of such sale and for any deficiency, Seller accounting to Buyer for any excess (Seller having the right to become buyer of such products at any such sale) and/or (6) Seller may take possession of any products Buyer has failed or refused to receive with the right to hold or sell same as above provided.

**WARRANTY:** EXCEPT FOR THE WARRANTY THAT THE PRODUCTS COMPLY WITH THEIR APPLICABLE SPECIFICATIONS, BUYER MAKES NO REPRESENTATION OR WARRANTY AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE OR ANY OTHER MATTER. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF BUYER HAS ANY AUTHORITY TO BIND BUYER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS CONTRACT.

**LIMITED WARRANTY REMEDY:** Seller's sole obligation and Buyer's sole remedy in the event of a breach of the above warranty shall be to replace such nonconforming Products with an equivalent or newer version, determined by Seller's sole discretion. Seller may require Buyer to return the alleged defective Products to Seller, EXW Seller's shipping origin, before remedying a breach of the warranty.

**LIMITATION OF PROCEEDINGS:** No action of any kind may be commenced against Seller more than one (1) year from the date Buyer's claim or cause of action against Seller first arose.

**WAIVER:** Waiver by Seller of a breach by Buyer of any provision of this Contract shall not be deemed a waiver of future compliance therewith and such provision as well as all other provisions hereunder shall remain in full force and effect.

**DAMAGES:** Seller's liability shall in no event except in the case of non-delivery exceed the cost of replacing Products or the amount of the purchase price paid with respect to the Product on which the claim for damage is based, whichever is lesser (Buyer is to return to Seller any Product with regard to which Buyer receives the amount of the purchase price paid) in the case of non-delivery Seller's liability shall not exceed the difference if any between the contract price and the market price on the contract day of delivery of the Product to be delivered.

**SELLER IN NO EVENT SHALL HAVE ANY LIABILITY WHATSOEVER FOR PAYMENT OF INCIDENTAL, CONSEQUENTIAL, INDIRECT OR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF PROFIT OR DAMAGES RESULTING FROM PERSONAL INJURY OR DEATH OR DAMAGE TO, OR LOSS OF USE OF ANY PROPERTY, INCLUDING BUT NOT LIMITED TO ANY PRODUCT SOLD HEREUNDER.**

**FORCE MAJEURE:** Neither party shall be liable to the other party for any delay or failure of delivery or other performance (except for any obligations to make payments to the other party under this Contract) caused in whole or in part by any contingency beyond a party's reasonable control, including and without limitation, fire, flood, acts of God, pandemic, epidemics, acts of any government or any agency or subdivision thereof, any acts of terrorism, or shortage or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices from regular sources.

**CONTROLLING LAW AND JURISDICTION:** This Contract shall be governed by, construed and interpreted in accordance with the laws of the State of Delaware, without giving effect to any choice of law rule that would cause the application of the laws of any



other jurisdiction. The UN Convention on Contracts for the International Sale of Goods shall not apply. All disputes, controversies and claims arising out of or relating to this Contract or the relationship between the parties shall be resolved exclusively in the federal or state courts of the State of Delaware or the United States District Court for the District of Delaware and the appellate courts have jurisdiction of appeals in such courts.

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<sup>1</sup> *Grignard Pure is a trademark of Grignard Pure LLC*