

## PACKAGING AGREEMENT

THIS AGREEMENT, entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Harcros Chemicals Inc., a Kansas corporation, (hereinafter referred to as the "Producer") and \_\_\_\_\_ with its principal office \_\_\_\_\_ (hereinafter referred to as the "Buyer").

WHEREAS, Producer desires to provide the products in accordance with and meeting the specifications set forth in Exhibit A (the "Product"); and

WHEREAS, Buyer desires to purchase such Products in accordance with the terms of this Agreement;

NOW THEREFORE, in consideration of the covenants and agreements of the parties and other good and valuable consideration, the parties agree as follows:

1. Entire Agreement. This Agreement constitutes the entire agreement between Producer and Buyer concerning its subject matter, and supersedes all previous agreements and understandings of the parties concerning such subject matter. This Agreement may not be amended or modified without the written consent of both parties.

2. Performance. Producer shall provide Products to Buyer in accordance with the requirements and specifications set forth on Exhibit A. Producer shall act as an independent contractor in all respects, and shall not have any authority to act on behalf of or to bind in any way the Buyer.

3. Compliance with Laws. Producer agrees that it will comply with all applicable local, state and federal laws, regulations, and requirements as known (collectively, "Laws"), in the performance of its duties under this Agreement.

4. Buyer-Supplied Materials.

If Buyer provides any materials to Producer in connection with the performance of this Agreement (such materials being referred to as "Buyer-Supplied Materials"), Buyer shall provide all necessary information for the safe handling, care, and safekeeping of Buyer-Supplied Materials. Producer shall use such Buyer-Supplied Materials only for the purposes of performing Producer's obligations hereunder.

5. Indemnification.

A. Except for loss or damage caused solely by the negligence of Producer, Buyer shall save and hold Producer harmless from and against all liabilities, and claims, with respect to or on account of personal injuries and diseases, including death, or property loss or damage to any person arising out of or in any manner connected with or related to: the performance of this Agreement by Producer, including claims arising out of the storage, shipment, packaging, handling or use of the Product;

B. Buyer shall at its own expense, defend any actions with respect to which Producer is entitled to indemnification hereunder, and Buyer shall pay all costs and expenses (including attorneys' fees).

6. Insurance.

A. The Buyer shall maintain in full effect during the term of this Agreement the following insurance coverage with an insurer having an A.M. Best rating of at least "A-".

1. **General Liability including Products Liability** with limits of:

\$2,000,000 per Occurrence

\$4,000,000 General Aggregate

\$4,000,000 Products/completed operations

*(Limits of liability can be met by primary policy coverage or a combination of primary and umbrella coverage.)*

*Coverage should include: Contractual Liability, products completed operations*

2. **Workers Compensation and Employers' Liability**

WC Limit: Statutory

EL Limit: \$1,000,000 for Bodily Injury due to accident

\$1,000,000 for Bodily Injury due to disease/each employee

\$1,000,000 for Bodily Injury due to disease/aggregate

3. **Auto Liability** with limits:

\$1,000,000 Combined single limit

*(If material being produced is a hazardous material/substance as defined by the United States, Department of Transportation all financial requirements applicable to these regulations will be met.)*

B. The Producer will be named as an additional insured and loss payee for coverage "1." above. The policy will also contain a "waiver of subrogation" in favor of the Producer.

C. The Producer will be given not less than 30 days notice of cancellation of any of the policies referenced in "A" of this section.

D. A certificate of insurance will be provided prior to the commencement of any work or service being performed.

7. Interruption. Neither party to this Agreement shall be responsible or liable, financially or otherwise, to the other party, for any failure to comply with the terms of this Agreement if such failure is caused by fire, flood, strikes, riots, acts of God or government, or by any other cause beyond its reasonable control and not due to its own acts or omissions. In the event that a party's performance is prevented by any such causes, such party shall use its best efforts to remove such cause and to resume performance hereunder.

8. Assignment. Without the advance written consent of Buyer, the Producer shall not (A) assign its rights or delegate its duties to any other party, or (B) appoint any subcontractor to perform any of its obligations hereunder.

9. Changes. Producer shall make no change in the work to be performed hereunder or perform any additional work unless approved in writing by Buyer.

10. Quantities, Prices and Payment of Packaging Work. The work to be performed hereunder shall be performed in accordance with work orders in the form of Exhibit A, as executed from time to time by the parties. The specific terms and conditions of each work order, including without limitation the specific work to be performed and Products to be supplied, and price, and terms and conditions for payment of same, shall be specified on the applicable work order and shall be subject to agreement by both parties. The terms and conditions of this Agreement shall govern all work orders, in addition to the specific provisions of such work orders. All of Producer's rights and remedies hereunder shall be in addition to and not in lieu of all rights and remedies available to Producer under applicable law.

11. Amendments. The terms of this Agreement and any work order issued hereunder may be amended from time to time by mutual written consent signed by authorized representatives of both parties hereunder.

12. Safe Handling. Buyer agrees to provide to Producer Material Safety Data Sheets for the Products, and for all hazardous materials provided by Buyer to Producer. Producer agrees to train and instruct its employees with regard to safety precautions and health hazards involved in carrying out the terms and conditions of this Agreement, and for the enforcement of such instructions.

13. Default and Termination.

(a) Buyer shall have the right to terminate any or all outstanding Work Orders if Producer fails to perform any of its obligations under the Agreement, and does not remedy such failure within thirty (30) days after written notice thereof has been given by Buyer to Producer. Buyer shall reimburse Producer for its costs associated with a work order canceled by Buyer under this Section 12 upon receipt of adequate documentation of such costs.

(b) If Buyer terminates this Agreement without cause, Buyer is responsible for any costs realized by Producer as a result of the termination.

14. Nonwaiver. Failure of either party to exercise any of its rights under this Agreement upon one occasion shall not constitute a waiver of its right to exercise any of such rights on any other occasion.

15. Notices. All notices and consents required or permitted to be given hereunder shall be in writing, and shall be delivered to a party at the addresses set forth below. Such notices and consents shall be sent by (i) certified United States Mail, return receipt requested, (ii) overnight delivery service via a recognized national overnight delivery service, (iii) via facsimile transmission, or (iv) by hand delivery. All notices and consents shall be effective upon receipt thereof by the party being notified. The parties' addresses for purposes of notice shall be as follows:

Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

Producer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

16. Term of Agreement. This Agreement shall continue in force until terminated by either party on 30 days' notice to the other party. Except as set forth in Section 12, the termination of this Agreement shall not affect the parties' rights and obligations hereunder with respect to any work orders outstanding at the time of termination. In addition, Producer's obligations under Sections 2, 3, 4, 5, and 11 shall continue in full force and effect following any termination of this Agreement and all work orders issued hereunder.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

HARCROS CHEMICALS INC. [Producer]

By: \_\_\_\_\_

Title: \_\_\_\_\_

\_\_\_\_\_ [Buyer]

By: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT A

Product to be produced: \_\_\_\_\_

Container sizes: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Formulation:

Raw Material \_\_\_\_\_ Percentage by Weight

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Special formulating instructions:

Items provided by Buyer: (Material Safety Data Sheets & other safety information are attached for raw materials.)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Producer's Signature of receipt of safety information:

\_\_\_\_\_

Items provided by Producer

Cost per unit

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Cost per unit produced: \_\_\_\_\_

The Exhibit will be in effect from the \_\_\_\_ day of \_\_\_\_\_, 20\_\_ until terminated as outlined in the Agreement pertaining to this Product.