

August 16, 2024

Justin Starr

New York State Department of Environmental Conservation

Division of Environmental Remediation

Bureau of Program Management, 12th Floor

625 Broadway

Albany, New York 12233-7012

Attention: Justin Starr

Subject: **RI FAP Addendum Four for the Irvington Rugs and Cleaners Site
Site (Site 360175)
Work Assignment # D009809-28
Earth Environment Engineering and Geology, P.C., Project # US-EI
3616216144**

Dear Mr. Starr,

Earth Environment Engineering and Geology, P.C. (EEE&G; Formerly MACTEC Engineering and Geology, PC [MACTEC]) is submitting this Field Activities Plan (FAP) Addendum for the Irvington Rugs and Cleaners Site (Site) (WA Issuance D009809-28). The original Remedial Investigation/Feasibility Study (RI/FS) FAP was issued in March 2022 (MACTEC, 2022).

To help refine FS alternatives and evaluate potential remedial options (in situ chemical oxidation and in situ bioremediation), EEE&G will conduct a Pre-design Investigation (PDI) to evaluate:

- the soil oxidant demand at the site,
- current soil and groundwater concentrations below the basement slab at 49 Main Street,
- the ability to inject amendment into the water table below the slab of 49 Main Street, and
- the hydraulic conductivity of the overburden.

Work will be conducted as described below. Locations are shown on Figure 1. Injection testing and hydraulic testing field data records are included in Attachment 1. The Standard Operating Procedures to be followed can be found in the MACTEC Quality Assurance Program Plan (MACTEC, 2020), and include:

1. S2- Water Level Measurement
2. S8- Chain of Custody Procedures
3. S13- Soil Sampling
4. S14- Field Preservation of Volatile Organic Analytes and Gasoline Range Organics Soil Samples
5. S16- Drill Oversight
6. S17- Direct Push Sampling
7. S21- Field Equipment Decontamination
8. S22- Monitoring Well-Microwell Installation

Other field work protocols, including handling investigation derived waste and health and safety can be found in the original Field Activities Plan (MACTEC, 2022).

49 Main Street Basement Sampling. To evaluate the contaminants of concern, and the ability to inject amendment into the identified contaminant source area, one test point (to be labeled as DP-18) will be conducted in the basement of 49 Main Street, in the vicinity of previous sample GW-02-16 (GW-02-16 shown on Figure 1). This location was approximately 18 feet east of the brick sump (labeled as HA-01 on Figure 1) and 2 feet west of the step down from the upper height level of the basement. The actual location may vary based on the overhead access requirements for the direct push equipment.

Work conducted in the basement will include the following:

- 1) Core an approximate 4-to-6-inch hole through the concrete slab; at proposed location DP-18, care will be taken to minimize dust.
- 2) Collect one groundwater sample using tubing and a peristaltic pump from just below the slab for analysis of Volatile Organic Compounds (VOCs) by United States Environmental Protection

Agency (USEPA) Method 8260. A liter of water will also be collected in a plastic container for inclusion with the Soil Oxidant Demand (SOD) test listed below.

- 3) Collect one soil sample from soil just below the basement slab (estimated at six-inches thick) for analysis of:
 - a. SOD testing (shipped to Evonik for “Klosure Soil Oxidant Demand Test) (Evonik sampling form and chain of custody included in Attachment 2);
 - b. VOCs by USEPA Method 8260; and,
 - c. Gasoline Range Organics and Diesel Range Organics (GRO/DRO) by USEPA Method 8015.
- 4) Complete one soil boring (DP-18) through the cored hole to eight feet below the top of slab (or refusal). Collect two soil samples from approximately 4-feet and 8-feet below top of slab. Samples should be roughly in the middle and bottom of the boring but can be biased towards photoionization detector detections or visual or olfactory signs of contamination. Soil samples will be submitted for analysis of:
 - a. Middle sample- VOCs, DRO, and GRO as per methods above; and
 - b. Deeper sample – VOCs.
- 5) If possible, collect a groundwater sample from the bottom of the boring by lowering tubing to the bottom of the boring and using a peristaltic pump. The sample will be submitted for analysis of VOCs.
- 6) Collect the remaining soil from the upper four feet of the boring and submit for grain size analysis (approximately one-gallon Ziplock bag).
- 7) Return the remaining soil from the bottom four feet of the boring to the bottom of the boring.
- 8) Install a water injection/sampling point into the top of the boring. The three-foot-long point will consist of a one-inch inside diameter PVC pipe with a two-foot screen and one foot riser. #0 sand will be placed around the well screen to just above the well screen, and bentonite chips and then a hydraulic cement will be used to seal the riser within the concrete floor. The well will be finished with flush mount casing to prevent tripping hazards
- 9) Conduct an injection test by gravity feeding potable water into the injection point (use field data record included in Attachment 1). This will be conducted by:
 - a. Mixing a 500-gallon tank of potable water with a little less than one ounce of Bright Dyes® yellow green fluorescent dye.

- b. Connecting a hose from the outside tank to the injection point with compression and/or screw fittings; the hose will include a flow meter and shut off valve.
- c. Opening the tank lines to gravity feed the water, measuring flow rate and pressure and noting time.
- d. Monitoring during the injection (and include times) of:
 - i. The floor for potential leaks of water.
 - ii. The brick sump in the basement for signs of increased water flow and dyed water (location HA-01 on Figure 1) (this is a one foot deep square pit that gravity flows to the sewer through a P-trap).
 - iii. The active sump in the basement (DW-02) for signs of dye (note if sump is pumping).
 - iv. The active sump in the basement of 53 Main Street (Irvington Rugs and Cleaners) (DW-01) for signs of dye (note if sump is pumping).
 - v. Periodically check water in sumps with fluorescent meter if nothing visible with the naked eye.
 - vi. Water levels in DP-05, located in the yard outside the basement.
- e. If water is observed entering the basement up through the concrete floor stop injections. If water stops entering, restart injections at slower flow rate. If water continues to enter the basement up through the floor, stop test.
- f. If no water comes up through the floor, continue injections until 500 gallons has been injected (or, if injecting slower than 2 gallons per minute, until four hours have passed), monitoring all the above for indications of dye. If water flow increases into brick sump, try to estimate flow rate into sump compared to injection rate.
- g. Upon completion of test, re-seal basement sumps/covers with Zinsser Joint Sealant: Watertite, or equivalent caulking and close injection well and clean basement as needed.

49 and 53 Main Street Exterior Hydraulic Conductivity Testing. Tests should be conducted in the two microwells in the backyard of 49 Main Street, DP-002 and DP-005 (Figure 1). Testing will be conducted by first checking water levels, and then installing a transducer into the well and calibrating it to water depth below top of casing. Initiate recording of data on transducer (recording at one second intervals). Tubing will then be lowered into the well and the well pumped at approximately 400 ml/min to evaluate water level at which draw down stabilizes (wells previously

pumped at 200 ml/min, with minimum draw down observed). Pump for at least 30 minutes at as stable a rate as possible (rate should be checked during pumping), measuring and recording depth to water in 5-minute intervals. Estimate of water pumped should be calculated based on flow rate and back checked with amount of water collected. At end of pumping, and prior to shutting off pump, restart transducer, with recordings set to one quarter second, and then shut off pump, measuring recharge until water is within 10 percent of starting water depth. Measurements will be collected to determine hydraulic conductivity (K). Field data record included in Attachment 1.

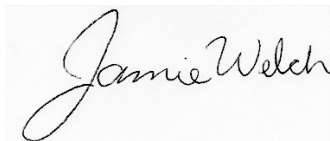
53 Main Street Soil Sampling. To evaluate background SOD, one soil boring (DP-02A) will be completed in the vicinity of DP-02 using direct push technology. Soil cores will be observed, and one soil sample will be collected from approximately six to eight feet below ground surface for total oxidant demand testing. Samples will be collected in a zip log bag and sent to Evoniks. In addition, one liter of water will be purged from DP-02 into a plastic container to include for the SOD test (no purging will be necessary).

Analytical samples other than SOD testing will be sent to Eurofins for analysis.

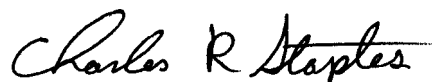
Please let us know if you have any questions or need any additional information.

Sincerely,

Earth Environment Engineering and Geology, P.C.



Jamie Welch
Project Engineer



Charles Staples, P.G.
Project Manager

References:

MACTEC Engineering and Geology, PC (MACTEC), 2022. Field Activities Plan, Remedial Investigation/Feasibility Study, Irvington Rugs and Cleaners. March 2022.

MACTEC, 2020. *Quality Assurance Program Plan and Program Field Activities Plan*. Prepared for the New York State Department of Environmental Conservation, Albany, New York. April 2020.

TABLES

Table 1: Proposed Sampling and Analytical Program

Location ID	Media	Property Location	Sampling Interval (feet BGS/ Below Top of Slab)	Sample ID	VOCs Method 8260	VOCs duplicate	VOCs MS/MSD	GRO/DRO Method 8015M	Soil Oxidant Demand (SOD)	Notes
Groundwater Sampling										
DP-18	Water	49 Main	1	360175-DP018001	1	1				
DP-18	Water	49 Main	8	360175-DP018008	1		1			
Soil Sampling										
DP-18	Soil	49 Main	1	360175-DP018001	1	1		1	1	
DP-18	Soil	49 Main	4	360175-DP018004	1			1		
DP-18	Soil	49 Main	7	360175-DP018007	1		1			
DP-02A	Soil	53 Main	7	360175-DP02A007					1	
TOTAL SAMPLES					5	2	2	2	2	

NOTES:
BGS = below ground surface
Sample ID: 360175 = NYSDEC Site No.; followed by location ID and sample depth.
Field Quality Control samples (duplicates, matrix spike, matrix spiked duplicates) will be collected at a frequency of 5% (1:20 samples) and are indicated by a letter at the end of the sample ID (D, MS, MD)
VOCs: Volatile Organic Compounds
GRO: Gasoline Range Organics
DRO: Diesel Range Organics
SOD test will be collected from top four feet of boring - After VOC/DRO/GRO sample collected.

FIGURES

ATTACHMENT 1

FIELD DATA RECORDS

Well ID: Initial Depth to Water:

Continue readings until measurements within 10% of original depth to water (% based on total drawdown)

Injection Testing Field Data Record

[illegible]

NOTES:

ATTACHMENT 2

EVONIK SAMPLING INFORMATION

BACKGROUND

When applying Klozur® persulfate to contaminated soil, a portion of the Klozur® persulfate will be utilized reacting with the contaminants of concern. However, Klozur® persulfate will also react to some extent with oxidizable components of the soil and ground-water, such as soil organics and reduced metals. This is known as the Soil Oxidant Demand (SOD), or Natural Oxidant Demand (NOD), and is a measure of how much additional activated persulfate is needed over the contaminant demand on the oxidant. The SOD is site dependent, and can vary with soil type and the amounts of organic fraction metals content in the soil. It is important to measure SOD for the site soils and groundwater prior to applying Klozur® persulfate in the field. If SOD is not accounted for when determining the total persulfate demand for a site, then there is a possibility that the persulfate may be under dosed, resulting in incomplete contaminant destruction or rebound.

Klozur® Soil Oxidant Demand Test (KDT) measures the consumption of activated persulfate after a 2 day and 7 day period when exposed to a non-contaminated, representative soil sample from the site. The test is run with the persulfate activation chemistry to account for the impact of the activator on the persulfate lifetime. It is important that the KDT test be performed with non-contaminated soil, because if the soil contains significant contaminant concentration, the apparent SOD demand will be inflated as a result of persulfate consumption from the contaminant. The contaminant demand is not quantified during a KDT test, and this would lead to an over-estimation of the total persulfate demand for a site.

TEST COST

A KDT test costs \$1000 USD for the first sample and activator. Additional samples and/or activators cost \$500 each. A report will be issued following the completion of the study.

SAMPLE REQUIREMENTS

Soil: 0.5kg of the representative soil. Please do not send more than 0.5kg. This is approximately the amount of soil equivalent to an 8oz jar or two sandwich sized zip top plastic bags. If sending the sample in a zip top bag, please double bag the sample. Fill to the brim of the container with no airspace on top. Seal with tape. The samples do not need to be packed on ice.

Groundwater: 1 liter of groundwater. Please do not send more than 1 liter. Fill to the top of the container with minimal air bubbles. Seal with tape. The samples do not need to be packed on ice.

SAMPLE SHIPPING

Please contact your local Evonik Technical Sales Representative prior to shipping samples. Samples shipping from outside the United States require specific labeling and shipping information. All samples should include information regarding the number of tests to be run and which persulfate activator(s) being investigated.

The Invoice will be generated upon completion of the final report provided by the Evonik Technical Sales Representative.

Samples should be shipped to:

Evonik

Attn: Brianna Desjardins

78 Sawyer Ave., Tonawanda, NY 14150

+1-716-879-0493

Chain of custody

Contact name	Address		
Company	City	State/Province	Postal Code
Telephone number	Country		
Email	Evonik Technical Sales Representative providing support		
Project name	Number of soil samples	Number of groundwater samples	

If more than one sample, do you want each soil sample ☐ tested separately or ☐ homogenized into one sample?

SAMPLE #	SAMPLE IDENTIFICATION	SAMPLE NOTE (special instructions, comments, etc)	If samples are contaminated please provide specific contaminants and concentrations expected to be present.

Select which activators you wish tested:

Alkaline Activation ☐ FeEDTA ☐ Klozur® One ☐
 Hydrogen Peroxide (please contact Technical Sales Rep) ☐ Other (please specify) _____

Internal Use only

Date Received: _____
 Received by: _____
 Project Reference Number: _____

Evonik Corporation
Soil & Groundwater Remediation
Klozur® Soil Oxidant Demand Test Order Form



Submit form: RemediationCustomerService@evonik.com

Date: _____ Account # (if known): _____

Is a PO required for order placement?* Yes ☐ No ☐

*If a PO is required, the test will not be performed until a PO is received or accompanies this order form. If no, the order will be placed based on the information provided on this form.

The Invoice will be generated upon completion of the final report provided by the Evonik Technical Sales Representative.

Customer Contact Information: (if different than the Chain of Custody contact)

Contact Name	Company
Email address	Phone
Project Name/Job # (if applicable)	Evonik Account Manager
Quote Number (if applicable)	PO #/Contract #

Sold-To (billing location):

Company Name	Address – Street
City	State/Province
Zip Code	Country
Send Invoice to	Customer Accounts Payable Contact

All orders for product ("Product") are subject to written acceptance by the Evonik entity that is to sell the Product ("Seller"), and to ongoing credit approval. The complete and exclusive agreement between Seller and buyer ("Buyer") is contained in these Terms and in other document(s), if any, agreed to in writing by Seller and Buyer (collectively, "Contract"), and cancels and supersedes any prior understandings or agreements. BUYER'S SUBMISSION OF ANY PURCHASE ORDER OR LIKE DOCUMENT ("ORDER") NOT SPECIFICALLY AGREED TO BY SELLER IN WRITING IN ADVANCE IS HEREBY REJECTED, AND AUTOMATICALLY CONSTITUTES BUYER'S IRREVOCABLE ACCEPTANCE OF THESE TERMS. ANY PERFORMANCE OR OTHER ACTION UNDERTAKEN BY SELLER FOLLOWING ITS RECEIPT OF SUCH ORDER, INCLUDING ACKNOWLEDGEMENT OF ORDER RECEIPT, OR SELLER'S RECEIPT OF ANY PAYMENT, AS WELL AS THE RIGHTS AND OBLIGATIONS OF SELLER AND BUYER, SHALL BE EXCLUSIVELY GOVERNED BY THESE TERMS (AND, IF APPLICABLE, THE REMAINDER OF THE CONTRACT).

1. ACCEPTANCE/PRICE/PAYMENT: Except as stated therein, quotations are held open for thirty (30) days from the date on the quotation. Prices quoted will be firm for orders scheduled by Seller to be delivered within sixty (60) days after the quotation date; otherwise, Seller reserves the right to apply prices in effect, including any applicable tariffs, at the time of delivery, including any surcharges applicable to the cost of production, distribution or storage of Product. Prices do not include sales, use, excise, or other similar taxes or governmental charges, and all such present and future taxes and charges will be paid by Buyer. If any government action, order or request prevents Seller from adjusting or continuing in effect the price stated in the Contract, Seller shall have the right to cancel the Contract with respect to all or a portion of Product deliverable thereunder, without any liability whatsoever. Each delivery of Product is a separate and independent transaction, and payment for each delivery shall be made accordingly. Payment is due thirty (30) days after invoice date. All payments are to be made in United States currency and in full, and are not subject to set-off, recoupment, abatement, counter-claim or any other adjustment. No Product order shall be cancelled except with the written consent of Seller.

2. DELIVERY: Delivery to Buyer of Product, and corresponding transfer of title and of all risk of loss exclusively to Buyer, shall occur upon Seller's loading of Product onto the carrier at Seller's shipping point or as otherwise agreed to in the Contract (the "Delivery Point"). Delivery dates, where stated, are approximate and shall not be strictly construed or enforced. Seller reserves the right to pack the Product otherwise than as specified by Buyer but otherwise in a commercially reasonable manner. Seller's weights shall govern, absent manifest error.

3. EXCUSED NON-PERFORMANCE: (a) Seller shall not be liable for breach of any obligation directly or indirectly attributable to events or circumstances beyond Seller's reasonable control, and whether affecting Seller or any person or entity whose performance Seller is relying upon, in whole or in part, to satisfy its obligations under the Contract (individually and collectively, "Force Majeure"). Such events include, but are not limited to, acts of God, acts of Buyer, war, riots, accident, fires, explosions, floods, sabotage, terrorism, governmental laws, rules, regulations, orders or action (whether valid or not valid), acts or failure to act by Seller's suppliers or third parties, natural disaster, weather conditions, or shortages of or inability to obtain (upon Seller's usual terms and from its usual sources of supply) suitable or sufficient energy, labor, machinery, facilities, raw materials, transportation, supplies or other resources or services. Labor difficulties, strike, lockout or other act of workers shall be conclusively presumed to be beyond Seller's reasonable control, and accordingly within the meaning and intent of this Paragraph 3. All or some of the quantities of Product deliverable under, or other performance by Seller under, the Contract that is affected by a Force Majeure event may, in Seller's sole and absolute discretion, be eliminated and/or suspended from the operation of the Contract (with the elimination and/or suspension of Buyer's corresponding obligations), but such Contract shall remain otherwise unaffected.

(b) In no event shall Seller be required to acquire alternative product and/or services from a third party in the event of a Force Majeure. If Seller is unable to supply the quantity of Product stated in the Contract, it may in its sole discretion, without any liability, allocate its available supply among any or all purchasers, as well as itself and its affiliates, in a manner that it determines in good faith to be fair and reasonable.

(c) If, in Seller's sole and exclusive good faith judgment, (i) its compliance with any governmental law, regulation, rule, order or action (including but not limited to those relating to environment, energy, occupational safety and health, toxic substances, product safety, packaging, consumer protection or transportation) renders the production, marketing or transportation of the Product economically, technically or commercially unfeasible, or (ii) the manufacture, export, import, sale and/or use of the Product, or of any related component or process, by it or any of its affiliates, or by Buyer or any of Buyer's customers, may breach, violate or infringe any patent or intellectual property right, Seller has the right without liability to discontinue or limit its production or sale of Product hereunder.

4. PRODUCT SAFETY: BUYER COVENANTS AND AGREES TO TRANSPORT, STORE, HANDLE, USE, DISPOSE OF AND OTHERWISE DEAL WITH PRODUCT SAFELY AND IN STRICT COMPLIANCE WITH ALL LAWS AND REGULATIONS AND ALL APPLICABLE STANDARDS OF CARE, INCLUDING IN A MANNER NO LESS STRINGENT THAN AS SET FORTH IN SELLER'S LABELS, MATERIAL SAFETY DATA SHEETS AND OTHER SAFETY AND HEALTH INFORMATION. Seller does not warrant the safety of the Product or its use, whether alone or in combination with any other substance or in any process or equipment. Buyer assumes all responsibility for warning its employees, customers, and contractors of any hazards associated with the Product, including those arising from incorporation of the Product into other substances or use in process(es). Seller assumes no liability for Buyer's failure to comply with Buyer's obligations under the E.U. REACH (Registration, Evaluation, Authorization, and Restriction of Chemicals) regulations.

5. WARRANTY: SELLER MAKES NO WARRANTY OF, AND SHALL HAVE NO LIABILITY FOR, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE (EVEN IF SELLER IS AWARE OF SUCH PURPOSE) OR OTHERWISE, WHETHER EXPRESS OR IMPLIED, AT LAW OR IN EQUITY OR OTHERWISE, OTHER THAN THAT (A) THE PRODUCT, UPON DELIVERY AT THE DELIVERY POINT AND NOT ALTERED OR MODIFIED BY BUYER OR ANY THIRD PARTY, SHALL MEET THE SPECIFICATIONS STATED IN THE CONTRACT, AND (B) SELLER SHALL TRANSFER TO BUYER GOOD TITLE TO PRODUCT. IF NO SPECIFICATIONS ARE SO STATED, THEN AT THE DELIVERY POINT PRODUCT SHALL MEET SELLER'S SPECIFICATIONS FOR THE PRODUCT AT THE TIME OF ITS MANUFACTURE. NO OTHER WARRANTY OR LIABILITY WHATSOEVER, EXPRESS OR IMPLIED, AND WHETHER ARISING BY OPERATION OF LAW, STATUTE OR CUSTOM, SHALL APPLY. Product meeting specifications must be accepted and paid for by Buyer. Buyer agrees to inspect the Product and its packaging immediately upon such delivery and to give notice in writing to Seller of any claim within thirty calendar (30) days after such delivery. Failure to give such notice constitutes an unqualified acceptance of the Product and a waiver of all claims with respect thereto.

6. LIABILITY: Seller's total liability shall be limited to the purchase price of the Product supplied (or to have been supplied) hereunder in respect of which Damages are claimed. All technical or other advice, recommendation or assistance by Seller, whether or not at Buyer's request, with respect to the Product, its processing, further manufacture, or otherwise, is given gratis by Seller and Seller shall not be liable for, and Buyer assumes all risk of, same and the consequences thereof. OTHER THAN AS SET FORTH IN THIS

PARAGRAPH 6, SELLER SHALL IN NO EVENT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, INCIDENTAL OR OTHER DAMAGES, AND REGARDLESS (i) WHETHER THE CLAIM IS BASED ON WARRANTY, CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, AND (ii) WHETHER SELLER WAS OR SHOULD HAVE BEEN AWARE OF SAME. Upon satisfactory proof of claim by Buyer of Product not meeting specifications as provided in this Contract, and as Buyer's exclusive remedy, Seller will within a reasonable time supply Buyer at the Delivery Point with replacement Product meeting specifications, free of charge, freight prepaid or, at Seller's option, refund the purchase price for the Product upon return of such non-conforming Product. Buyer claims for replacements and returns for credit will not be allowed unless authorized by Seller in writing. The Buyer shall indemnify, defend and hold harmless Seller and its affiliates from and against all claims, proceedings, damages, costs, fees, expenses (including reasonable attorneys' fees and expenses), liabilities, losses, obligations, judgments, and penalties ("Damages") arising out of, or in connection with, any actual or alleged breach by Buyer of its obligations under the Contract, and also from Buyer's transportation, use, storage, handling, disposal, resale of or other dealing with Product.

7. LIMITATIONS OF ACTIONS: Subject to Paragraph 5, Buyer's right to commence a legal action arising out of or in connection with the Contract or the Product expires one (1) year after the cause of action has accrued. Buyer hereby waives any otherwise applicable statute of limitations. Failure by Buyer to commence a legal action within one year forever bars Buyer from commencing any legal action with respect thereto.

8. MANUFACTURING DEVICES AND CONFIDENTIAL INFORMATION: All manufacturing devices, designs, formulas, data, or other technical information of Seller or any of its affiliates relating to the Contract will remain Seller's or its affiliates' confidential property, and Buyer shall not have any rights thereto, nor any right to disclose such items or information to any third party. Nothing in the Contract shall be construed (by implication, estoppel or otherwise) as granting, or as an undertaking by Seller to subsequently grant, to Buyer any license, right, title or interest in or to any present or future patent, patent application, know-how, copyright, trademark, trade secret or other proprietary right.

9. BUYER'S CREDIT/COLLECTION: Notwithstanding any prior credit approval, if Buyer fails to pay in full for any one invoice when payment is due, or if at any time Seller in its sole and exclusive good faith judgment determines Buyer's credit or payment history to be unacceptable, or believes that Buyer's future credit will be unacceptable, Seller reserves the right, among other remedies and without any liability, (a) to cancel any order or to terminate the Contract, (b) to suspend or terminate any shipments of Product, or (c) to require payment in advance or other security for future deliveries. Buyer shall be responsible for the payment of reasonable attorneys' fees and related costs and expenses incurred by Seller in (i) any claim or action by Seller to enforce the Contract, and (ii) successfully defending any claim or action by Buyer.

10. COMPLIANCE: Seller's policies concerning social, safety and environmental matters can be found at www.evonik.com/responsibility. Seller expects that all parties in its supply chain and anyone using Seller's products for other than an end-use similarly meet such standards. Buyer shall comply with all applicable legal requirements in its import, use, transport, storage, distribution, and export or re-export of Product (especially if not an end-use), including compliance with the U.S. Foreign Corrupt Practices Act. Seller's export of Product and any related technical information may be subject to laws and regulations controlling the export and re-export of products and data. Seller shall not be obligated to export, transfer or deliver any Products and related data to Buyer if prohibited by applicable law or until all necessary government registrations or authorizations have been obtained. Seller shall not be liable for any expenses or damages resulting from failure to obtain or delays in obtaining any such required government authorizations and may, at its option, rescind a sale if the necessary registrations or authorizations cannot be obtained or are delayed.

11. BINDING EFFECT/ASSIGNMENT: The Contract shall be binding on the successors and assigns of Buyer and Seller; provided, however, that Buyer shall not, directly or indirectly, and whether by operation of law or otherwise, assign any of its rights or delegate any of its obligations under the Contract, or suffer the same to occur without the prior written consent of Seller, signed by Seller. Other than Seller's affiliates, there are no third-party beneficiaries to the Contract.

12. WAIVER/SEVERABILITY: (a) Seller's failure in any instance to insist upon strict performance of any provision of the Contract will not constitute a continuing waiver of such provision, or a waiver of any other provision. No waiver by Seller shall be deemed to arise from any course of dealing or trade custom, and will only be effective if set forth in a separate writing specifically identifying the matter waived, and signed by Seller. (b) If any provision of the Contract is held to be wholly or partly invalid, the validity of the remaining provisions shall not be affected.

13. GOVERNING LAW/CONSTRUCTION/WAIVER OF JURY TRIAL: The Contract shall be interpreted and enforced in accordance with the laws of the State of New Jersey, U.S.A., without regard to the United Nations Convention on the International Sale of Goods or other international treaty, rule or accord, and without regard to conflicts of law principles. These Terms shall supersede any inconsistent provision of any other part of the Contract, unless and to the extent such provision expressly states that it will supersede these Terms. Paragraph headings are exclusively for reference purposes, only. Seller and Buyer hereby irrevocably submit to the exclusive jurisdiction of the federal and state courts located in the State of New Jersey for the resolution of any suit, action or proceeding, whether by way of claim or counterclaim, under the Contract, and Buyer agrees not to assert any defense to any suit, action or proceeding initiated by Seller based upon improper venue or inconvenient forum. BUYER AGREES THAT ANY SUIT, ACTION OR PROCEEDING, WHETHER BY WAY OF CLAIM OR COUNTERCLAIM, BROUGHT BY IT RELATED TO THE CONTRACT SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BUYER HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING.