

TERMS AND CONDITIONS OF COMMERCIAL SALE OF PRODUCTS OF Q. VANDENBERG & SONS, INC., D.B.A. TOTALGREEN INC.

1. OFFER, CONFIRMATION OR AGREEMENT

These terms and conditions of commercial sale of Q. Vandenberg & Sons, Inc., Doing Business As TotalGreen Inc., ("TotalGreen") (the "Terms and Conditions") apply to and form an integral part of all quotations and offers made by TotalGreen, all acceptances, acknowledgements and confirmations by TotalGreen of any orders by Buyer and any agreements ("Agreements") regarding the sale by TotalGreen and purchase by Buyer of goods and services ("Products"), unless and to the extent TotalGreen explicitly agrees otherwise. Any terms and conditions set forth on any document or documents issued by Buyer either before or after issuance of any document by TotalGreen setting forth or referring to these Terms and Conditions are hereby explicitly rejected and disregarded by TotalGreen, and any such terms shall be wholly inapplicable to any sale made by TotalGreen to Buyer and shall not be binding in any way on TotalGreen. TotalGreen's offers are open for acceptance within the period stated by TotalGreen in the offer or, when no period is stated, within thirty (30) Days from the date of the offer, but any offer may be withdrawn or revoked by TotalGreen at any time prior to the receipt by TotalGreen of Buyer's acceptance thereof.

2. PRICING

Prices in any offer, confirmation or Agreement are in U.S. Dollars, based on delivery Ex-Works (INCOTERMS latest version) TotalGreen's manufacturing facility or other facility designated by TotalGreen, unless agreed otherwise in writing between Buyer and TotalGreen and do not include any taxes, duties or similar levies, now or hereafter enacted, applicable to the Products. TotalGreen will add taxes, duties and similar levies to the sales price where TotalGreen is required or enabled by law to pay or collect them and these will be paid by Buyer together with the price.

3. PAYMENT

(a) Unless agreed otherwise between TotalGreen and Buyer in writing, TotalGreen may invoice Buyer for the price of the Products delivered upon delivery of the Products in accordance with the applicable INCOTERM. Net payment is due within thirty (30) days of date of invoice unless agreed otherwise between TotalGreen and Buyer in writing. All payments shall be made to the designated TotalGreen address. If deliveries are made in installments, each installment may be separately invoiced and shall be paid for when due. No discount is allowed for early payment unless agreed to in writing by TotalGreen. In addition to any other rights and remedies TotalGreen may have under applicable law, interest will accrue on all late payments at the rate of eighteen percent (18%) per annum or the applicable statutory rate, whichever is higher and to the extent permitted by applicable law, from the due date until payment in full.

(b) All deliveries of Products agreed to by TotalGreen shall at all times be subject to credit approval of TotalGreen. If, in TotalGreen's judgment, Buyer's financial condition at any time does not justify production or delivery of Products on the above payment terms, TotalGreen may require full or partial payment in advance or other payment terms as a condition to delivery, and TotalGreen may suspend, delay or cancel any credit, delivery or any other performance by TotalGreen.

(c) In the event of any default by Buyer in the payment of any fees or charges due, or any other default by Buyer, TotalGreen shall have the right to refuse performance and/or delivery of any Products until payments are brought current and TotalGreen may suspend, delay or cancel any credit, delivery or any other performance by TotalGreen. Such right shall be in addition to, and not in lieu of, any other rights and remedies available under the Agreement or at law.

4. DELIVERY AND QUANTITIES

(a) Products shall be delivered Ex-Works (INCOTERMS latest version) as designated by TotalGreen, unless otherwise agreed in writing. Delivery dates communicated or acknowledged by TotalGreen are approximate only, and TotalGreen shall not be liable for, nor shall TotalGreen be in breach of its obligations to Buyer, for any delivery made within a reasonable time before or after the communicated delivery date. TotalGreen agrees to use commercially reasonable efforts to meet the delivery dates communicated or acknowledged by it on the condition that Buyer provides all necessary order and delivery information sufficiently prior to the such delivery date.

(b) Buyer will give TotalGreen written notice of failure to deliver and thirty (30) days within which to cure. If TotalGreen does not deliver within such thirty (30) day period, Buyer's sole and exclusive remedy is to cancel the affected and undelivered portions of the Agreement.

(c) Title in the Products shall pass to Buyer upon payment in full of the purchase price in respect thereof. Risk of loss in the Products shall pass to Buyer upon TotalGreen's delivery in accordance with the applicable INCOTERMS.

(d) If Buyer fails to take delivery of Products ordered, then TotalGreen may deliver the Products in consignment at Buyer's cost.

(e) In the event TotalGreen's production is curtailed for any reason, TotalGreen shall have the right to allocate its available production and Products, in its sole discretion, among its various customers and as a result may sell and deliver to Buyer fewer Products than specified in the Agreement, as the case may be.

5. FORCE MAJEURE

TotalGreen shall not be liable for any failure or delay in performance if:

- (i) such failure or delay results from interruptions in the Product manufacturing process; or
- (ii) such failure or delay is caused by Force Majeure as defined below or by law.

In case of such a failure as set forth above, the performance of the relevant part(s) of the Agreement will be suspended for the period such failure continues, without TotalGreen being responsible or liable to Buyer for any damage resulting therefrom. The expression "Force Majeure" shall mean and include any circumstances or occurrences beyond TotalGreen's reasonable control - whether or not foreseeable at the time of the Agreement - as a result of which TotalGreen cannot reasonably be required to execute its obligations including force majeure and/or default by one of TotalGreen's suppliers. In the event that the Force Majeure extends for a period of three (3) consecutive months (or in the event that the delay is reasonably expected by TotalGreen to extend for a period of three (3) consecutive months), TotalGreen shall be entitled to cancel all or any part of the Agreement without any liability towards Buyer.

6. LIMITED WARRANTY AND DISCLAIMER

(a) TotalGreen warrants that the Products, shall, at the time of delivery to Buyer and for a period of eight (8) days from the date of delivery (or such other period as may be agreed upon in writing by the parties), be free from defects or diseases in product, material or workmanship and shall substantially conform to TotalGreen's specifications for such Product, or such other specifications as TotalGreen has agreed to in writing, as applicable. TotalGreen's sole and exclusive obligation, and Buyer's sole and exclusive right, with respect to claims under this warranty shall be limited, at TotalGreen's option, either to the replacement or repair of a defective or non-conforming Product or to an appropriate credit for the purchase price thereof. TotalGreen will have a reasonable time to repair, replace or credit. The nonconforming or defective Products shall become TotalGreen's property as soon as they have been replaced or credited.

(b) Buyer may ship Products returned under warranty to TotalGreen's designated facility only in conformance with TotalGreen's then-current return material authorization policy. Where a warranty claim is justified, TotalGreen will pay for freight expenses. Buyer shall pay for returned Products that are not found to be defective or non-conforming together with the freight, testing and handling costs associated therewith.

(c) Notwithstanding the foregoing, TotalGreen shall have no obligations under warranty if the alleged defect or nonconformance is found to have occurred as a result of environmental or stress testing, misuse, use other than as set forth on the packaging, neglect, or as a result of improper alteration, modification, storage, transportation or improper handling.

(d) The express warranty granted above shall extend directly to Buyer and not to Buyer's customers, agents or representatives and is in lieu of all other warranties, whether express or implied, including without limitation any implied warranties of fitness for a particular purpose or merchantability. All other warranties are hereby specifically disclaimed by TotalGreen.

(e) Subject to the exclusions and limitations set forth in Section 7 of the Terms and Conditions, the foregoing states the entire liability of TotalGreen in connection with defective or nonconforming Products supplied hereunder. Section 8 (a) above, TotalGreen shall have the right, without obligation and at its sole option, to: (i) procure for Buyer the right to continue to use or sell the Product; (ii) provide replacement Product, or (iii) modify the Product in such a way as to make the modified Product non-infringing; or (iv) terminate any Agreement to the extent related to such Product.

(f) Subject to the exclusions and limitations set forth in Section 7 of the Terms and Conditions.

7. LIMITATION OF LIABILITY

(a) TOTALGREEN SHALL NOT BE LIABLE FOR ANY LOST PROFITS, LOST SAVINGS, LOSS OF REPUTATION, LOSS OF GOODWILL, INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE SALE OF ANY PRODUCTS OR SERVICES BY TOTALGREEN OR THE USE THEREOF WHETHER OR NOT SUCH DAMAGES ARE BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY – EVEN IF TOTALGREEN HAS BEEN ADVISED, OR IS AWARE, OF THE POSSIBILITY OF SUCH DAMAGES. TOTALGREEN'S AGGREGATE AND CUMULATIVE LIABILITY TOWARDS BUYER UNDER ANY AGREEMENT SHALL NOT EXCEED AN AMOUNT OF TEN PERCENT (10%) OF THE RELATED AGREEMENT.

(b) Any Buyer's claim for damages must be brought by Buyer within eight (8) days of the date of the event giving rise to any such claim, and any lawsuit relative to any such claim must be filed within one (1) year of the date of the claim. Any claims that have been brought or filed not in accordance with the preceding sentence are null and void.

(c) The limitations and exclusions set forth above in this Section 7 shall apply only to the extent permitted by applicable mandatory law.

8. CONFIDENTIALITY

Buyer acknowledges that all technical, commercial and financial data disclosed to Buyer by TotalGreen and/or its affiliates is the confidential information of TotalGreen and/or its affiliates. Buyer shall not disclose any such confidential information to any third party and shall not use any such confidential information for any purpose other than as agreed by the parties and in conformance with the purchase transaction contemplated herein.

9. EXPORT/IMPORT CONTROLS

If the delivery of Products under the Agreement is subject to the granting of an export or import license by a government and/or any governmental authority under any applicable law or regulation, or otherwise restricted or prohibited due to export or import control laws or regulations, TotalGreen may suspend its obligations and Buyer's rights regarding such delivery until such license is granted or for the duration of such restriction and/or prohibition, respectively, and TotalGreen may even terminate the Agreement, without incurring any liability towards Buyer. Furthermore, if an end-user statement is required, TotalGreen shall inform Buyer immediately thereof and Buyer shall provide TotalGreen with such document upon TotalGreen's first written request; if an import license is required, Buyer shall inform TotalGreen immediately thereof and Buyer shall provide TotalGreen with such document as soon as it is available. By accepting TotalGreen's offer, entering into any Agreement and/or accepting any Products, Buyer agrees that it will not deal with the Products and/or documentation related thereto in violation of any applicable export or import control laws and regulations.

10. ASSIGNMENT AND SETOFF

Buyer shall not assign any rights or obligations under the Agreement without the prior written consent of TotalGreen. Buyer shall have no right to withhold or reduce any payments or to offset existing and future claims against any payments due for Products sold under the Agreement or under any other agreement that Buyer may have with TotalGreen or any of its affiliates may have and agrees to pay the amounts hereunder regardless of any claimed offset which may be asserted by Buyer or on its behalf.

11. GOVERNING LAW AND FORUM

All offers, confirmations and Agreements are governed by and construed in accordance with the laws of the State of New York. All disputes arising out of or in connection with any Agreement shall first be attempted by Buyer and TotalGreen to be settled through consultation and negotiation in good faith in a spirit of mutual cooperation. All disputes which cannot be resolved amicably shall be submitted to the exclusive jurisdiction of the courts of New York, NY, provided that TotalGreen shall always be permitted to bring any action or proceedings against Buyer in any other court of competent jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to any offer, confirmation or Agreement. Nothing in this Section 13 shall be construed or interpreted as a limitation on either TotalGreen's or Buyer's right under applicable law for injunctive or other equitable relief or to take any action to safeguard its possibility to have recourse on the other party.

12. BREACH AND TERMINATION

Without prejudice to any rights or remedies TotalGreen may have under the Agreement or at law,

TotalGreen may, by written notice to Buyer, terminate with immediate effect the Agreement or any part thereof without any liability whatsoever, if:

- (a) Buyer violates or breaches any of the provisions of the Agreement;
- (b) any proceedings in insolvency, bankruptcy (including reorganization) liquidation or winding up are instituted against Buyer, whether filed or instituted by Buyer, voluntary or involuntary, a trustee or receiver is appointed over Buyer, or any assignment is made for the benefit of creditors of Buyer.

Upon occurrence of any of the events referred to above, all payments to be made by Buyer under the Agreement shall become immediately due and payable. In the event of cancellation, termination or expiration of an Agreement the terms and conditions destined to survive such cancellation, termination or expiration shall so survive.

13. MISCELLANEOUS

(a) In the event that any provision(s) of these Terms and Conditions shall be held invalid or unenforceable by a court of competent jurisdiction or by any future legislative or administrative action, such holding or action shall not negate the validity or enforceability of any other provisions thereof. In the event that any provision of these Terms and Conditions shall finally be determined to be unlawful or unenforceable, such provision shall be deemed severed from these Terms and Conditions, but every other provision shall remain in full force and effect, and in substitution for any such provision held unlawful or unenforceable, there shall be substituted a provision of similar import reflecting the original intent of the clause to the extent permissible under applicable law.

(b) The failure on the part of either party to exercise, or any delay in exercising, any right or remedy arising from the Agreement shall not operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy arising there from preclude any other or future exercise thereof or the exercise of any other right or remedy arising from the Agreement or from any related document or by law.