

Harsco Environmental Terms of Sale for Steel Slag Aggregate and Scrap

1. Interpretation

1.1 In the Terms –

Business Day means a day that is not a Saturday, Sunday or public holiday in the United States or the Commonwealth of Pennsylvania;

Buyer means the person to whom a Quotation is made or who makes an Order (as the case may be);

Contract means the contract for the sale of the Goods between Harsco and the Buyer which comes into existence when Buyer accepts the Quotation or Harsco accepts the Order (as the case may be);

Default Event means an event set out in Section 15.1;

Delivery Date means the date set out in the Quotation or Order (as the case may be) for the delivery of the Goods and if no date is set out in the Quotation or Order, the date stipulated for delivery of the Goods by Harsco on reasonable notice to the Buyer prior to delivery;

Delivery Address means the place set out in the Quotation or Order (as the case may be) where the Goods are to be delivered and if no place is set out in the Quotation or Order, the place of delivery will be the Harsco premises stipulated by Harsco on reasonable notice to the Buyer prior to Delivery Date;

Goods means the goods (including any instalment of the goods or any parts for them) described in the Quotation or Order (as the case may be);

Harsco means Harsco Environmental, a division of Enviri Corporation;

Liability Event has the meaning given to it in Section 16.1;

Order means the Buyer's order (whether written or oral) to Harsco for Harsco to supply goods;

Price means the price of the Goods and (unless the context otherwise requires) includes any other amount due to Harsco in relation to the Goods under Section 6;

Product Literature has the meaning given to it in Section 14.1;

Quotation means Harsco's written quotation to the Buyer for Harsco to supply goods;

Terms means the standard terms of sale set out in this document and (unless the context otherwise requires) any special terms agreed in writing between Harsco and the Buyer.

1.2 A reference in the Terms to a provision of a statute is to be construed as a reference to that provision as amended, re-enacted or extended at the relevant time.

1.3 Unless the context otherwise requires –

1.3.1 another grammatical form of a defined word or expression will have a corresponding meaning;

1.3.2 the singular includes the plural and vice versa;

1.3.3 a reference to one gender includes all genders;

1.3.4 words denoting persons include firms and corporations and vice versa;

1.3.5 any phrase introduced by the terms "including", "include", "in particular" or any similar expression is to be construed as illustrative and will not limit the sense of the words preceding the term; and

1.3.6 the phrase "as set out in the Order" or similar expression is, in relation to an oral Order, to be construed as "as provided by the Buyer when making the Order".

1.4 Unless otherwise stated, a reference to a section is a reference to a section in this document.

1.5 The section headings in this document are for convenience only and will not affect the construction of the Terms.

2. Basis of the Sale

2.1 The Terms will govern the Contract to the exclusion of any other terms, including any terms which the Buyer purports to apply in accepting the Quotation, making the Order, or under any confirmation of the Order, specification or other document.

2.2 No variation to the Terms will be binding unless agreed to in writing by Harsco and the Buyer.

2.3 The quantity, quality and description of the Goods and any specification for them will be as set out in the Quotation (if accepted by the Buyer) or the Order (if accepted by Harsco).

3. Quotations

3.1 Unless otherwise stated in the Quotation, a Quotation –

3.1.1 is (subject to Section 3.1.2) open for acceptance for 30 days from the date on which it was given;

3.1.2 may be withdrawn at any time before acceptance by the Buyer;

3.1.3 is subject to the availability of the Goods at the time it is accepted by the Buyer; and

3.1.4 will only be regarded as having been accepted by the Buyer when Harsco receives the Buyer's purchase order or payment of the Price.

3.2 The acceptance by the Buyer of any oral quotation given by Harsco for Harsco to supply goods will be deemed to be an offer by the Buyer to Harsco for Harsco to supply goods (i.e. an Order) which Harsco may in its discretion accept or reject.

4. Orders

4.1 No Order (which has been accepted by Harsco) or Quotation (which has been accepted by the Buyer) (as the case may be) may be cancelled by the Buyer except with the written agreement of Harsco and on terms that the Buyer shall indemnify Harsco in full against all loss (including loss of profit), costs (including the cost of all labor and materials used), damages, charges and expenses incurred by Harsco as a result of the cancellation.

5. Specifications

5.1 The Buyer shall be responsible for ensuring that the Goods supplied will be fit for the purpose for which the Buyer intends to use them.

6. Price of the Goods

6.1 The price of the Goods will be Harsco's quoted price or, where no price has been quoted, the price listed in Harsco's published price list current at the date of acceptance of the Order.

6.2 Prices quoted orally are only valid for the day on which they are quoted.

6.3 Harsco reserves the right, by giving written notice to the Buyer at any time before delivery, to increase the Price to reflect any increase in the cost to Harsco which is due to –

6.3.1 any factor beyond the control of Harsco (including any foreign exchange fluctuation, currency regulation, alteration of duties, any increase in the costs of labor, materials or other costs of supply or any increase in the costs of sourcing the Goods);

6.3.2 any change in delivery dates, quantities or specifications for the Goods which is requested by the Buyer; or

6.3.3 any delay or expense caused by any instructions of the Buyer or failure of the Buyer to give Harsco adequate information or instructions.

6.4 Except as otherwise stated in the Quotation or in the relevant price list of Harsco (as the case may be), all prices given by Harsco are on an ex works basis.

6.5 If Harsco agrees to deliver the Goods otherwise than at Harsco's premises, the Buyer shall be liable to pay Harsco's charges for transport, packaging and insurance.

6.6 The prices are exclusive of any applicable sales, use or value added tax, which the Buyer shall pay to Harsco when it pays for the Goods.

7. Terms of Payment

7.1 Harsco may invoice the Buyer for the Price on or at any time after delivery of the Goods; and in the case of the Buyer failing to give Harsco adequate delivery instructions or wrongfully failing to take delivery of the Goods, on or at any time after Harsco tenders delivery of the Goods.

7.2 Subject to Section 8, the Buyer shall pay the Price (in cash or cleared funds) on receipt of Harsco's invoice for the Goods.

7.3 Harsco may recover the Price notwithstanding that delivery may not have taken place and title to the Goods has not passed to the Buyer.

7.4 The time for payment of the Price is of the essence of the Contract.

7.5 Receipts for payment will be issued only on request.

7.6 The Buyer shall make all payments due under the Contract in full without any deduction whether by way of set-off (including equitable set-off), counterclaim, discount, abatement or otherwise.

8. Credit

8.1 If Harsco has in writing agreed to grant the Buyer credit in relation to any amount due to Harsco under the Contract, the Buyer shall pay the Price on or before the last day of the month following the month in which Harsco invoices the Buyer for the Goods.

8.2 The Buyer accepts that Harsco may in its discretion at any time and from time to time review the basis for granting the Buyer credit and withdraw or reduce the amount of credit granted.

8.3 If at any time the amount due by the Buyer to Harsco (whether under the Contract or on any account) is in excess of the Buyer's credit limit, the Buyer shall immediately pay to Harsco such amount as will bring the Buyer within its credit limit.

8.4 The provisions of Section 15.2.5 will mutatis mutandis (i.e. with the necessary changes) apply to any amount the Buyer is required to pay under Section 8.3 and fails to pay.

8.5 The Buyer authorizes Harsco to carry out checks on the Buyer with credit reference agencies and at any time and from time to time provide the agencies with information as to the manner in which the Buyer conducts its account with Harsco. The Buyer acknowledges that the agencies concerned may share this information with other credit reference agencies and businesses conducting credit or fraud prevention checks on the Buyer.

9. Discounts

9.1 Any discount, rebate or the like which Harsco gives to the Buyer on the price of the Goods is given on the basis that the Buyer will pay all amounts due to Harsco under the Contract on their due date, and if the Buyer fails to comply with the provisions of this Section 9.1, Harsco may invoice the Buyer for and immediately recover from the Buyer the difference between the price of the Goods invoiced under Section 7.1 and the full price of the Goods as listed in Harsco's published price list current at the date the Contract comes into existence.

10. Delivery

10.1 Delivery of the Goods will be made by making the Goods available at the Delivery Address on the Delivery Date.

10.2 Where the Delivery Address is other than at Harsco's premises, the Goods will be delivered immediately prior to them being unloaded.

- 10.3 The Buyer shall (at its cost) provide adequate equipment and labor for the loading of Goods where the Delivery Address is at Harsco's premises; or the unloading of Goods where the Delivery Address is other than at Harsco's premises.
- 10.4 The Delivery Date is approximate only and Harsco will not be liable for any delay in delivery of the Goods however caused (including Harsco's negligence). Time for delivery is not of the essence of the Contract.
- 10.5 Harsco may on reasonable notice to the Buyer deliver the Goods in advance of the Delivery Date.
- 10.6 Harsco may deliver the Goods in instalments. Each instalment will constitute a separate contract and the termination of any one instalment by the Buyer as a result of a breach by Harsco will not entitle the Buyer to terminate any other instalment or the Contract as a whole.
- 10.7 If Harsco fails to deliver the Goods (or any instalment) for any reason (other than as a result of the Buyer's fault) and Harsco is accordingly liable to the Buyer, Harsco's liability will be limited to the lower of the excess (if any) of the purchase price (in the cheapest available market) paid by the Buyer for similar goods to replace those not delivered over the Price (of the Goods not delivered); and 5% of the Price (of the Goods not delivered).
- 10.8 If the Buyer fails to take delivery of the Goods or fails to give Harsco adequate delivery instructions (including any documents, licenses or authorizations necessary or required to deliver the Goods), Harsco may store the Goods until actual delivery and charge the Buyer for the reasonable costs (including insurance) of storage and re-delivery of the Goods; or sell the Goods at the best price readily obtainable and after deducting the following amounts, account to the Buyer for the excess: (a) all reasonable storage and selling expenses; (b) the Price (or part of the Price) still outstanding; and (c) any other amounts due by the Buyer to Harsco, whether under the Contract or on any other account whatsoever.

11. Acceptance of the Goods

- 11.1. The Buyer shall within 3 Business Days of delivery of the Goods, notify Harsco in writing of any Goods missing on delivery; or any defect in the Goods on delivery which was apparent on a reasonable inspection at the time of delivery.
- 11.1 If the Buyer fails to give Harsco notice under Section 11.1 of –
 - 11.1.1 any missing Goods, the Goods as set out in Harsco's delivery documents will be deemed to have been duly delivered to the Buyer; and
 - 11.1.2 any defective Goods, the Buyer will be deemed to have accepted the Goods and will not be entitled to reject them; and will be bound to pay the Price as if the Goods had been delivered in accordance with the Contract.
- 11.3 Harsco's liability for any missing Goods or defect in the Goods for which the Buyer has given notice pursuant to Section 11.1 will be limited to replacing the Goods within a reasonable time or (at Harsco's discretion) issuing a credit note to the Buyer for the Price of the Goods (or a proportionate part of the Price) against any invoice raised for the Goods.

12. Title and Risk of Loss

- 12.1 Risk of damage to or loss of the Goods will pass to the Buyer –
 - 12.1.1 when the Goods are ready for delivery; and
 - 12.1.2 in the case of the Buyer failing to give Harsco adequate delivery instructions (including any documents, licenses or authorizations necessary or required to deliver the Goods) or wrongfully failing to take delivery of the Goods, at the time Harsco tenders delivery of the Goods.
- 12.2 Notwithstanding delivery and the passing of risk in the Goods, title to the Goods will not pass to the Buyer until Harsco has received in full (in cash or cleared funds) all sums due to it for the Goods and all other sums which are due by the Buyer to Harsco on any account.

- 12.3 Until such time as title to the Goods passes to the Buyer, the Buyer shall –
- 12.3.1 maintain the Goods in a satisfactory condition;
 - 12.3.2 hold the Goods as Harsco's bailee;
 - 12.3.3 store the Goods (at no cost to Harsco) separately from all other goods of the Buyer or any other person in such a way that they remain readily identifiable as Harsco's property;
 - 12.3.4 keep the Goods insured on Harsco's behalf (and at no cost to Harsco) for their full price against all risks to the reasonable satisfaction of Harsco. The Buyer shall on request produce the policy of insurance to Harsco; and
 - 12.3.5 not be entitled to pledge or in any way encumber or charge the Goods.
- 12.4 The Buyer may resell the Goods before title to the Goods has passed to it subject to any sale being in the ordinary course of the Buyer's business at full market value, and a sale of Harsco's property on the Buyer's own behalf and the Buyer dealing as principal when making such a sale.
- 12.5 If a Default Event occurs before title to the Goods has passed to the Buyer, the Buyer's right to possession of and to resell the Goods will immediately terminate; and Harsco may immediately recover the Goods.
- 12.6 The Buyer grants Harsco, its agents and employees an irrevocable license at any time to enter any premises where the Goods are or may be stored in order to inspect them, or (where the Buyer's right to possession has terminated) to recover them (with such transport and equipment as may be necessary).
- 12.7 Where Harsco is unable to determine whether goods in the Buyer's possession are Goods for which title has not passed from Harsco to the Buyer, Harsco will be deemed to have sold to the Buyer all such goods of the kind sold by Harsco to the Buyer (but only up the quantity sold by Harsco to the Buyer) in the reverse order in which they were invoiced by Harsco.

13. Warranties

- 13.1 Harsco warrants that upon delivery the Goods will conform to the specification of the Goods in the Contract and, provided Buyer has complied with these Terms, that Buyer will receive good and valid title to the Goods, free and clear of all encumbrances and liens.
- 13.2 EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN SECTION 13.1, HARSCO 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 HARSCO, OR ANY OTHER INDIVIDUAL OR ENTITY ON HARSCO'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 13.1 OF THIS AGREEMENT.
- 13.3 Harsco will not be liable under the warranty in Section 13.1 unless –
- 13.3.1 the Buyer gives Harsco written notice of any defect in the Goods –
 - 13.3.1.1 in accordance with the provisions of Section 11.1.2; or
 - 13.3.1.2 where the defect was not apparent on a reasonable inspection at the time of delivery, within a reasonable time after the Buyer discovers the defect or ought to have discovered the defect but in any event within 12 months of the delivery of the Goods; and
 - 13.3.2 Harsco is given a reasonable opportunity (after receiving the notice referred to in Section 13.3.1) of examining the Goods (which may, at Harsco's request, include examining the Goods at Harsco's place of business).

- 13.4 Harsco will not be liable under the warranty in Section 13.1 –
- 13.4.1 if the Buyer (or any other person) makes any use of the Goods after the Buyer has given Harsco notice of any defect in the Goods;
 - 13.4.2 for any defect in the Goods arising from any drawing, design, specification or instruction supplied by the Buyer;
 - 13.4.3 for any defect arising from the Goods being used or maintained otherwise than in accordance with the Product Literature; or
 - 13.4.4 if the Buyer fails or failed to pay to Harsco the Price on its due date.
- 13.5 If Harsco is liable under the warranty in Section 13.1 (or any other warranty, guarantee or the like given by Harsco for the Goods), Harsco's liability will be limited to repairing or replacing the Goods (or the defective part) or (at Harsco's discretion) refunding to the Buyer the Price (or a proportionate part of the Price).
- 13.6 Any Goods replaced will belong to Harsco and any repaired or replacement Goods will be warranted *mutatis mutandis* (i.e. with the necessary changes) on the terms set out in this Section 13 save that the 12-month period referred to in Section 13.3.1.2 will be calculated from the date of delivery of the original Goods.
- 14. Product Literature and Responsibility for the Use of the Goods**
- 14.1 "Product Literature" means, in relation to the Goods concerned –
- 14.1.1. any representation, advice, instruction or recommendation given in writing by a director of Harsco, an employee of Harsco holding the position of Director (notwithstanding that such person may not be on the board of directors of Harsco), an employee of Harsco holding the position of Business Manager or an employee of Harsco holding the position of manager within its Laboratory to the Buyer which is specific to the Goods (but only to the extent that it is not contrary to that contained in any subsequently issued or published guide or notice referred to in Sections 14.1.3 or 14.1.4);
 - 14.1.2. the most recent and generally available user guide (or part of a user guide) and safety guide (or part of a safety guide) from time to time issued or published by Harsco which is specific to the Goods (but only to the extent that it is not contrary to any advice, instruction or recommendation in any subsequently issued or published notice referred to in Section 14.1.3); and
 - 14.1.3. any notice which Harsco from time to time issues or publishes and which can be accessed from the internet site <https://www.harsco-environmental.com/harsco-environmental-terms-conditions>.
- 14.2 Harsco shall on the written request of the Buyer and the Buyer indicating the specific goods concerned, forward to the Buyer copies of the most recent guides or notices referred to in Sections 14.1.3 or 14.1.3 in relation to such goods.
- 14.3 The Buyer acknowledges that it has read Harsco's guidance notice on the use of steel slag aggregate in effect on the date the Contract comes into existence which can be accessed from the internet site <https://www.harsco-environmental.com/harsco-environmental-terms-conditions>, and that such notice is a notice referred to in Section 14.1.3 and is therefore included in the definition of Product Literature in relation to steel slag aggregate.
- 14.4 The Buyer accepts that any notice referred to in Section 14.1.3 concerning the Goods, including any defect in the design or quality of the Goods which could affect the manner in which the Goods should be used or safely used, will be adequate and sufficient notice to the Buyer.
- 14.5 The Buyer shall ensure that any person using the Goods is made aware of and complies with the Product Literature (if any) and good trade practice.

14.6 Subject to Section 16.5 the Buyer shall indemnify Harsco against all loss, damages, costs and expenses awarded against, incurred, paid or agreed to be paid by Harsco in connection with any claim which arises out of –

- 14.6.1 the use of the Goods after the Buyer is aware or ought to be aware of any defect in the Goods;
- 14.6.2 any defect in the Goods arising from fair wear and tear, wilful damage, the negligence of any person (other than Harsco), misuse, abnormal working conditions, or alteration or repair of the Goods without Harsco's prior written approval;
- 14.6.3 any use of the Goods (including the installation, disassembly, application, maintenance or removal of the Goods) other than in accordance with the Product Literature (if any) and good trade practice; or
- 14.6.4 the disposal of the Goods.

15. Default of the Buyer

15.1 A "Default Event" will occur if any one or more of the following events occur –

- 15.1.1 the Buyer fails to pay any amount due to Harsco under the Contract on its due date or breaches any other provision of the Contract;
- 15.1.2 the Buyer fails to pay any amount due to Harsco under any other contract between Harsco and the Buyer on its due date or breaches any other provision of any other contract between Harsco and the Buyer;
- 15.1.3 the Buyer becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors;
- 15.1.4 the Buyer ceases, or threatens to cease, to carry on business;
- 15.1.5 anything analogous to any of the events specified in Sections 15.1.3 to 15.1.4 occurs under the laws of any applicable jurisdiction;
- 15.1.6 Harsco reasonably apprehends that any of the events set out in 15.1.1 to 15.1.5 is about to occur in relation to the Buyer; or
- 15.1.7 any event set out in Sections 15.1.2 to 15.1.6 occurs in relation to any holding company of the Buyer or any subsidiary of any such holding company.

15.2 If a Default Event occurs, Harsco may, without incurring any liability to the Buyer, take any one or more of the following actions –

- 15.2.1 suspend any further deliveries to the Buyer under the Contract (and any other contracts between Harsco and the Buyer);
- 15.2.2 terminate the Contract;
- 15.2.3 declare all amounts due by the Buyer to Harsco under the Contract (and any other contracts between Harsco and the Buyer) to be immediately due and payable;
- 15.2.4 appropriate any payment made by the Buyer to such of the Goods (or the goods supplied under any other contract between Harsco and the Buyer) as Harsco may think it (notwithstanding any purported appropriation by the Buyer); and
- 15.2.5 charge the Buyer interest on any amount unpaid (both before and after any judgment) calculated on a daily basis (and compounded monthly in arrears on the last day of each month) from its due date until it is paid in full at 4% per annum above the prime rate from time to time published by the Wall Street Journal.

- 15.3 The termination of the Contract will not affect and will be without prejudice to any rights which have accrued or any rights arising out of any breach giving rise to the termination, or any provision which is expressly or by implication to operate after the termination of the Contract.
- 15.4 The provisions of Sections 8, 9, 12.2 to 12.7, 14.6, 15.5 and 16 will survive the termination of the Contract.
- 15.5 The Buyer shall indemnify Harsco against all costs and expenses incurred by Harsco in enforcing any of its rights under the Contract as against the Buyer and (where the Buyer's right to possession of the Goods has terminated pursuant to Section 12.5) recovering the Goods.

16. Limitation of Liability

- 16.1 A "Liability Event" means –

- 16.1.1 any breach by Harsco of any of its obligations under or arising out of the Contract;
- 16.1.2 any liability Harsco may have arising out of or in connection with the use or resale of the Goods by the Buyer (or any product incorporating the Goods); and
- 16.1.3 any act or omission (including any tortious or negligent act or omission or any breach of statutory duty) by Harsco or any of its employees, agents or subcontractors arising out of or in connection with the Contract and as a result of which the Buyer suffers loss or damage.

- 16.2 Subject to the provisions of Sections 16.4 and 16.5 –

- 16.2.1 Harsco's liability to the Buyer for a Liability Event will be limited to an amount equal to the price of the Goods which are the subject matter of or give rise to the claim; and
- 16.2.2 Harsco shall not be liable to the Buyer for a Liability Event –
- 16.2.2.1 for indirect or consequential (whether direct or indirect) loss or damage (including loss or damage suffered by Buyer as a result of an action brought by a third party, pure economic loss, wasted time or expenditure or loss of profit, revenue, production, business or goodwill); and
- 16.2.2.2 not previously satisfied or settled unless legal proceedings for the Liability Event are commenced by being both issued and served within 18 months of the delivery of the Goods.

- 16.3 If a number of Liability Events give rise to substantially the same loss, they will be regarded as having arisen from a single Liability Event and will accordingly only give rise to one claim under the Contract.

- 16.4 The provisions of Section 16.2.1 are without prejudice to the provisions of Sections 10.7, 11.3 and 13.7.

17. Force Majeure

Harsco will not be liable to the Buyer or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations under the Contract, if the delay or failure was due to any cause beyond its reasonable control including but not limited to any act of God, fire, flood, accident, strike, lock-out, or other industrial dispute or action (of its own or other employees), power failure, mechanical failure, delay in transportation, inability to obtain raw materials or supplies of the Goods, pandemic, act of government or state, requirement of any governmental or local authority, war, civil commotion, insurrection or embargo.

18. Consumers

- 18.1 Buyer represents and warrants to Harsco that Buyer is purchasing the Goods for a business purpose and not for personal, family or household purposes.

19. Authorized Harsco Persons

Where the Terms provide for certain matters to be agreed in writing between Harsco and the Buyer or Harsco providing its written consent or approval, the agreement, consent or approval will be of no effect unless it is signed on Harsco's behalf by a director of Harsco, an employee of Harsco holding the position of Director (notwithstanding that such person may not be on the board of directors of Harsco) or an employee of Harsco holding the position of Business Manager.

20. Notices

- 20.1 Any notice required to be given by the Buyer to Harsco must be sent to Harsco Environmental, 300 Seven Fields Blvd., Seven Fields, PA 16046, Attn: Regional President – North America, or to such changed address as Harsco may notify to the Buyer in writing from time to time.
- 20.2 Any notice required to be given by Harsco to the Buyer may be sent to the address of the Buyer as set out in the Quotation or Order, or to such changed address as the Buyer may notify to Harsco in writing from time to time.
- 20.3 A notice to the Buyer at its address referred to in Section 20.2 will be deemed to have been received by the Buyer (a) if delivered by hand, at the time of delivery; (b) if sent by pre-paid first-class mail, 2 Business Days after posting (exclusive of the day of posting); and (c) if sent by facsimile, on Harsco receiving a successful transmission report.
- 20.4 A notice actually received by the Buyer will be regarded as effective, notwithstanding that it was not delivered or sent to the Buyer at its address referred to in Section 20.2.

21. Assignment

- 21.1 The Buyer may not assign, transfer, charge or create a trust over any of its rights under the Contract to any other person without the prior written consent of Harsco.

22. Third Party Rights

The Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of the Contract.

23. Rights Cumulative

Each right or remedy of Harsco under the Contract is without prejudice to any other right or remedy of Harsco whether under the Contract or in law or equity.

24. Waiver

The failure or delay by Harsco to exercise any of its rights under the Contract will not operate as a waiver or variation of that or any other right and any defective or partial exercise of any right will not preclude Harsco from exercising that or any other right.

25. Severability

If any provision of the Contract is held by a court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of the Contract and the remainder of the provision concerned will not be affected.

26. Governing Law

The Contract will be governed by the laws of the Commonwealth of Pennsylvania and the Buyer agrees to submit to the non-exclusive jurisdiction of the state and federal courts of located in the Commonwealth of Pennsylvania.