

## GENERAL TERMS AND CONDITIONS

1. **Acceptance.** Seller's performance is conditioned on Buyer agreeing to each of these General Terms and Conditions ("Terms and Conditions") and the other provisions contained in or incorporated by reference into the sales agreement form to which they are attached (collectively, the "Agreement"). Seller objects to and rejects any and all terms or conditions that are additional to or different from those set forth in the Agreement, whether such additional or different terms arise from prior, contemporaneous or subsequent oral or written communications, course of performance, course of dealing or usage of the trade, or otherwise.
2. **Invoice; Payment and Credit.** Seller will invoice Buyer upon shipment of Product. If Buyer fails to make payment in strict accordance with the Payment terms set forth in the Agreement, then Seller may, in addition to all other remedies, (a) immediately withhold shipments of any additional Product until the delinquent amounts plus interest, transportation and storage are paid; (b) repossess Product which has not been paid for; (c) charge interest at 1.5% per month or the maximum legal rate, if lower, for each month or part thereof on which payment is not timely made; (d) declare breach and terminate the Agreement in accordance with the terms hereunder and/or (e) recover all costs of collection, including reasonable attorneys' fees, disbursements and litigation costs. Seller may, in its discretion, require Buyer to pay before delivery if Seller determines that Buyer's creditworthiness is impaired. Seller may recover for each delivery as a separate transaction without reference to any other delivery. Buyer shall pay any undisputed amounts. Buyer may not set off amounts claimed against Seller in a different transaction or against one of Seller's affiliates.
3. **Buyer's Obligations.** Buyer is responsible for selection, use, handling, transportation (if applicable) and disposal of Product. Seller's price excludes, and Buyer is responsible for, all governmental taxes (including without limitation sales, use, excise, value-added and other similar taxes), duties and fees in connection with the purchase, sale, transportation, storage or disposal of Product or otherwise resulting from Seller's performance of the Agreement, whether now or hereafter imposed, levied, collected, withheld or assessed. If Seller is required to impose, levy, collect, withhold or assess any such taxes, duties or fees on any transaction under the Agreement, then Seller will invoice Buyer therefor, unless at the time of order placement, Buyer furnishes Seller with an exemption certificate or other documentation sufficient to verify exemption from such taxes, duties or fees. Buyer will (a) review handling or safety information Seller provides; (b) promptly convey such information to persons potentially exposed to the Product; and (c) follow safe handling, use, storage, transportation, and disposal practices. Seller may terminate the Agreement immediately if Seller believes Buyer is breaching this provision.
- 3a. **Non-Analysis.** Buyer shall not (i) disassemble Product, (ii) analyze, or have others analyze, Product or any portions thereof to determine its chemical composition, microscopic structure or method of manufacture, and (iii) use any information derived from the use of Product in filing applications for, prosecuting, or otherwise obtaining or perfecting any patent or other intellectual property rights.
4. **Volumes and Delivery.** Each delivery shall stand as a separate contract and the failure of any delivery is not a breach of the Agreement as to others. The word "delivery" under the Agreement shall include tender of delivery of the Product to Buyer. Unless otherwise specified, Product will be delivered Ex Works (Incoterms 2010) Seller's plant in accordance with Seller's standard lead times then in effect. If the price includes freight, Seller may increase the price on 15 days notice to Buyer to reflect increased transportation and handling costs. In addition, Seller may discontinue deliveries of any Product, the manufacture, sale or use of which in its opinion would involve patent infringement. Upon delivery, Buyer assumes full responsibility and liability for compliance with government laws, rules and regulations relating to the Product, including without limitation those relating to unloading, discharge, storage, handling use and/or disposal of the Product. Seller shall not be required to deliver in any month more than the amount expressly specified herein or more than the pro rata amount of Seller's maximum obligation. The lead time is specified in the Agreement (the "Lead Time"). The Lead Time is an estimate. Seller does not guarantee a particular date for shipment and shall have no liability for any delay or failure in performance except in a case of gross negligence or wilful intent. If Seller fails to deliver the Product within the Lead Time, Buyer shall be obliged to fix an appropriate time limit for subsequent performance of no less than four weeks. If Seller fails to deliver the Product within said time limit, Buyer shall be entitled to cancel the delayed order. This cancellation of the delayed order is Buyer's sole and exclusive remedy for the relevant delay.
5. **Packaging.** Seller may, in its sole discretion, agree to special packaging, handling, transportation (including expediting) and/or insurance requested by Buyer, and if so, they shall be for Buyer's account and added to the invoice. Buyer shall: (a) properly dispose of all disposable containers; (b) return to Seller within the free unloading time allowed empty, non-disposable containers and equipment provided by Seller ("Equipment") in the condition received, normal wear and tear excepted; and (c) be responsible for and promptly pay Seller's customary demurrage or detention charges for Equipment returned after the applicable free unloading period. Seller shall neither use Equipment for any other purpose nor re-use, re-consign, or transfer it.
6. **Inspection and Claims.** Any claims (including without limitation for shortage or because of nonconformities) ascertainable upon inspection, must be particularized and made in writing to Seller within 30 days of delivery to Buyer; otherwise, the Product shall be deemed to have been accepted by Buyer. Any revocation of acceptance of all or any part of the Product on the basis of any latent non-conformity or other reason must particularize each non-conformity or other reason and be made in writing to Seller within 6 months of delivery of the Product to Buyer. Claims or revocations of acceptance that are not particularized, or which are made later than the applicable period specified in this section, will be deemed waived by Buyer. Upon Seller's request, Buyer must promptly make available to Seller for inspection and testing any Product upon which Buyer has made a claim. Any action for breach by either party, other than for non-payment, is time barred if not commenced within one year after the date of delivery, or due date of delivery in the event of non-delivery, of the particular shipment upon which such claim is based. Buyer shall accept delivery of quantities within 10% of those ordered, but need only pay for quantities actually delivered. Seller's Product measurements shall govern unless proven in error. No weight claims or credits will be allowed unless gross shipment weight discrepancies exceed 0.5% for packaged Product or 1% for bulk Product. No heel credits will be given.
7. **Limited Warranty** SELLER'S WARRANTIES ARE EXCLUSIVELY LIMITED TO THE FOLLOWING: (A) BUYER SHALL OBTAIN GOOD TITLE TO PRODUCT SOLD HEREUNDER; (B) AT DELIVERY SUCH PRODUCT WILL CONFORM TO SELLER'S SPECIFICATIONS ATTACHED TO THIS SALES

AGREEMENT; AND (C) PRODUCT DELIVERED HEREUNDER DOES NOT INFRINGE THE VALID AND ENFORCEABLE CLAIMS OF ANY U.S. PATENT EXTANT AS OF THE DATE OF THE AGREEMENT COVERING PRODUCT ITSELF, BUT SELLER DOES NOT WARRANT AGAINST INFRINGEMENT WHICH MIGHT ARISE BY THE USE OF SUCH PRODUCT ALONE OR IN ANY COMBINATION WITH OTHER MATERIALS, BY THE OPERATION OF ANY PROCESS OR OTHERWISE. SELLER MAKES NO OTHER REPRESENTATION, GUARANTEE OR WARRANTY OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AND IN PARTICULAR, SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATION OR WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EVEN IF THAT PURPOSE IS KNOWN TO SELLER, AND DISCLAIMS ANY REPRESENTATION OR WARRANTY OF NON-INFRINGEMENT (INCLUDING NON-INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS), EXCEPT AS EXPLICITLY WARRANTED IN (C) ABOVE, AND DISCLAIMS ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF THE TRADE. ANY APPLICATION INFORMATION OR ASSISTANCE WHICH SELLER MAY FURNISH TO BUYER IS GRATUITOUS AND SHALL IN NO WAY BE DEEMED PART OF THE SALE OF PRODUCT HEREUNDER OR A WARRANTY OF THE RESULTS OBTAINED THROUGH USE OF SUCH PRODUCT.

**8. Limitation of Liability and Remedy** EXCEPT IN A CASE OF GROSS NEGLIGENCE OR WILFUL INTENT AND SUBJECT TO ANY MANDATORY LEGISLATION (INCLUDING WITHOUT LIMITATION IN RESPECT OF PRODUCT LIABILITY), SELLER'S TOTAL LIABILITY UNDER ANY THEORY OF RECOVERY, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), WARRANTY, INDEMNITY OR OTHERWISE, SHALL NOT EXCEED THE TOTAL PRICE PAID (OR PAYABLE) TO SELLER FOR THE SHIPMENT IN QUESTION. BUYER'S EXCLUSIVE REMEDY WILL, AT SELLER'S OPTION, BE THE REPLACEMENT OF NON-CONFORMING PRODUCT OR THE REFUND OF THE PARTICULAR SHIPMENT'S PURCHASE PRICE. SUBJECT TO THE ABOVE MENTIONED EXCEPTIONS, SELLER WILL UNDER NO CIRCUMSTANCES BE LIABLE FOR ANY DAMAGES FOR LOSS OF USE, BUSINESS INTERRUPTION, LOST PROFITS, REVENUE OR OPPORTUNITY, OR FOR ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL LOSS OR DAMAGES OF ANY KIND OR NATURE.

**9. Force Majeure.** Seller shall have no liability for any delay or failure in performance hereunder, in whole or in part, if such delay or failure arises from (a) compliance in good faith with any foreign or domestic governmental regulation or order, whether or not later shown invalid or inapplicable; (b) the occurrence of any contingency the nonoccurrence of which was a basic assumption at the time the Agreement was made, including without limitation, acts of God, fire, accident, riot, war, terrorism, sabotage, equipment failure, embargo, or labor trouble from whatever cause arising, (c) interruption of or delay in transportation, inadequacy or shortage or failure of supply of materials, equipment breakdowns in each case not reasonably foreseeable or due to a failure to repair and outside of Seller's control; (d) increased costs for compliance with environmental protection, health or safety regulations; or (e) any other event or occurrence not within Seller's reasonable control. If any such circumstances affect only a part of Seller's capacity, Seller may allocate production and deliveries among its customers and its own requirements as Seller may fairly and reasonably determine. Quantities affected by this paragraph may, at the option of either party, be eliminated from the Agreement without liability, but the Agreement shall remain otherwise unaffected. If the circumstances of this paragraph continue for more than 90 days, either party may terminate the Agreement without penalty upon written notice to the other party. For the avoidance of doubt, this Force Majeure provision shall not excuse payment under any circumstances by Buyer of invoices issued by Seller under the Agreement

**10. Manufacturing Hardship.** If Seller's total cost of production and transportation of the Product increases by more than 5% over Seller's costs on the Effective Date, Seller may, on 15 days notice ("Hardship Notice") increase prices to maintain its

original economic return. These changes will be considered accepted unless Buyer objects before the effective date of the Hardship Notice. Within 5 days of Buyer's objection, if any, Seller will advise whether (a) Seller will continue to sell on the previous terms or (b) Seller wishes to negotiate a mutually acceptable price with Buyer. Either party may terminate the Agreement immediately by notice if the negotiations have not been finalized within 20 days of the Hardship Notice; *provided, however*, that Seller may during such 20 day period agree to sell on the previous terms. The Price in effect prior to the Hardship Notice will prevail during such negotiations.

**11. Termination.** In addition to the rights of termination under the Force Majeure and Manufacturing Hardship provisions above, either party may terminate the Agreement upon written notice: (a) if the other party is in material breach of the Agreement and does not cure such breach (i) within three (3) days of notice in the event of a payment delinquency or (ii) within thirty (30) days of notice for any other material breach; or (b) if the other party (i) ceases to function as a going concern, (ii) makes an assignment for the benefit of creditors, or (iii) becomes the subject of any proceeding under applicable bankruptcy, receivership, insolvency or similar laws instituted by or against such party. Termination shall not affect any debt, claim or cause of action accruing to any party against the other before the termination and the rights of termination provided in this clause are not exclusive of other remedies to which either party may be entitled.

**12. Notices.** All notices must be in writing, addressed to the party's contact noted on the sales agreement form and shall be delivered by one of the methods referenced in this provision. Notice shall be deemed given on the date of (a) the applicable confirmation if delivered by fax, by hand or by overnight courier or (b) receipt or rejection, if sent certified mail, return receipt requested.

**13. Confidentiality.** Buyer will keep confidential the terms and conditions of the Agreement and the parties' performance hereunder, as well as any preceding negotiations.

**14. Governing Law and Jurisdiction.** SWISS LAW (WITHOUT GIVING EFFECT TO ITS CONFLICTS OF LAW PRINCIPLES) GOVERNS THE AGREEMENT. THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS, 1980 (OR ANY SUCCESSOR) SHALL NOT APPLY. Any controversy or claim that may arise out of or in connection with the Agreement or the individual sales transactions resulting therefrom that cannot be resolved after good faith negotiations shall be submitted to the exclusive jurisdiction of the competent courts in Geneva (Switzerland).

**15. General.** Any assignment without the written consent of the other party shall be void except for an assignment to an affiliate of the Seller or if in connection with the sale or transfer of all or a substantial portion of Seller's business to which the Agreement relates. The Agreement constitutes the complete, exclusive agreement of the parties for the sale and purchase of Product and supersedes all prior and contemporaneous oral or written communications relating to its subject matter. Any modification must be in writing signed by each party's duly authorized representative. No failure to exercise any right hereunder shall be deemed a waiver. If any provision of the Agreement is unenforceable, the surviving provisions will be unaffected and there will be substituted one or more provisions as similar in terms as may be enforceable under applicable law. All provisions which by their nature should apply beyond the Term will remain in force after expiration or termination of the Agreement, including but not limited to the sections dealing with Invoice, Payment and Credit; Inspection and Claims; Limited Warranty; Limitation of Liability and Remedy and Governing Law and Jurisdiction.

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