



## TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale (including the purchase order to which these Terms and Conditions of Sale relate (the “**Purchase Order**”) and any attachments referenced in the Purchase Order, this “**Agreement**”) are entered into as of the date of the Purchase Order by and between the Buyer and Seller referenced in such Purchase Order. Buyer and Seller are referred to herein collectively as the “**Parties**”, and each as a “**Party**”.

1. Product; Price; Payment. Subject to the terms and conditions herein, Buyer agrees to purchase from Seller and Seller agrees to sell to Buyer the product set forth in the Purchase Order (the “**Product**”) at the price set forth in the Purchase Order. All stated prices are exclusive of any taxes, fees and duties or other amounts, however designated, and including without limitation value added and withholding taxes which are levied or based upon such charges, or upon this Agreement (other than taxes based on the net income of Seller). Buyer shall pay Seller for the Product by wire transfer to Seller’s account set forth in the Purchase Order on the payment terms set forth in the Purchase Order. Seller reserves the right to charge interest up to the maximum legally permitted rate on all due and unpaid amounts. No charge will be allowed for packing, crating, freight, express, or other carrier's charges, or cartage, unless designated in the Purchase Order.
2. Delivery. Delivery shall take place as set forth in the Purchase Order, or if not specified, delivery shall take place Ex Works (Incoterms 2010) at Seller’s facility (Batesville, Arkansas) at the time Seller notifies Buyer that the Product is available for Buyer to take delivery. Title to and risk of loss of Product shall pass to Buyer upon delivery. Buyer is solely responsible for arranging appropriate transportation to retrieve the Product from Seller’s facility. Buyer must retrieve all Product from Seller’s facility within 30 days of delivery.
3. WARRANTY: Upon delivery, the Product shall conform in all material respects to the specifications set forth in the Purchase Order. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE OR NON-INFRINGEMENT OR ANY WARRANTY THAT MAY BE ALLEGED TO ARISE AS A RESULT OF CUSTOM OR USAGE, AND SELLER MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND.
4. Quality Claims. All claims by Buyer having anything to do with the quality of Product (including, for breach of Product warranty) must be made by Buyer in writing within 60 days after delivery and failure of Buyer to give such notice shall constitute a complete waiver by Buyer of any such claims and defense for Seller against any such claims.
5. LIMITATION OF LIABILITY: NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, SELLER’S SOLE LIABILITY AND BUYER’S SOLE REMEDY FOR BREACH OF THE PRODUCT WARRANTY PROVIDED IN THIS AGREEMENT SHALL BE, AT SELLER’S OPTION, EITHER REWORK, REPLACEMENT OR REFUND OF ANY PRODUCT WHICH IS DEFECTIVE OR FAILS TO MEET THE APPLICABLE SPECIFICATIONS.

NO PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES, ARISING OR ALLEGED TO ARISE OUT OF OR IN CONNECTION WITH ITS PERFORMANCE HEREUNDER OR WITH ANY PRODUCT OR OTHER ITEMS OF SALE HEREUNDER, WHETHER SUCH DAMAGE RESULTS FROM ANY NEGLIGENT ACT OR OMISSION OR IS RELATED TO STRICT LIABILITY, OR OTHERWISE.

IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED 20% OF THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE PRODUCT SOLD HEREUNDER DURING THE 12 MONTHS PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY.

6. Indemnity. Buyer, having the expertise and knowledge in the intended use of the Product and any articles made therefrom, assumes all risk and liability for results obtained by the use of the Product, whether used alone or in combination with other materials. Buyer shall indemnify, defend and hold harmless Seller and its affiliates and each of Seller’s and its affiliates’ directors, officers, employees, agents and contractors (and each of successors and assigns of the foregoing) from and against all demands, claims, suits, damages, losses, judgments and liabilities of whatever kind or nature, including, without limitation,

reasonable attorneys' fees, expenses and other costs of litigation, fines, penalties or assessments asserted against or suffered by any such indemnitee by reason of, arising out of, or in any way related to Buyer's use (or any subsequent user's or end-user's use) of the Product, any articles made or manufactured using the Product, Buyer's negligence or willful misconduct, Buyer's failure to comply with applicable laws, and/or any claims for infringement of patent, copyright, or other intellectual property based upon the purchase or resale by the Buyer, whether or not the Product is within Buyer's specifications, drawings, and/or samples.

7. Insurance. Buyer shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, (i) statutory workmen's compensation and employer liability with a minimum limit meeting applicable state and federal laws; (ii) commercial general liability in a sum no less than \$1,000,000 for each occurrence and \$2,000,000 in the aggregate, including bodily injury and property damage and products, which policy will include contractual liability coverage insuring the activities of Buyer under this Agreement; (iii) comprehensive automobile liability insurance with liability limits of \$2,000,000 per occurrence for bodily injury and property damage; and (iv) excess liability/umbrella insurance over the above listed coverages to a limit of \$5,000,000, in all cases with financially sound and reputable insurers. Buyer shall provide Seller with a certificate of insurance from Buyer's insurer evidencing the insurance coverage specified in this Agreement. The certificate of insurance shall name Seller as an additional insured. Buyer shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Buyer's insurance policy. Except where prohibited by law, Buyer shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.
8. Compliance. It is a responsibility of Buyer to comply with all relevant reporting obligations under the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. section 11001-11049 (EPCRA, also commonly known as Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA Title III)) resulting from the presence of the chemicals and Product supplied under this Agreement. Further, it is a responsibility of Buyer to warn and protect its employees and others exposed to the hazards posed by Buyer's storage and use of the Product.
9. Governing Law. This Agreement shall be governed by and construed in accordance with the substantive law of the State of Arkansas, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods will not, for any purpose, govern or apply to this Agreement or any transactions, performance or disputes hereunder.
10. Choice of Forum. Each Party irrevocably and unconditionally agrees that it will not commence any action, litigation or proceeding of any kind whatsoever against the other Party in any way arising from or relating to this Agreement in any forum other than the United States District Court for the District of Arkansas or, if such court does not have subject matter jurisdiction, the courts of the State of Arkansas, and any appellate court from any thereof. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of such courts and agrees to bring any such action, litigation or proceeding only in such courts, as applicable. Each Party agrees that a final judgment in any such action, litigation or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.
11. Notice. All notices, requests, claims, demands and other communications between the Parties shall be in writing (unless provided for otherwise under this Agreement). All notices shall be given (i) by delivery in person, (ii) by a nationally recognized next day courier service, (iii) by first class, registered or certified mail, postage prepaid or (iv) by electronic mail, in any case, to the address of the Party specified in the Purchase Order or such other address as either Party may specify in writing. All notices shall be effective upon (i) receipt by the Party to which notice is given, or (ii) on the fifth (5th) day following mailing, whichever occurs first.
12. Force Majeure. Neither Buyer nor Seller shall be liable or responsible to each other, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make any payment hereunder), when and to the extent such failure or delay is caused by or results from acts beyond Buyer's or Seller's (as applicable, "**Impacted Party**") reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Events**"): (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; and (i) shortage of adequate power or transportation facilities. The Impacted Party shall give prompt notice of the Force Majeure Event to the other Party, stating the period of time the occurrence is expected to continue. The Impacted

Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. In the event that the Impacted Party's failure or delay remains uncured for a period of 30 days following written notice given by it under this Section of this Agreement, the other Party (i.e., Buyer or Seller, as applicable) may thereafter terminate this Agreement upon 7 days' written notice as its sole and exclusive remedy.

13. Compliance with Laws. During the performance of this Agreement, each Party agrees to comply with all laws, rules, regulations, ordinances and requirements of federal, states and local governmental or regulatory bodies which are applicable to this Agreement, including the provisions contained in the regulations identified in this section, to the extent that such regulation or regulations are applicable to this order. Without limiting the foregoing, if the following conditions for a regulation are applicable, the Parties must comply with that regulation: (i) if this Agreement is \$10,000 or more, Affirmative Action Compliance (48 CFR 52.222-25), Certificate of Non-Segregated Facilities (41 CFR 60-1.8 and 48 CFR 52.222-21), Affirmative Action for Special Disabled and Vietnam Era Veterans (41 CFR 60-250-1 & 4 and 48 CFR 52.222-35), Utilization of Small Business Concerns and Small Disadvantaged Business Concerns (48 CFR 52.219-8 and 48 CFR 19.702), and Utilization of Women Owned Small Businesses (Executive Order 12138 and 48 CFR 52.219-13); (ii) if the annual aggregate value of this Agreement exceeds \$10,000, Equal Opportunity Clause (Executive Order 11246, 41 CFR 60-1.4, and 48 CFR 52.222-26); (iii) if this Agreement is \$25,000 or more, Utilization of Labor Surplus Area Concerns (48 CFR 52.220- 3) and Drug Free Work Place Act; (iv) if the other Party has 50 or more employees and if the annual aggregate value of this Agreement exceeds \$50,000, Affirmative Action Programs (41 CFR 60-1.7 & 60-1.40, 48 CFR 22.804-1, and 48 CFR 52.222-25 & 27); (v) if the annual aggregate value of this Agreement exceeds \$100,000 and if any facility used herein has been the subject of a conviction under the Clean Water Act or Clean Air Act and is listed by the U.S. EPA as a violating facility, the Clean Air and Water Certification (48 CFR 52.223-1) and the Clean Air and Water (48 CFR 52.223-2) sections apply; and (vi) if this Agreement exceeds \$500,000, Labor Surplus Area Subcontracting Program (48 CFR 52.220-4) and Small Business and Small Disadvantaged Business Subcontracting Plan (48 CFR 52.219-9) and all other applicable sections in 41 CFR Chp. 60
14. Exporter of Record. If the goods covered by this order are to be exported from the United States of America, Seller shall not, for purposes of this agreement, be the "exporter of record" as that term is used by U.S. Customs and/or the Bureau of Industry and Security ("BIS") and Buyer shall comply with all regulations (including, but not limited to, those related to reporting, filing and record keeping) of U.S. Customs and/or the BIS. In the event Buyer exports any goods, Buyer shall indemnify and hold harmless Seller from any and all costs arising from any and all anti-dumping claims or investigations resulting from export of goods.
15. Miscellaneous.
  - a. This Agreement constitutes the entire agreement between the Parties relating to the subject matter addressed in this Agreement. This Agreement supersedes all prior communications, contracts, or agreements between the Parties with respect to the subject matter addressed in this Agreement, whether oral or written. The terms and condition of this Agreement shall survive the expiration or termination of this Agreement to the full extent necessary for their enforcement and for the protection of the party in whose favor they operate
  - b. While purchase orders, invoices, business forms, Buyer's website or similar routine or non-routine documents may be used to implement or administer provisions of this Agreement, any provisions of such other documents which contain any additional or different terms or conditions that add to, vary, modify or are at conflict with the provisions of this Agreement shall be deemed deleted and shall have no force or effect on any Party's rights or obligations under this Agreement, unless in a writing specifically agreed to and executed by the Parties specifically referring to this Section of this Agreement and agreeing to the change.
  - c. No amendment, change or modification of this Agreement shall be valid unless the same is in writing and signed by the Parties. No purported or alleged waiver of any of the provisions of this Agreement shall be binding or effective unless in writing and signed by the Party against whom it is sought to be enforced.
  - d. If at any time Buyer fails to be creditworthy as reasonably determined by Seller or fails to make any payment hereunder, Seller may request adequate assurance of payment. At Seller's discretion, Buyer may receive or continue to receive service if such adequate assurance of payment is provided within 3 business days of Seller's request. Seller may

immediately suspend sales and shipment of Product to Buyer if Buyer fails to provide the adequate assurance of payment within the allotted timeframe.

- e. Each Party shall comply in all respects with all applicable legal requirements governing the duties, obligations, and business practices of that Party and shall obtain any permits or licenses necessary for its operations. No Party shall take any action in violation of any applicable legal requirement that could result in liability being imposed on any other Party.
- f. This Agreement is not assignable or transferable by Buyer, in whole or in part, except with the prior written consent of Seller. This Agreement shall inure to the benefit of Seller and Buyer and their respective successors and assigns if properly assigned. The Parties agree that this Agreement has been mutually drafted and authored by all the Parties and that it shall not be construed against any one Party. Headings used herein are for reference only and not interpretation of the Agreement.
- g. Without limiting any shorter time limitation set out in this Agreement with respect to specific matters (such as, but without limitation, time limits for submission of claims relating to quality), any action by Buyer to enforce any rights or obligations under this Agreement must be filed in court against Seller no later than one (1) year after the date on which the alleged breach of this Agreement occurred, failing which, to the fullest extent permitted under applicable law, they shall be time barred.
- h. This Agreement may be executed in two or more counterparts, each of which together shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of a signature hereto may be made by facsimile transmission or by e-mail delivery of a ".pdf" and such signature shall create a valid and binding obligation as if such signature were an original thereof.

*[end of document]*