



## TERMS AND CONDITIONS FOR THE SALE OF GOODS

Seller and Buyer agree that the terms and conditions set forth herein (“**Agreement**”) shall, as of the date of this [**Acceptance**] (the “**Effective Date**”), apply to all of Buyer’s current and future purchases of goods (“**Goods**”) from Seller.

**1. Price.** The prices of the Goods purchased from Seller shall be set forth in Seller’s acceptance of Buyer’s purchase order(s) or by any other means that Seller may from time to time utilize. Quotations of prices must be received from Seller in writing in order to be effective. Unless otherwise stated in any quotation, the term for all quoted prices shall expire in thirty (30) days following the date Seller made the quotation. Quoted prices do not include sales, use or other taxes or government charges arising out of or related to the manufacture, distribution or sale of the Goods. All such taxes or charges, other than taxes on Seller’s income, will be paid by Buyer. Orders are firm and not subject to cancellation or revision except with the written consent of Seller. Buyer is responsible for all reasonable cancellation charges. Prices for the goods may be increased on account of new or increased (i) taxes on the manufacture or sale of such goods, (ii) governmental charges or (iii) cost of raw materials (but only if the cost of raw materials increases by more than 10% after the date on which Seller quoted its price to Buyer).

**2. Payment Terms.** Except as provided below, all invoices shall be due and payable according to the terms stated on Seller’s invoice. If Buyer fails to pay for any shipments on these terms or reasonable grounds for insecurity otherwise arise, Seller shall have the right to revoke any credit Buyer has and/or suspend further shipments until receipt of adequate assurance of Buyer’s performance in accordance herewith. If Seller ceases to extend credit, payment shall be, at Seller’s option, upon cash terms or any type of secured transaction specifically approved in writing by Seller. All amounts not paid on these terms shall bear interest at the rate of 1.5% per month, unless this rate exceeds the highest rate permitted by applicable law, in which event the rate shall be at the highest rate permitted by such law. Buyer shall make payment of all amounts on these terms without deduction or setoff for any reason whatsoever and without Seller being compelled to take action to collect such amounts. Buyer shall, upon demand, reimburse Seller for all collection expenses, including but not limited to reasonable attorney’s fees and court costs. If a Seller invoice does not provide for payment terms, payment shall be made within 30 days of the invoice date.

**3. Purchase Orders; Delivery Terms; Other Terms.** The requested quantity terms and delivery times for the shipment of Goods (“**Specific Delivery Terms**”) hereunder shall be as set forth in this [**Acceptance**] or if not set forth herein, then as set forth in the Buyer’s purchase order received by Seller. Seller will use all reasonable efforts to meet such Specific Delivery Terms; provided, however, that Seller’s performance shall be excused upon and during continuation of any event, condition or occurrence beyond Seller’s reasonable control, including but not limited to fire, flood, storm, acts of God, war, civil insurrection, unavailability of raw materials, acts of terrorism, industry wide shortages, labor disturbances and lack of transportation services or supplies. Seller reserves the right to make delivery in installments. All such installments shall be separately invoiced and paid for on terms, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Buyer agrees that delivery of a total quantity that is up to ten percent (10%)

more or less than specified in the Specific Delivery Terms is acceptable and Buyer will either pay for the additional Goods or will receive a credit for the shortage at the contract price. Goods shall be delivered F.C.A. Seller’s factory or as otherwise stated on a Seller invoice. This Agreement shall apply to all orders and deliveries of Goods to Buyer. Except for the Specific Delivery Terms agreed to by Seller in writing, no other terms and conditions set forth in any of Buyer’s purchase orders shall apply to any sales of Goods by Seller to Buyer. If any conflict exists between Buyer’s purchase order terms and the terms of this Agreement or a written acceptance issued by Seller, the terms of this Agreement shall control.

**4. Risk of Loss.** Title and risk of loss to the Goods shall pass to Buyer upon delivery to the carrier if delivery is F.O.B. or F.C.A. Seller’s plant.

**5. Warranties.** Seller represents and warrants that, when delivered, the Goods will: (a) conform, in all material respects, to the blueprints or other written specifications for the Goods prepared and delivered by Seller to Buyer and (b) be free of defects in material and workmanship. The duration of this warranty is for twelve (12) months from date of delivery. Defects that fall within customary trade tolerances are not grounds for rejection of the Goods or a breach of warranty. Seller specifically makes no guarantees under any local, state or federal statute or ordinance including, but not limited to, the Food Additives Amendment of 1958 to the Food, Drug and Cosmetics Act, the Poultry Products Inspection Act and the Meat Inspection Act.

**6. Provision of Services.** Seller may also provide services to assist with the installation of products in accordance with the instructions provided by Seller. The scope of such services will be adjusted from time to time and the scope of such services shall be determined in the terms and conditions of a particular purchase order.

**7. Disclaimer of Warranties.** THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED.

**8. Limitation of Remedies.** Buyer’s sole and exclusive remedy for any defects in Goods sold hereunder, whether Buyer’s claim arises by virtue of the warranty set forth herein or otherwise, shall be limited to the repair or replacement (at Seller’s option) of such Goods. Claims for shortages must be made within five (5) working days after Buyer’s receipt of the Goods. If, within the warranty period, Buyer believes any Goods are defective, Buyer must promptly notify Seller of the nature of the defect. Goods may not be returned to Seller without Buyer first obtaining a return authorization number and shipping instructions from Seller. If the Goods are finally determined to be defective, Seller will pay the shipment costs to and from its plant. If the Goods are finally determined not to be defective, Buyer will pay such shipment costs. If the Goods are defective and Seller is unable to repair the Goods to conform to the warranty, Seller will, at its option, either refund the purchase price of the defective Goods or provide a replacement product which conforms to the warranty. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY INDIRECT, PUNITIVE, EXEMPLARY, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF PROFITS, LOSS OF BUSINESS, DOWNTIME,

PROPERTY DAMAGE, LOSS OF GOODWILL OR ANY ECONOMIC DAMAGES OR LOSS OF ANY KIND, WHETHER FORESEEABLE OR NOT AND WHETHER BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE (ALL OF THE FOREGOING IS REFERRED TO AS "**EXCLUDED DAMAGES**"). THE PARTIES ACKNOWLEDGE THAT THE GOODS ARE NOT SO UNIQUE OR THE CIRCUMSTANCES SUCH THAT EITHER PARTY SHALL BE ENTITLED TO THE REMEDY OF SPECIFIC PERFORMANCE. SINCE CERTAIN JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR DIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO BUYER. IF THE LIMITATION OF LIABILITY SET FORTH HEREIN DOES NOT APPLY TO BUYER AS A MATTER OF LAW AND IF BUYER IS DISSATISFIED WITH ANY GOODS, OR WITH ANY OF THESE TERMS, BUYER'S SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THE AGREEMENT AND RETURN THE GOODS FOR A REFUND OF THE PURCHASE PRICE.

**9. Seller's Agents.** BUYER ACKNOWLEDGES THAT IT HAS BEEN ADVISED THAT NO AGENT, EMPLOYEE, OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, PROMISE, REPRESENTATION, OR WARRANTY CONCERNING ANY OF THE GOODS, AND, UNLESS SUCH AFFIRMATION, PROMISE, REPRESENTATION, OR WARRANTY IS SPECIFICALLY SET FORTH IN THIS AGREEMENT, IT DOES NOT FORM A BASIS OF THIS BARGAIN AND SHALL NOT BE ENFORCEABLE AGAINST SELLER.

**10. Confidentiality.** For purposes of this Agreement, the "**Confidential Information**" means all information and materials which concern a party's business, including but not limited to all pricing information, specific customer and supplier requirements, internal business organization information, financial data, sale, and cost information, research and development, intellectual property, technologies, processes and methods, whether communicated orally, in writing or electronically, before or after the Effective Date. Each party agrees that during the term of this Agreement and indefinitely thereafter, it shall not: (i) directly or indirectly sell, alienate, transfer, assign, disclose or divulge the Confidential Information to any person or entity without the other party's prior, written permission; and (ii) directly or indirectly use the Confidential Information or any information relating to the Confidential Information for the benefit of any individual, business, profession, partnership, corporation, joint venture, limited liability company or other endeavor including itself.

**11. Governing Law.** This Agreement will be governed by and construed in accordance with the domestic laws of the State of Illinois, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Illinois.

**12. Arbitration.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement or the breach thereof, the parties agree to use all reasonable efforts to settle the dispute, claim, question, or disagreement. To this effect, they agree to consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 45 days, then the parties agree to endeavor first (and before resorting to arbitration) to settle the dispute by mediation administered by the American Arbitration Association (the "AAA") under its Commercial Mediation Rules. Any controversy or claim arising from or relating to this Agreement or breach thereof not resolved by mediation within 45 days will be settled by arbitration administered by the AAA in

accordance with its Commercial Arbitration Rules. Following the end of the 45 day mediation period, any party may, in a written notice delivered to the other party, demand arbitration. Such notice must contain a statement of the matter in controversy in reasonable detail. The arbitration shall be heard by three arbitrators. An award rendered by a majority of the arbitrators is final and binding on all parties in the proceeding. The parties stipulate that the provisions of this Section constitute a complete defense to any proceeding instituted in any federal, state or local court or before any administrative tribunal with respect to any controversy or dispute arising out of this Agreement. The arbitration provisions hereof will, with respect to such controversy or dispute, survive the termination or expiration of this Agreement. Such arbitration proceeding will be conducted in Chicago, Illinois at a location designated by a majority of the arbitrators. The arbitration award must be made within nine (9) months of the filing of the notice of intention to arbitrate and the arbitrators must agree to comply with this schedule before accepting appointment. The arbitrators will issue a written decision that will reveal the essential findings and conclusions on which the award is based. Except as required by law, neither party will disclose the existence, content or results of any arbitration without the written consent of the other party. The arbitrators have the right to award or include in any award such relief which the arbitrators deem proper in the circumstances including, without limitation, money damages, specific performance, injunctive relief and legal fees and costs; provided, however, the arbitrators may not award Excluded Damages. The award and decision of the arbitrators will be conclusive and binding upon all of the parties, and judgment upon the award may be entered in any court of competent jurisdiction. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its attorneys' fees, accountant's fees, witness fees, expert fees and its share of the arbitrators' fees and expenses.

**13. Time for Bringing Action.** Any action related to this Agreement must be commenced within one (1) year after the cause of action has accrued.

**14. Assignment; Successors; Binding Agreement.** Buyer may not assign, pledge or encumber its interest in this Agreement or any part thereof and may not delegate its duties hereunder. Seller may freely assign its rights and obligations under this Agreement without permission from the Buyer. This Agreement shall be binding on and inure to the benefit of Seller's successors and assigns.

**15. No Waiver or Forbearance of Breach.** The waiver by any party of the breach of any provision of this Agreement shall not be deemed to be a waiver of any subsequent breach. Forbearance of any breach of this Agreement shall not constitute acceptance or approval of that breach or of any future breach, nor shall it prejudice Seller's right to action in response to any breach

**16. Modification.** No provision of this Agreement may be modified, waived or discharged unless such waiver, modification or discharge is agreed to in a writing signed by Buyer and Seller.

**17. Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect. Furthermore, the invalid or unenforceable provision will be deemed superseded by a valid, enforceable provision that most closely matches the intent of the original provision and the remainder of the agreement shall continue in effect.

**18. Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes any prior proposals, negotiations, understandings, agreements or representations to the extent they relate in any way to the subject matter hereof.