



Terms and Conditions of Sale

1. AGREEMENT - These terms and conditions (collectively, "Terms"), the Price Request Form ("PRF") between the seller ("Seller") and buying entity listed therein ("Buyer"), together with any draw down or order to be placed by Buyer pursuant to the PRF for the purchase and sale of goods/products described in therein, or other goods/products that are substantially similar to those listed therein ("Goods") shall constitute the entire agreement ("Agreement") between Buyer and Seller related to the sale and purchase of those Goods of the Agreement. Seller's execution of the PRF shall constitute Seller's acceptance of an Agreement with Buyer. Buyer's (a) execution of the PRF or (b) placing any order pursuant to the PRF, or (c) failure to object in writing to the PRF or any release related to the PRF within one business day of receipt, whichever occurs first, shall be deemed Buyer's acceptance of both the PRF and these Terms. BUYER'S ACCEPTANCE IS LIMITED TO ACCEPTANCE OF THE EXPRESS TERMS OF THE AGREEMENT AND DOES NOT INCLUDE ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER OR ANY ATTEMPT BY BUYER TO VARY THE TERMS OF THIS AGREEMENT.

2. PAYMENTS. Buyer will pay Seller when due (a) the total purchase price for the Goods, (b) all applicable sales taxes, value added taxes and all other taxes of any kind or nature related to Buyer's purchase of the Goods, and (c) Seller's shipping and other costs, as applicable. Time for payment is of the essence to this Agreement. All payments will be made without offset or any deduction and will be made in USD unless otherwise specifically provided. Any amounts not paid when due, shall be subject to a late charge equal to one and one-half percent (1.5%) per month (not to exceed the highest rate allowed by law) until paid. If Buyer delays the payment for more than thirty (30) calendar days, Seller shall have the right to terminate this Agreement immediately with a written notice to Buyer and/or suspend any further delivery of Goods to Buyer, and such action shall not influence the exercise or use by Seller of any other rights or remedial measures allowed by law, including without the limitation requesting Buyer to pay the late charge.

3. INSPECTION AND REJECTION OF NONCONFORMING GOODS.

(a) Buyer shall inspect the Goods within 3 days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is substantially different than identified in this Agreement; or (ii) the Good's label or packaging incorrectly identifies its contents. (b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, (i) replace such Nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such Nonconforming Goods. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to Seller's specified location. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods in accordance with the Incoterms described in the Agreement. (c) Buyer acknowledges and agrees that the remedies set forth in Section 3(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 3(b), all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return Goods purchased under this Agreement to Seller.

4. INTELLECTUAL PROPERTY. Buyer shall have no right title or interest in any trademarks, trade dress, copyrights, patents or other intellectual property owned or controlled by Seller or any of its affiliates ("Seller IP"). Except as approved in advance in writing by Seller, which approval may be withdrawn by Seller at its sole direction at any time, Buyer shall not use any Seller IP or any other words, marks or designs resembling or similar to any Seller IP (or the translation of such Seller IP into any language other than English) in connection with the business name or commercial activities of Buyer or in any manner. Buyer shall not register any of the Seller IP or any name, mark or design resembling or similar to any of the Seller IP. Buyer shall give prompt notice in writing to Seller of any infringement or possible infringement of Seller IP that may come to Buyer's attention. Seller shall have the right, in its absolute discretion and at its expense to take such actions



(including the initiation of proceedings and participation in proceedings brought against Buyer) as Seller may deem necessary or desirable, at law or otherwise, in any applicable jurisdiction, to stop any infringement of Seller IP and, in the event any sum is recovered, Seller shall have the exclusive right thereto.

5. WAIVER OF WARRANTY AND CLAIMS; LIMITATION OF LIABILITY. SELLER EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. EACH PARTY HEREBY EXPRESSLY WAIVES ITS RIGHTS TO SEEK AND/OR TO OBTAIN ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL, OR PUNITIVE DAMAGES, INCLUDING LOST PROFITS FROM THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT. BUYER EXPRESSLY ACKNOWLEDGES AND AGREES THAT SELLER'S AGGREGATE LIABILITY TO BUYER ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY REASON IS LIMITED TO THE TOTAL AMOUNT PAID BY BUYER TO SELLER HEREUNDER.

6. GOVERNING LAW. The validity, performance and construction of this Agreement will be governed by the local, domestic law of the Commonwealth of Massachusetts, and without regard in any way to the United Nations Convention on Contracts for the International Sale of Goods, application of which is expressly waived by the parties.

7. VENUE AND JURISDICTION. Each party hereby consents to the jurisdiction of any state or federal court located within the Commonwealth of Massachusetts and irrevocably agrees that the exclusive venue for all actions or proceedings arising out of or relating to this Agreement will be litigated in such courts. Each party hereby agrees that service of process in any such proceeding may be by personal service, or (a) in the United States, by certified or registered mail, return receipt requested, addressed to such party, at its address as specified in the Agreement or (b) outside of the United States by prepaid international priority delivery by Federal Express, UPS or another internationally recognized carrier. Service of process as provided above will be deemed made on the date of delivery if personally served, or ten (10) days after it is posted by certified or registered mail or by international priority delivery.

8. CONFIDENTIALITY. Within the effective term of this Agreement and any time thereafter, each party shall not disclose any confidential information of the other party without prior written consent of the other party. Confidential information shall include but is not limited to business, products, technology of one party as well as the terms and conditions of this Agreement.

9. TERMINATION FOR BREACH. Either party may terminate this Agreement in the event of a material breach of the other party that is uncured after 30 days from the date of written notice of such breach.

10. FORCE MAJEURE. In the event of any act of God, war, labor dispute, crop failure, boycott, act of terrorism, riot, governmental act, strikes, fire, flood, accident or other casualty, or any other cause or condition beyond Seller's reasonable control which interferes with Seller's ability to supply the Goods as described in the Agreement, Seller may, at its option, either cancel entirely or reschedule delivery of such portion of the Goods not yet delivered to Buyer. Further, this Agreement is based on an estimate of Seller's production of Goods. Seller shall not be responsible for any inability to deliver or failure to deliver Goods or to meet any shipping schedule caused by production shortages or due to any cause or condition beyond Seller's reasonable control (including, but not limited those noted above). Seller may, at its discretion and without penalty, delay deliveries, make partial deliveries, cancel any deliveries, or provide alternative goods that are substantially similar as the Goods, or terminate this Agreement as needed as a result of any such conditions that impairs its capacity to deliver Goods to Buyer as contemplated herein.