

## TERMS AND CONDITIONS OF PURCHASE OF GOODS

1. **DEFINITIONS.** (a) “Agreement” means these Terms and Conditions of Purchase and the Purchase Order that accompanies them or to which they are attached; (b) “Buyer” means the buyer identified on the Purchase Order referencing these Terms and Conditions of Purchase; (c) “Products” means all goods, materials, chattels, equipment, supplies and machinery to be provided pursuant to this Agreement, including those provided in connection with or incidental to the performance of services; (d) “Purchase Order” means the purchase order issued by Buyer to Seller, as such Purchase Order may be modified pursuant to this Agreement; (e) “Seller” means the person, partnership, company or corporation providing the Products to Buyer; and (f) “Specifications” means the written description of the Products provided by Buyer on the Purchase Order or referenced in the Purchase Order or, if specifications are not provided by Buyer or referenced, the specifications and related documentation (including safety data sheets) for the Product identified in the Purchase Order as provided or made available by Seller as of the date of the Purchase Order.
2. **PURCHASE AND SALE.** Subject to the terms and provisions of this Agreement, Seller agrees to sell the Products described in the attached Purchase Order. Seller shall be deemed to have accepted the Purchase Order upon its execution of an acknowledgment of the Purchase Order or its shipment of Products described in the Purchase Order. Buyer objects to variations in and additions to any of the terms and conditions of this Agreement, irrespective of the wording of Seller’s acceptance, proposal, invoice, shipping receipt or other written materials (“Seller’s Forms”). Any terms in Seller’s Forms that add to, vary from, or conflict with this Agreement shall be void. Buyer may terminate this Agreement, in whole or in part, at any time, for any reason, upon written notice to Seller.
3. **PAYMENT; TAXES.** Unless otherwise provided on the face of the Purchase Order and subject to any conditions to or withholdings of payment set forth in this Agreement or provided by applicable law, payment shall be made within sixty (60) days of the date of Seller’s invoice. Seller’s invoice shall not be issued earlier than the date of Seller’s shipment of the Products. Any taxes not disclosed on the Purchase Order shall be the responsibility of Seller. If Seller has received a waiver of or reduction in such withholding from all applicable taxing authorities, Seller must provide such waiver or reduction to Buyer in order for its payments not to be subject to this withholding.
4. **ELECTRONIC COMMERCE.** Buyer and Seller may transact electronic exchanges of Purchase Orders and modifications of or cancellations of Purchase Orders. The terms of an electronically transmitted Purchase Order shall be those terms and conditions contained in this Agreement regardless of any other terms and conditions.
5. **ORDER MODIFICATIONS.** Upon notice to Seller, Buyer may make changes in the Specifications before the Products are manufactured or in the timing, method or place of delivery before they are shipped. If Seller determines that any change made by Buyer requires an adjustment in the price or compensation to be paid or in the delivery, Seller must notify Buyer of the adjustment as soon as possible, but in any event prior to shipment or within ten (10) days after the date on which Buyer notifies Seller of the change, whichever is earlier. If Seller does not provide its notice of adjustment in a timely manner, then Seller’s claim for adjustment shall be waived. All adjustments agreed to by Buyer and Seller shall be documented with a revised Purchase Order or other written agreement between the parties.
6. **INDEMNIFICATION. TO THE EXTENT PERMITTED BY APPLICABLE LAW, SELLER SHALL INDEMNIFY, HOLD HARMLESS AND DEFEND BUYER AND ITS AFFILIATES AND THEIR RESPECTIVE EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, INSURERS, AGENTS AND REPRESENTATIVES (COLLECTIVELY, THE “INDEMNIFIED PARTIES”), FROM ALL CLAIMS, LIABILITIES, DAMAGES, SUITS, PROCEEDINGS, COSTS AND**

**EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) (COLLECTIVELY, THE "LOSSES"), FOR ANY DAMAGE, INJURY, DEATH, LOSS OR DESTRUCTION OF ANY KIND RELATING TO OR ARISING OUT OF THE PERFORMANCE OR BREACH OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OR DAMAGE TO ANY PROPERTY OR INJURY TO OR DEATH OF ANY PERSON (INCLUDING, WITHOUT LIMITATION, SELLER, ITS EMPLOYEES AND ITS AGENTS), WHETHER ARISING AS A WORKERS' COMPENSATION CLAIM OR UNDER THEORIES OF NEGLIGENCE, TORT, STRICT LIABILITY, INTENTIONAL MISCONDUCT, OR FAULT OF ANY KIND. THE PARTIES AGREE THAT THE FOREGOING INDEMNIFICATION SHALL APPLY TO LOSSES INCURRED BY THE PARTIES IN CONNECTION WITH CLAIMS BETWEEN THEM.**

**7. INSURANCE.** The indemnification provisions of this Agreement are in addition to, and not in substitution for or a limitation of, these insurance provisions. Unless otherwise agreed in writing by Buyer, Seller shall comply with the following insurance provisions. Seller shall procure, pay for, and maintain insurance coverage sufficient for their operations under this agreement. This includes, but is not limited to, Workers' Compensation as required by applicable law, Employer's Liability, Commercial General Liability (including coverage for Contractual Liability, Products/Completed Operations, and Environmental Liability), Automobile Liability, and Excess Liability coverage. Seller must ensure that their subcontractors comply with these insurance requirements. On the request of Buyer, Seller shall provide Buyer with a certificate of insurance naming Buyer as an additional insured on each of the policies required by this Agreement (other than Worker's Compensation and Employer's Liability). The failure of Buyer to object to Seller's failure to furnish a certificate or failure by Buyer to object to any defect in such certificate, shall not be a waiver of Seller's insurance obligations. Seller hereby: (i) represents and warrants that all insurance described above shall be primary and noncontributory and any other valid and collectible insurance available to Buyer shall be excess; (ii) waives any rights of recovery or subrogation against Buyer; (iii) represents and warrants that all retentions and deductibles shall be at the sole expense and for the account of Seller; and (iv) represents and warrants that no amendments or endorsements to the insurance described above need be issued in order for the representations and waivers contained in items (i) through (iii) of this subsection to be effective against Seller and its insurers.

**8. INDEPENDENT CONTRACTOR.** Seller and its contractors, employees, representatives and agents are independent contractors as to Buyer for all purposes related to and at all times during the term of this Agreement. Seller has responsibility for, and control over, the means and details of performing any services in connection with the production and transport of Products. Seller shall control and supervise all performance by such persons. Buyer shall incur no liability or obligation to employees, agents, representatives, contractors or other parties utilized by Seller, and Seller shall require all such persons to comply with the terms of this Agreement. Buyer shall not be liable for any act or omission of Seller or any of its employees, representatives, contractors or agents.

**9. ASSIGNABILITY.** Seller may not assign or delegate this Agreement in whole or in part either voluntarily or by operation of law without the express written consent of Buyer. If Seller assigns this Agreement without the consent of Buyer, Buyer may at its sole option treat the assignment as null and void.

**10. GOVERNING LAW.** The Agreement shall be interpreted and governed by the laws of the State of Kansas, USA, without regard to any conflict of laws principles. Neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Law on the Formation of Contracts for the International Sale of Goods shall be applicable to any sales hereunder. Any litigation between Buyer and Seller shall be litigated, if at all, in and before a federal or state court located in the State of Kansas, which is deemed the most proper forum under the circumstances. Such courts are selected to the exclusion of the courts

of any other state or country. Buyer acknowledges and hereby waives any and all challenges to personal jurisdiction in the State of Kansas and also waives any right to seek the transfer of venue for any reason whatsoever.

**11. ENTIRE AGREEMENT; SEVERABILITY; SECTION HEADINGS; AMENDMENTS.** This Agreement constitutes the entire agreement of the parties and supersedes all previous written or oral understandings and agreements between the parties regarding the subject matter hereof. If any provision of this Agreement (or any portion of any provision) is held to be unenforceable by a court of competent jurisdiction, such provision shall be enforced to the extent permitted by law and the remainder of this Agreement will remain in effect, to be construed in such a manner as to give effect to the intent of the parties to the greatest extent possible. The captions or section headings of this Agreement are for convenience of reference only and shall not be used to interpret the terms of this Agreement or construed as an expression of the intent of the parties. The Agreement may not be altered or amended except in a document signed by a duly authorized representative of Seller and Buyer. **Without limiting the prior sentences, if Buyer's personnel are required to enter a "Supplier Portal" or similar website in order to conduct business with Seller, including viewing required specifications from Buyer and/or reviewing Buyer's orders, and Buyer's personnel are required to check an "I Agree" box in order to enter the website, such actions by Buyer's personnel WILL NOT constitute agreement to any terms presented by Seller, on that website or elsewhere, and will not modify the terms of the Agreement as defined above. Buyer expressly rejects any "Clickwrap" or "Browsewrap" agreement(s) offered by Seller at its website.**

**12. NOTICES.** Any notice or other communication required or desired to be served, given or delivered hereunder shall be in writing and shall be deemed to have been validly served, given or delivered: (a) by hand courier; (b) upon delivery by a reputable delivery service such as UPS or FedEx that provides written delivery confirmation, or (c) by facsimile to the facsimile number of the party to be notified (with written confirmation of transmission). Notice shall be effective upon delivery. Either party may change the address, fax number or representative provided for notice in the Purchase Order by providing written notice of such change to the other party in the manner herein prescribed. Notwithstanding the foregoing, notice to the email addresses set forth in the Purchase Order may be used for ordering, reporting, pricing changes, changes in Specifications, and other routine correspondence.

**13. SURVIVAL; REMEDIES.** Sections 6 (Indemnification), 12 (Notices), 16 (Inspection of Products), 17 (Product Warranty), in addition to this Section and any other provisions that by their content are intended to survive, shall survive the delivery of Products under the Purchase Order and the termination or expiration of this Agreement. The remedies provided for in this Agreement are in addition to all other remedies available to Buyer at law or in equity.

**14. PURCHASE PRICE.** The purchase price for the Products shall be as set forth on the Purchase Order.

**15. SHIPPING; DELIVERY.** Seller shall deliver the Products DAP (Incoterms 2010) to the "ship to" address of Buyer identified on the Purchase Order, unless otherwise specified in the Purchase Order. Buyer may require that Products not delivered within the time specified be shipped by the most expeditious and rapid means of transportation with additional cost of said shipment charged to Seller's account. Title to the Products shall transfer to Buyer upon their delivery to Buyer or payment by Buyer of the purchase price, whichever is earlier.

**16. INSPECTION OF PRODUCTS.** All Products shall be subject to inspection and test by Buyer. Buyer shall have the right to reject Products that in the opinion of Buyer are not fit for the purposes intended by Buyer, contain defective material, do not meet the Specifications, or are not in conformity with the Purchase Order. Rejected Products shall be removed by Seller promptly after notification of rejection, at the expense of

Seller (including transportation), for credit on the purchase price or correction of defects, at the option of Buyer. Failure on the part of Buyer to inspect any Products does not relieve Seller from liability if Buyer determines at a later date that the Products do not meet the requirements.

17. **PRODUCT WARRANTY.** Seller warrants that (a) it is the owner of good and clear title to the Products, (b) the Products shall be new and merchantable and conform to the Specifications and any statements made on the containers, labels, product data sheets, manuals, advertisements, brochures and other marketing materials for such Products, (c) the Products shall not contain any material not identified in the Specifications from any source, whether resulting from manufacture, transportation or storage of Products, prior to delivery to Buyer, and (d) the Products shall be free from defects in material and workmanship for a period of one year following delivery to Buyer or for such longer period as may be set forth in any manufacturer's or Seller's published warranty. If Seller knows of or has reason to know the particular purposes for which Buyer intends to use the Products, Seller warrants that such goods shall be fit for such particular purposes. All such warranties shall survive inspection, test, acceptance and use and shall run to Buyer, its successors, assigns, buyers and users. Seller hereby assigns to Buyer all manufacturers' warranties covering the Products.