



*****TERMS AND CONDITIONS OF SALE***
PROPER USE OF PRODUCT**

IF THE MATERIAL IDENTIFIED IN THIS SHIPMENT DIFFERS FROM PREVIOUS SHIPMENTS KEEP SEPARATE UNLESS YOUR TESTS PROVE THIS UNNECESSARY.

- 1. Terms.** Buyer's purchase of the Products from Seller shall be governed solely by these Terms and Conditions of Sale ("Standard Terms"), any written agreement between Buyer and Seller that supplements or amends these Standard Terms (the "Supply Agreement") and the terms in the invoice delivered by Seller to Buyer ("Invoice") collectively referred to as Terms ("Terms"). Seller expressly notifies Buyer of its objection to any different and/or additional terms proposed by Buyer including but not limited to any terms and conditions contained in any Purchase Order or in any other format of Buyer. Seller's sale of the Products is expressly conditioned on Buyer's acceptance of these Terms, and Buyer's acceptance of the Product is a confirmation of the acceptance of these Terms.
- 2. Price; Payment; Taxes; Assurances.** The purchase price of the Products is specified in the Invoice. Seller may elect to send the corresponding Invoice via regular mail, electronic mail or by any other electronic means. The purchase price does not include any sales, use, revenue, excise or other taxes or governmental charges, all of which are Buyer's responsibility. If Seller is required to collect those taxes or charges, Seller will add them to the purchase price and invoice Buyer (in the Invoice or separately), and Buyer shall pay them. Unless the Invoice provides otherwise, the purchase price of Products does not include any services or freight. Unless the Invoice specifies a different payment schedule, the total purchase price of the Products shall be due and payable within 30 days after the date of the Invoice. No partial payment by Buyer shall constitute an accord and satisfaction or otherwise satisfy the entire outstanding balance of any invoice of Seller, notwithstanding any notation or statement accompanying that payment. Should Seller determine Buyer's finances to be inadequate to support payment for the Products to be sold hereunder, Seller may require cash in advance or other additional assurances satisfactory to Seller or may elect to discontinue deliveries on any Product. The Seller may, by giving notice to the Buyer at any time before delivery, increase the price of the Product to reflect any increase in the cost of the Product that is due to: (a) any factor beyond the Seller's control (including foreign exchange fluctuations, increases in taxes and duties, and increases in labour, materials, utilities, haulage or other manufacturing or delivery costs); (b) any request by the Buyer to change the delivery date(s), quantities or types of Product ordered, or the specification; or (c) any delay caused by any instructions of the Buyer or failure of the Buyer to give the Seller adequate or accurate information or instructions.
- 3. Delivery; Quantity; Returnable Materials.** All delivery schedule and dates given by Seller are estimates only and Seller is not liable for any delay in delivery. All prices are net of any delivery charges, all of which Buyer shall pay. Delivery shall occur and title and all risk of loss shall pass to Buyer upon the earliest to occur of the following ("Delivery"): (a) Buyer takes possession of the Products; (b) the Products leave Seller's premises to be delivered to Buyer; or (c) the Products are placed in the possession of a common, contract or other carrier to be delivered to Buyer. Seller shall not be responsible for any damage to the Products caused by a carrier, and Buyer's sole recourse for that damage shall be against the carrier. Seller may make partial deliveries. Seller may discontinue deliveries on any Product, the manufacture, sale or use of which in its opinion would involve patent infringement. Buyer shall give Seller prompt notice of any discrepancy in the quantity of Products ordered. Seller's count or its weight shall be final and conclusive, except in case of proven error whereby an adjustment shall be made. Buyer shall promptly unload, release and return to Seller all returnable materials and transportation equipment so that no related expense or loss shall be incurred by Seller. Buyer shall assume all liability including demurrage with respect to such returnable materials and equipment, including packaging.
- 4. Limited Warranty.** Seller warrants to Buyer that the Products will meet Seller's standard written specifications for the Products in effect as of the date of Delivery (available upon Buyer's written request), or such other specifications to which the parties agree pursuant to an agreement in writing executed and delivered by both parties. No agent, sales representative or employee of Seller shall have any authority to modify or expand this warranty in any way. This warranty is limited to the original Buyer and may not be transferred. Buyer, having the expertise and knowledge in the intended selection, application, use or incorporation ("Use") of the Products and any product or material made therefrom, assumes all risk and liability for results from the Use of the Products, whether alone or in combination with other materials or reacted with other materials. This warranty shall be null and void, and Buyer assumes all risk and liability, if (a) the Products are abused, misused, damaged by accident, used contrary to Seller's instructions, or modified by anyone not authorized by Seller, (b) the Products are not maintained in accordance with Seller's instructions, (c) Buyer does not pay the purchase price for the Products as and when due, or (d) Buyer does not allow Seller access to the Products for purposes of inspection, repair or replacement.
- 5. Buyer's Claims.** Buyer must give Seller written notice of any failure of the Products to comply with the warranty within 5 days after Buyer identifies any non-compliance; provided that notwithstanding when Buyer identifies such non-compliance, Buyer must notify Seller in writing of any non-compliance no later than 90 days after delivery of the Products. The notice must specify the basis of Buyer's claim in detail and identify the Products at issue. Seller shall have a reasonable opportunity to inspect the Products at issue and a reasonable time to cure any nonconformity. Buyer shall allow Seller access to the Products on Buyer's premises to inspect, or replace the Products, and shall return the Products to Seller, freight and insurance prepaid, at Seller's request, for inspection, or replacement. Buyer shall not ship Products to Seller without first obtaining Seller's approval and instructions. Buyer shall keep all Products subject to a claim segregated until Seller has completed its inspection or has given Buyer written notice with respect to the particular Products that Buyer does not need to continue to segregate those Products. **For any Products that Seller determines do not conform to the warranty, Buyer's sole and exclusive remedy shall be for Seller, at its sole discretion, to replace the non-conforming Product (subject to availability) or refund the amount of the purchase price Buyer paid for the non-conforming Product, and in no event shall Seller's liability for any claim be greater than the amount Buyer paid for the non-conforming Product.** Buyer shall be deemed to have waived all warranty claims with respect to the Products that it does not report to Seller in writing within the 90 day period. No claim shall be allowed for Product that has been processed in any manner.
- 6. DISCLAIMERS; LIMITATIONS.** Except as expressly set forth the warranty in Section 4, **THE PRODUCTS ARE SOLD AS IS, WHERE IS, WITH ALL FAULTS AND AT BUYER'S SOLE RISK AND PERIL, AND SELLER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND AS TO THE PRODUCTS, LEGAL OR CONVENTIONAL, EXPRESS AND IMPLIED, INCLUDING ALL REPRESENTATIONS AND WARRANTIES AS TO MERCHANTABILITY,**

FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OF THE PRODUCTS FOR BUYER'S PURPOSES, ABSENCE OF LATENT DEFECTS, THE IMPACT OF THE PRODUCTS ON BUYER'S OPERATIONS AND NON-INFRINGEMENT. Without limiting the preceding disclaimers, **SELLER SPECIFICALLY DISCLAIMS ANY LEGAL WARRANTY OF QUALITY, ANY WARRANTY OF NON-INFRINGEMENT WITH RESPECT TO ANY COMBINATION OF THE PRODUCTS WITH OTHER GOODS, ANY USE OF THE PRODUCTS IN ANY PROCESS, OR ANY DESIGN, SPECIFICATION OR OTHER ASPECT OF THE PRODUCTS BUYER SPECIFIES OR PROVIDES.** Buyer has expertise in the intended use of the Products and items made from the Products. Unless the Invoice provides otherwise, the Products are not approved and cannot be used for applications involving, permanent, brief, or temporary implantation in the human body or permanent contact with internal bodily fluids or tissues. **IN NO EVENT SELLER SHALL BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, EXEMPLARY, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST REVENUES AND PROFITS, ARISING OUT OF OR RELATING TO THESE TERMS OR THE PRODUCTS, BREACH OF WARRANTY, SELLER'S NEGLIGENCE, WHETHER IN CONTRACT, CIVIL LIABILITY, TORT, STRICT LIABILITY OR OTHERWISE, IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.** No warranty claim may be made under or pursuant to this Agreement unless notice thereof is given to Seller within the earlier of: (a) 1 year after the claim or cause of action has accrued; or (b) the period prescribed by applicable law. These Terms contain Buyer's sole and exclusive remedies relating to these Terms, a breach of these Terms or the Products, regardless of the cause of action.

7. Indemnity. To the extent permissible under applicable law, Buyer assumes all risk of and liability for and Buyer agrees to indemnify, defend and hold harmless Seller, its officers, directors, its employees and agents from and against any and all claims, actions, suits, demands, damages, liabilities, costs, obligations, and expenses whatsoever (including, without limitation, legal fees) for loss, property damage, injury (including death, illness or disease) or damage of any other kind whatsoever to any and all persons or entities, whatsoever (including employees of Buyer), whether based on negligence, civil liability, strict liability, contract or breach of warranty, arising from or relating to (i) Use of the Products, (ii) any processing or modification of the Products in any manner by Buyer, its employees, agents or customers, (iii) use exceeding the Products' specifications, (iv) misrepresentation (express or implied) made by Buyer, its employees or agents, (v) any violation of law or regulation by, intentional or negligent act of, or unauthorized representation by Buyer its employees or agents in their Use, sales, distribution or handling of Products, and (vi) any violation or infringement of any patent, trademark, copyright, trade secret or other property interest of a third party arising out of Seller's compliance with any designs, materials, specifications, or instructions Buyer provides to Seller, its employees or agents. At Seller's request, Buyer shall defend Seller, at Buyer's expense, against any such claim made against Seller. This indemnification obligation shall survive the termination of these Terms.

8. Cancellation; Delay. Buyer has no right to cancel any order it submits to Seller or to delay any Delivery. If Seller allows Buyer to cancel an order to delay a Delivery, Buyer shall pay Seller all costs Seller has incurred, and will incur, with respect to the cancellation or delay, including all restocking charges. It is understood and agreed between Buyer and Seller that if this Agreement covers Products that must be manufactured especially for Buyer and such an order is suspended or terminated for any reason, Buyer shall take delivery of and make payment for such Products as have been completed and such Products as are in process on the date notice of suspension or termination is received by Seller. If Buyer for any reason cannot accept delivery of such specially manufactured Products, Buyer shall make payment therefore as though delivery has been made and Seller will store such Products for Buyer's account and at Buyer's expense.

9. Insurance. Buyer shall maintain at all times, until the purchase price for the Products is paid in full, with an insurer reasonably satisfactory to Seller, property damage insurance on the Products for their full insurable value and shall provide to Seller upon Buyer's delivery of Products, and from time to time thereafter upon Seller's request, a current insurance certificate showing Seller as loss payee and providing that Seller shall receive at least 10 business days prior written notice of any modification or cancellation of the insurance policy.

10. Security Interest. To secure the prompt payment of the purchase price and all other amounts due to Seller with respect to the Products, Buyer hereby grants to Seller a first-priority purchase money security interest in the Products and all proceeds and products of the Products, including insurance proceeds. Buyer hereby authorizes Seller to file all financing statements, continuation statements and other documents necessary or desirable to perfect and to maintain Seller's security interest in the foregoing collateral.

11. Default; Remedies. The occurrence of any of the following shall constitute an event of default (each, an "Event of Default") by Buyer: (a) Buyer's failure to pay any sum to Seller as and when due; or (b) Buyer's default under any other provisions of these Terms which is not cured within 10 days after Seller gives Buyer written notice of default. Upon the occurrence of an event of default, and in addition to any other rights and remedies that Seller may have, Seller shall have the right, at its option, to take one or more of the following actions: (a) declare all or part of Buyer's obligations to Seller immediately due and payable; (b) suspend its performance under or terminate one or more pending orders; and (c) pursue its other rights and remedies under these Terms and applicable law. All amounts Buyer does not pay as and when due shall accrue interest at the lesser of the business prime rate charged by JPMorgan Chase Bank (or its successor) plus three percentage points (3%) per annum or the maximum amount allowed by law, until paid in full. If Buyer defaults under its obligations to Seller, Buyer shall pay Seller all costs of collection, including reasonable legal fees and costs.

12. Force Majeure and Material Change in Circumstances. Force Majeure. Seller and Buyer shall not be liable for delays or failure to perform directly or indirectly resulting from force majeure or events and causes beyond Seller's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms pandemics and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, fuel, supplies, power, materials or services through usual sources at, reasonable prices or in sufficient amounts. If Seller declares a force majeure event, Seller may allocate its supply of Products among its internal and external customers, (with which it had binding contractual supply commitments prior to the force majeure event) on such basis as the Seller considers to be reasonably justified, taking into account: (a) any supply commitments which the Seller has to customers with forward hedged raw material positions; and (b) any contractual stock reservation commitments which the Seller has with customers which apply on the occurrence of a force majeure event; except to the extent such distribution is prevented by law; without liability, but the Agreement shall remain otherwise unaffected. For the avoidance of doubt, in the event of any force majeure affecting the Seller, the Seller shall not be obliged to source Product from other members of the Seller's group or any third party to

comply with its supply obligations hereunder, to supply volumes of Product which were not delivered in connection with a force majeure event, nor to purchase supplies of the Product to enable it to perform this Agreement. If the force majeure event last for more than three (3) months, Seller may terminate this Agreement by providing the Buyer with at least thirty (30) days prior written notice. **Material Change in Circumstances:** If a long term situation adversely affects either of the parties, due to a Change in Circumstances as defined below, the affected party may notify the other party requesting the renegotiation of the relevant price of the Product and specifying the basis for such request. The parties shall meet to hold good faith negotiations with the intent to remedy the situation to both parties' satisfaction. If, within thirty (30) days of such notification the parties have not agreed upon the remedy to such situation, the affected party shall have the right to terminate the Agreement by providing the other party with at least thirty (30) days prior written notice. During the period of time from the notice delivered by the affected party requesting renegotiation to the effective date of early termination of the corresponding portion of this Agreement, all terms and conditions of this Agreement shall remain in full force and effect. **"Change in Circumstances"** shall mean any of the following events that adversely affects the affected party's economics under this Agreement in a material manner: (i) the imposition of new, amendments, or termination of laws, regulations or governmental taxes or governmental charges that have the effect of increasing the cost of materials if such increase in cost of production has not been already incorporated in the corresponding raw price formulae for the Products of Seller; (ii) the imposition of (a) any new import duties (or the expiration of any exemption from import duties or preference) or any increase in the import duty rate, or any new antidumping duties, on materials or (b) other new governmental restrictions for the import of materials into MEXICO, the USA or CANADA, including without limitation exchange rate controls, import licenses or other non-tariff trade barriers).

13. **Safety.** Buyer shall distribute to its employees and others that handle the Products, and will follow, all safety and other instructions for the use and handling of the Products that Seller provides in its Product specifications and documents accompanying the Products or elsewhere.

14. **Confidentiality.** These Terms, together with any specifications, or any other documents which may accompany them, shall be held in strict confidence by the Buyer.

15. **Miscellaneous.** All technical advice, recommendations and services rendered by Seller to Buyer are intended for use by individuals having a reasonable level of skill and know-how, and are used at their own risk and Seller assumes no responsibility for results obtained or damages incurred from their use. Buyer shall not have any right of set-off with regard to any amounts owed to Seller, regardless of any dispute that may arise between the parties. Any notice permitted or required under these Terms shall be deemed given if in writing and delivered personally, deposited in the United States mail, certified mail, return receipt requested, and sent by an electronically transmitted method to the respective addresses of Seller and Buyer. Buyer shall have no intellectual property or similar rights in the Products and Seller's sale of the Products shall not be construed as granting to Buyer any license or intellectual property or similar right applicable to or with the Products. Seller will be entitled to assign its right, title and interest in the Agreement to any of its affiliates without the prior written consent of the Buyer. Buyer may not assign to any person or entity all or a portion of its rights or obligations under these Terms or any order without Seller's prior written consent, and any attempted assignment without that consent shall be void, and of no force and effect. Seller reserves the right to correct clerical and typographical errors in any document. Seller's delay in enforcing any right or remedy shall not constitute a waiver, and Seller's waiver of any right or remedy in a particular instance shall not constitute a waiver in any other instance. These Terms and any controversy relating to them or the Products shall be governed by the laws of the State of North Carolina applicable therein (excluding any conflict of law rule or principle of such laws that might refer such interpretation or enforcement to the laws of another jurisdiction). Each party irrevocably submits to the exclusive jurisdiction of the state courts of Mecklenburg County, North Carolina or the United States District Court for the Western District of North Carolina with respect to any matter arising hereunder or relating hereto, and the parties hereby expressly waive the right to invoke that such jurisdiction is not a convenient forum under the doctrine of *forum non conveniens*. The United Nations Convention on the International Sale of Goods is expressly excluded and shall not apply. Seller and Buyer hereby consent and submit to the jurisdiction and venue of those courts. These Terms shall be binding on, and shall inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. These Terms, including the exhibits, annexes and schedules attached hereto, if any, which are hereby incorporated by reference, contain the full and entire understanding and agreement of the parties relating to the Products and supersede all previous and contemporaneous agreements, understandings, usages of trade, and courses of dealing, whether written or oral. These Terms may be modified, waived, discharged or terminated only by a written agreement, signed by both parties, expressly modifying these Terms. Whenever possible, each provision of these Terms shall be interpreted in such manner as to be effective and valid under any applicable law but if any provision of these Terms is held to be invalid, illegal or unenforceable in any respect under any law or rule in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision or any other jurisdiction, but these Terms shall be reformed, construed and enforced in such jurisdiction as if such invalid, illegal, or unenforceable provision had never been contained herein.