

## TERMS AND CONDITIONS

1. **APPLICABILITY.** These Terms and Conditions of Sale (“**Terms**”) apply to the purchase of goods and services (the “**Products**”) on the Terms set forth herein. Such Terms are specifically made a part of the order for the sale of the Foods. Any reasonable means of acceptance shall be effective as an acceptance of this offer. Acceptance of this offer is expressly limited to the terms of this offer. Unless changes to the Terms of this agreement are submitted in writing within five (5) business days, Seller shall not be bound by any terms of Buyer’s purchaser order which provide conditions additional to or different from the Terms hereof. Any Term or condition in any form of Buyer which has been or, at any time, may be received by Seller and which is inconsistent with, additional to, or different from the Terms is hereby expressly rejected. These Terms and the Sales Confirmation (as defined below) comprise the entire agreement between the Parties (collectively, the “**Agreement**”)

2. **CANCELLATION.** Cancellation or modifications of all or part of any order are subject to Seller’s prior written consent in each instance. If cancellation or modification is allowed, Buyer agrees to pay to Seller all expenses incurred and damage sustained by Seller on account of the cancellation or modification, plus a reasonable profit.

3. **PRICE.** Prices in any quotation, proposal, order acknowledgment, or invoice (the “**Sales Confirmation**”) from Seller are subject to change upon notice sent to Buyer at any time before the Sales Confirmation has been accepted. Prices for Products covered by this Agreement may be adjusted by Seller, upon notice to Buyer at any time prior to shipment, to reflect any increase in Seller’s cost incurred by Seller after issuance of the applicable Sales Confirmation.

4. **PAYMENT.** Unless otherwise set forth in the Sales Confirmation, Buyer will pay all invoiced amounts within thirty (30) days following the date of Seller’s invoice. Unpaid amounts will accrue interest at a rate equal to the lesser of one and one-half percent (1.5%) per month and the maximum rate permitted by applicable law, from due date until paid, plus Seller’s reasonable costs of collection. Seller reserves all other rights granted to a seller under the Uniform Commercial Code (“**UCC**”) for Buyer’s failure to pay for the Products or any other breach by Buyer of these Terms. In addition to all other remedies available to Seller (which Seller does not waive by the exercise of any rights hereunder), Seller may suspend the delivery of any Products if Buyer fails to pay any amounts when due and the failure continues for five (5) days following Buyer’s receipt of notice

thereof. Buyer may not withhold payment of any amounts due and payable as a set-off of any claim or dispute with Seller, regardless of whether relating to Seller’s breach, bankruptcy, or otherwise.

5. **DELIVERY; SHIPPING.** (a) Seller will deliver the Products within a reasonable time after receiving Buyer’s purchase order, subject to their availability. The delivery date provided by Seller for the Products is only an estimate and is based upon prompt receipt of all necessary information from Buyer. If Buyer causes Seller to delay shipment or completion of the Products, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller will not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach of contract on Seller’s part. (b) Unless otherwise agreed in writing by the parties, Seller will deliver the Products at the location specified in the Sales Confirmation (the “**Delivery Location**”), using Seller’s standard methods for packaging and shipping same. Buyer will take delivery of the Products within three (3) days of Seller’s notice that the Products have been delivered to the Delivery Location. If Buyer fails to take delivery of the Products within this three (3) day period Buyer will pay Seller for the Products and all storage expenses incurred by Seller. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer will pay for the units shipped whether the shipment is in whole or partial fulfillment of Buyer’s purchase order. (c) The quantity of any installment of the Products, as recorded by Seller on the dispatch from Seller’s place of business, is conclusive evidence of the quantity received by Buyer upon delivery, unless Buyer provides conclusive evidence to the contrary. Seller will not be liable for any non-delivery of the Products to the Delivery Location, unless Buyer gives written notice to Seller of the non-delivery within five (5) days following the date that Buyer would, in the ordinary course of business, have received the Products. Seller’s liability for any non-delivery of the Products will be limited to replacing the Products within a reasonable time or adjusting the invoice for the Products to reflect the actual quantity delivered.

6. **TITLE; RISK OF LOSS.** (a) Risk of loss or damage passes to Buyer upon delivery to the carrier. If Buyer fails to accept delivery of any of the Products on the date set forth in Seller’s notice that Seller has delivered the Products to the Delivery Location, or if Seller is unable to deliver the Products to the Delivery Location on the date because Buyer has failed to provide

appropriate instructions, documents, licenses, or authorizations, then: (i) risk of loss to the Products will pass to Buyer; (ii) the Products will be deemed to have been delivered to Buyer; and (iii) Seller, at its option, may store the Products until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses resulting from the failure (including but not limited to the cost of storage and insurance). (b) Title passes to Buyer upon Buyer’s payment in full for the Products.

7. **INSPECTION; REJECTION OF PRODUCTS.** (a) As used in this Section 7, “**Nonconforming Products**” means only the items shipped are different from those identified in Buyer’s purchase order. Buyer will inspect the Products within five (5) days following receipt thereof (the “**Inspection Period**”). The Products will be deemed accepted at the end of the Inspection Period unless Buyer notifies Seller in writing of any Nonconforming Products and furnishes Seller with written evidence or other documentation reasonable required by Seller. (b) If Buyer timely and properly notifies Seller of any Nonconforming Products, then Seller will, in its sole discretion, (i) replace the Nonconforming Products with conforming Products or (ii) credit or refund the purchase price for the Nonconforming Products. At Seller’s request, Buyer will dispose of the Nonconforming Products or return the Nonconforming Products to Seller at Seller’s expense. Upon receipt of the Nonconforming Products, Seller will promptly refund the monies owed or ship the replacement Products to the Delivery Location at Seller’s expense, with Seller retaining the risk of loss until delivery. (c) Buyer acknowledges and agrees that the remedies set forth in this Section 7 are Buyer’s exclusive remedies for the delivery of Nonconforming Products, and except as set forth in this Section 7, Buyer has no right to return the Products to Seller without Seller’s written authorization.

8. **NO WARRANTY. SELLER MAKES NO PRODUCT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, OF ANY KIND, AND SELLER DISCLAIMS ALL PRODUCT WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

9. **INDEMNIFICATION.** Buyer will defend, indemnify, and hold harmless Seller and its parent company, their respective subsidiaries, affiliates, successors, and assigns and their respective directors, officers, shareholders, and employees from and against any loss, injury, death, damage, liability,

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claim, deficiency, action, judgment, interest, award, penalty, fine, cost, fees or expense (including reasonable attorney and professional fees and costs, and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers) (“**Claims**”) arising out of or occurring in connection with the negligence or willful misconduct of Buyer or its employees or agents, including but not limited to: (i) any misuse or modification of the Products by Buyer or its employees or agents, (ii) any act (or failure to act) by Buyer or its employees or agents in contravention of any safety procedures or instructions that Seller provides to Buyer or its employees or agents, or (iii) the failure to store, install, operate, or maintain the Products in accordance with the Instructions.

**10. LIMITATIONS OF LIABILITY.** (a) **IN NO EVENT WILL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO ANY LOSS OF USE OR UNDER-UTILIZATION OF LABOR OR FACILITIES, LOSS OF REVENUE OR ANTICIPATED PROFITS, LOST DATA, AND COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF THE DAMAGES.** (b) **SELLER'S TOTAL LIABILITY FOR ALL CLAIMS ARISING OUT OF, OR RELATING TO, THE PRODUCTS WILL BE LIMITED TO GENERAL MONEY DAMAGES IN AN AMOUNT NOT TO EXCEED THE TOTAL PURCHASE PRICE FOR THE PRODUCTS GIVING RISE TO THE CLAIM.** (c) **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN ANY PERSONAL SERVICE REPORT, MARKETING MATERIALS OR OTHERWISE, SELLER MAKES NO WARRANTIES WITH RESPECT TO WATER SYSTEM BIOHAZARDS FROM WATERBORNE PATHOGENS OR INFECTIOUS DISEASES.**

**11. CHANGES.** Seller reserves the right to alter, modify, or redesign its Products without any obligation to replace previous shipments to Buyer.

**12. NO LICENSE.** The sale of the Products will not confer upon Buyer any license, express or implied, under any patents, trademarks, trade names, or other proprietary rights owned or controlled by Seller, its

subsidiaries, affiliates, or suppliers; it being specifically understood and agreed that all the rights are reserved to Seller, its subsidiaries, affiliates, or suppliers.

**13. TERMINATION.** In addition to any other remedies that Seller may have, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement and the failure continues for five (5) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

**14. CONFIDENTIALITY.** All non-public, confidential, or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, that Seller discloses to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and regardless of whether marked, designated, or otherwise identified as “confidential,” in connection with the Agreement is confidential, solely for the use of performing the Agreement, and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer will promptly return all documents and other materials received from Seller. Seller will be entitled to injunctive relief for any violation of this Section 14, without having to post bond or establish the insufficiency of a remedy at law. This Section 14 does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Seller on a non-confidential basis from a third party.

**15. FORCE MAJEURE.** Seller will not be liable for any failures or delays caused by strikes, differences with workers, or any causes beyond the reasonable control of Seller, including but not limited to viruses, fires, floods, accidents, action of any governmental authority, war, insurrection or riots, or shortages of labor, energy, raw materials, production facilities, or transportation. Where delays or failures are caused by labor difficulties, Seller will not be obligated to seek or obtain any settlement that, in Seller's best judgment, is not in Seller's best interest.

**16. GOVERNING LAW AND VENUE.** The Agreement shall be governed by and construed in accordance with the laws

of the State of Illinois. The parties agree that the exclusive venue for any claim or action brought pursuant to the Agreement, shall be the state courts located in DuPage County, Illinois.

**17. AMENDMENTS.** These Terms may be amended from time to time at the discretion of the Seller.

**18. MISCELLANEOUS.** Buyer acknowledges that is has not been induced to purchase any the Products from Seller by any representation or warranty not expressly set forth in this Agreement. These Terms and the Sales Confirmation constitute the entire agreement of the parties and supersede all existing agreements and all other oral or written communications between them concerning its subject matter. None of the Terms may be added to, modified, superseded, or otherwise altered, except by a written document signed by an authorized representative of Seller that specifically references these Terms and states that it modifies them. If there is a conflict between the provisions of the Sales Confirmation and these Terms, then the terms of the Sales Confirmation will govern.

**19. WAIVER.** No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing that specifically references these Terms and is signed by Seller. No failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms operates or may be construed as a waiver thereof. No single or partial exercise of any right, remedy, power, or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The Section headings contained in these Terms are for convenience only and will not affect the interpretation of any provision.

**20. SEVERABILITY.** If any provision of these Terms shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If the Court finds that any portion of these Terms is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

**21. ATTORNEY'S FEES.** In the event of any breach by Buyer of the Agreement, including these Terms, the Seller shall be entitled to recover its reasonable attorneys' fees and costs in any collection efforts or proceedings arising from the breach.