

TERMS AND CONDITIONS

Buyer's written acknowledgment of this Product Sales and Delivery Agreement ("Agreement") (whether by execution of a copy of this Agreement or otherwise), Buyer's acceptance of goods delivered or services performed under this Agreement or Buyer's payment for any of the goods delivered or services performed under this Agreement shall conclusively evidence Buyer's acceptance of this Agreement, which acceptance shall be strictly limited to the express terms and conditions contained in this Agreement and on any riders or addenda attached to this Agreement that are signed by an authorized representative of Seller (such signed riders and addenda being collectively referred to later on as "Riders"). If there is a continuing written Agreement signed by Buyer and Seller which relates to the goods, services or mixed goods and services that are the subject of this Agreement (such goods and services being collectively referred to later on in this Exhibit B as "Product"), that continuing Agreement shall be deemed supplemented by the provisions of this Agreement, except to the extent the terms of this Agreement conflict with the express terms of such continuing Agreement, in which case, the terms of the continuing Agreement shall control. In any other cases, the provisions and documents referred to in this Agreement and on any Riders shall constitute the final, exclusive and entire expression of the agreement between Buyer and Seller with respect to the Product covered by this Agreement and shall supersede all prior and contemporaneous agreements, understandings, negotiations, discussions and proposals, oral or written, and all other communications between the parties with respect to the subject matter of this Agreement. Any additional or different provisions, whether contained on Buyer's acknowledgment of this Agreement, Buyer's releases against this Agreement or other communications by Buyer, are expressly objected to, rejected and shall be deemed a material alteration of this Agreement, and shall not be binding upon the parties unless set forth in a writing signed by Seller's authorized representative.

1. **SHIPPING.** Will be as expressly provided in this Agreement.

2. **TERMS.** Will be as expressly provided in this Agreement.

3. **TAXES.** All federal, state, municipal and other governmental excise, sales, use, occupational, export, import or like taxes, tariffs and governmental charges (other than those based upon Seller's net income) resulting directly or indirectly from this Agreement shall be paid by Buyer.

4. **WARRANTIES**

a. **General.** Seller warrants that Buyer shall receive good and marketable title to all Product delivered by Seller to Buyer under this Agreement—free and clear of all liens, security interests and encumbrances of any kind. Seller further warrants that the Product shall conform to Seller's Specifications, meaning the specifications for the Product which are attached to this Agreement and signed by an authorized representative of Seller, or, if such specifications are not attached, Seller's prevailing specifications for the Product at the time of delivery.

b. **EXCLUSION OF OTHER WARRANTIES.** The foregoing warranties and any additional written warranties or representations that are expressly made part of this Agreement and are signed by an authorized representative of Seller are in lieu of all other warranties, express or implied, with respect to the Product.

NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, SHALL APPLY.

c. **Claims.** If any Product fails to conform to the Specifications at the time of shipping, then Seller shall, at its option and specifically subject to the other terms and conditions in this Agreement, repair or replace the defective Product at no cost to Buyer. Any claim for breach of Seller's warranty under this Agreement must be made in writing, providing sufficient detail to permit identification of the defect and indicating the date on which Buyer discovered the claimed defect. Such written claim must be sent to Seller (at its address shown at the beginning of this Agreement) by registered or certified mail (return receipt requested), within 30 days after Buyer's discovery of the claimed defect. Any claim not made in accordance with the foregoing shall be conclusively deemed to have been waived by Buyer. Subject to the foregoing, any Product that is claimed to be nonconforming must be shipped to Seller at Buyer's risk and expense. Seller's acceptance of any Product so shipped shall not be deemed an admission that such Product is nonconforming. If Seller finds that any Product so returned is both nonconforming and covered by the warranties provided under this Agreement, such Product shall be repaired or replaced, and then returned to Buyer, at Seller's risk and expense, within a reasonable time; if, however, Seller finds that any of the Product so returned is either not

defective or otherwise not covered by the warranties under this Agreement, such Product shall be reshipped to Buyer at Buyer's risk and expense.

d. Exclusive Remedies. Buyer's remedies for any claim relating to the Product shall be limited to the repair or replacement of nonconforming Product as provided above unless circumstances cause such limited remedies to fail of their essential purpose, in which case, Buyer's sole alternative remedy shall be to recover the purchase price of the nonconforming Product less the value of such Product when it was delivered to Buyer. The foregoing remedies for breach of warranty under this Agreement shall be exclusive.

5. SPECIAL HANDLING INSTRUCTIONS. If applicable, a copy of Seller's current Safety Data Sheets ("SDS") containing special handling instructions for the Product as of the date of this Agreement is attached to this Agreement. Buyer shall handle the Product as specified in Seller's SDS and shall indemnify, defend and hold harmless, Seller against any Loss (as defined below) arising out of any failure by Buyer to handle the Product in accordance with Seller's SDS.

6. PRICE ADJUSTMENTS. Will be as expressly provided in this Agreement

7. FORCE MAJEURE. No liability shall result from delay in performance or non-performance in whole or in part if performance as agreed has been made impracticable by the occurrence of any contingency (a "Force Majeure"), the non-occurrence of which was a basic assumption on which this Agreement was made. By way of illustration, examples of Force Majeure include, without limitation, acts of God, fire, flood, accident, riot, war, sabotage, strike, labor trouble or shortage, embargo, governmental regulation, or Seller's inability to obtain, at prices and on terms deemed by Seller in its reasonable discretion to be practicable, any required raw material, energy source, equipment, labor, transportation or the Product itself. As to this last Force Majeure, the parties recognize that Seller's ability to sell Product to Buyer at the price and in the quantities stated in this Agreement is strictly dependent upon Seller's assumed continued ability to obtain, at existing favorable prices and terms and in a timely manner, the raw materials and/or Product from its existing third-party suppliers. Accordingly, if, for any reason, one or more of Seller's suppliers suspend or limit their production of raw materials or Product, then, Seller will be excused from its obligation to sell Product to Buyer at the times, price and in the quantities stated in this Agreement; *provided, however*, that, if a Force Majeure affects only a part of Seller's ability to perform, Seller shall have the right to allocate production and deliveries among all of its customers and its own requirements, on such basis as Seller may deem fair and practical, in Seller's discretion, without liability to Buyer for any failure of performance which may result from that allocation. Quantities affected by Force Majeure may, at the option of either party, be eliminated from the Agreement without liability, but the Agreement shall remain otherwise unaffected.

8. LIMITATION OF LIABILITY. Under no circumstances shall Seller be liable for any special, consequential or incidental damages for any cause whatsoever arising from or related to the Product even if Seller has been advised in advance of the possibility of any such damages including, but not limited to, loss of revenue, loss of profits, failure to realize savings, expenses in connection with or by reason of the use of or inability to use the Product, transportation, installation, adjustment or other expenses (including, without limitation, recall expenses) that may arise in connection with the Product, and any liability of Buyer to another party. Under no circumstances shall Seller's liability for damages for any cause whatsoever exceed the purchase price of the Product less the value of the Product when it was delivered to Buyer.

9. LIMITATION OF ACTIONS. Any action by Buyer for any cause whatsoever arising from or related to the Product must be commenced by Buyer within six months from the time the cause of action accrues unless the period for action shall be extended by Seller in writing. In the interpretation of this limitation of actions as it relates to Seller's warranties under this Agreement, it is expressly agreed that there are no warranties of future performance of the Product that would extend the period of limitation under this Agreement for bringing an action by Buyer.

10. PROPERTY AND PATENT RIGHTS. Buyer agrees that Seller shall retain for itself all property rights in all designs, engineering details, process details, and other data and rights pertaining to the Product and to all rights of discovery, invention or patent rights arising out of the work done in connection with this Agreement. Seller will defend any action brought against Buyer based on a claim that the Product infringes a United States patent, and Seller will, subject to Paragraph 8 above, pay those costs and damages, if any, finally awarded against Buyer, but only on condition that: (a) Seller shall be notified promptly in writing of any such claim or action; (b) Seller shall have the sole control of the defense and final settlement of such claim or action, and Buyer shall render to Seller whatever information and assistance may be reasonably required for such defense or settlement; and (c) should any of the Product become, or in Seller's opinion be likely to become, the subject of a claim of infringement, Buyer shall permit Seller, at Seller's sole option and expense, to: (i) procure for Buyer the right to continue using the Product, (ii) replace or modify the same to

become non-infringing, or if neither (i) nor (ii) is reasonably feasible, then (iii) grant Buyer a credit for the purchase price of such Product and accept the return of such Product. Seller shall have no liability to Buyer with respect to any claim of patent infringement that is: (a) compromised or settled by Buyer without the prior written consent of Seller; (b) based upon the use of the Product with other goods not furnished by Seller; or (c) based upon the modification of the Product other than with the prior written consent of Seller. The foregoing states the entire liability of Seller with respect to infringement of patents. Buyer shall indemnify, defend and hold Seller harmless from any damages or expenses (including reasonable attorneys' fees) resulting from infringement of patents arising from Seller's compliance with Buyer's designs or specifications.

11. **RESERVATION OF RIGHTS WITH RESPECT TO SELLER'S OTHER PRODUCTS.** Seller reserves the right to make improvements and changes in formula or design upon its products without any obligation to make such changes or improvements upon the Product or any other products previously manufactured and sold by Seller.
12. **DEFAULT.** If Buyer defaults in payment to Seller, in addition to the other rights set forth in this Agreement, Seller shall have the right to enter the premises where the Product is located and peaceably retake possession of such Product without posting security as a condition to regaining such possession. Furthermore, after Buyer's default in any payment due Seller or after any other breach by Buyer under this Agreement, Seller shall be entitled to: (a) declare all amounts unpaid under this Agreement immediately due and payable; (b) receive interest on all unpaid amounts under this Agreement at the rate of two percent per month or the highest rate permitted by law, whichever rate is lower; and (c) recover administrative expenses, reasonable attorneys' fees, costs of suit and all other expenses incurred by Seller as a result of Buyer's default or other breach. Such payment may be deducted from any deposit paid to Seller. The foregoing shall not be construed as limiting, in any manner, any of the remedies available by law to Seller because of any default or other breach by Buyer, and all remedies available to Seller shall be cumulative, and recourse to one remedy shall not preclude recourse to others.
13. **INSOLVENCY.** Until Seller is paid in full for the Product, Seller may, in its sole discretion, cancel this Agreement (and recover possession of any Product shipped to Buyer under this Agreement) immediately after the occurrence of any of the following events: (a) insolvency of Buyer; (b) Buyer's filing of a voluntary petition in bankruptcy; (c) the filing of an involuntary petition to have Buyer declared bankrupt (provided such petition is not vacated within 30 days from the date of filing); (d) the appointment of a receiver or trustee for Buyer (provided such appointment is not vacated within 30 days from the date of such appointment); or (e) the execution by Buyer of an assignment for the benefit of creditors.
14. **HOLD HARMLESS/INDEMNITY.** Buyer agrees to indemnify, defend and hold Seller harmless from and against all losses, damages, costs, expenses, liabilities and obligations of any kind (including, without limitation, reasonable attorneys' fees incurred both before and after suit is filed and, if suit is filed, all other costs of suit at the pretrial, trial or appellate level) (collectively, "Loss") that may ever be suffered or incurred as a result of any injury to person, death, or damage to property caused by the improper use of the Product by Buyer, its customers or any other person.
15. **MISCELLANEOUS.** The headings of the Paragraphs in this Agreement are for convenience of reference only and shall not affect the construction or meaning of this Agreement. No course of prior dealings between the parties and no usage of trade shall be relevant to supplement or explain any term used in this Agreement, and Seller's acceptance of, or acquiescence in, a course of performance rendered by Buyer under this Agreement shall not be relevant to determine the meaning of the Agreement even though Seller has knowledge of the nature of the performance and an opportunity to object. No alteration of or addition to this Agreement, and no waiver with respect to this Agreement, shall bind Seller unless expressly assented to in writing by a duly authorized officer of Seller. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired by such invalidity, illegality or unenforceability. The parties agree that the execution and delivery of this Agreement shall be deemed to be the transaction of business within South Carolina for purposes of conferring jurisdiction upon courts located within South Carolina. The parties further agree that the internal laws of the State of South Carolina shall govern the validity, construction, interpretation and effect of this Agreement, without regard to any choice of law principles which would require the application of the law of any other jurisdiction. Any legal action or proceeding with respect to this Agreement may only be brought in the Federal or State courts of the State of South Carolina and by execution and delivery of this Agreement, the parties hereto consent, for itself and in respect of its property, to the exclusive jurisdiction of those courts. The parties irrevocably waive any objection, including any objection to the laying of venue or based on the grounds of *forum non conveniens*, which it may now or later on have to the bringing of any action or proceeding in such jurisdiction in respect of this Agreement. The parties hereto each waive personal service of any summons, complaint or other process, which may be made by any other means permitted by South Carolina.

