

TERMS AND CONDITIONS OF SALE OF GOODS INVOICED

1. **Acceptance and Agreement.** ALL SALES ARE SUBJECT TO AND EXPRESSLY CONDITIONED UPON THE TERMS AND CONDITIONS CONTAINED HEREIN, AND UPON BUYER'S ASSENT THERETO. NO VARIATION OF THESE TERMS AND CONDITIONS WILL BE BINDING UPON SELLER UNLESS AGREED TO IN WRITING AND SIGNED BY AN OFFICER OR OTHER AUTHORIZED REPRESENTATIVE OF SELLER. ANY ADDITIONAL OR DIFFERENT TERMS, ADDITIONS, OR EXCEPTIONS PROPOSED BY BUYER (WHETHER IN A PURCHASE ORDER, OTHER PRINTED FORM OR ELSEWHERE) ARE OBJECTED TO AND HEREBY REJECTED, UNLESS SUCH TERMS, ADDITIONS, OR EXCEPTIONS ARE APPROVED SPECIFICALLY BY SELLER IN WRITING. No course of prior dealings or usage of trade shall be relevant to supplement or explain any term used herein. Any clerical errors by Seller are subject to correction.

2. **Changes.** Orders deriving here from or related hereto may be changed or amended only by written agreement signed by both Buyer and Seller, setting forth the particular changes to be made and the effect, if any, of such changes on the price and time of delivery. Buyer may not cancel the order to which this invoice relates unless such cancellation is expressly agreed to in writing by Seller. Seller will advise Buyer of the total charge for such cancellation, and Buyer agrees to pay such charges. Certification of such costs by Seller's independent public accountants shall be conclusive on the parties hereto. Any permitted returns of unused goods will be handled in accordance with paragraph 11 hereof.

3. **Delivery, Claims, Delays.** All sales are FOB Seller's shipping point unless otherwise noted. Buyer shall pay shipping and freight costs, which will be added to the invoice. Delivery of the goods to the carrier at Seller's shipping point shall constitute delivery to Buyer; Buyer shall bear all risk of loss or damage in transit. The general method of shipment shall be determined by Seller in its discretion although Seller will consider any reasonable requests by Buyer; however, Seller reserves the right, in its discretion, to change the exact method of shipment and to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of Buyer's obligations to accept remaining deliveries. Upon Buyer's receipt of any goods shipped hereunder, Buyer shall inspect the goods and notify Seller in writing within 5 days after the goods have been received by Buyer of any claims for shortages, defects or damages and shall hold the goods for Seller's written instructions concerning disposition. If Buyer fails to so notify Seller within 5 days after the goods have been received by Buyer, such goods shall conclusively be deemed to conform to the terms and conditions hereof and to have been irrevocably accepted by Buyer. Seller shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Seller's reasonable control, including without limitation, act of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Seller's business, fire, explosion, accident, theft, vandalism, riot, acts of war, acts of labor (such as strikes or labor difficulties), lightning, floods, windstorm or other acts of God, delay in transportation, routine shutdowns of Seller's manufacturing facilities, equipment failure, shortage of raw materials or inability to obtain labor, fuel, materials, supplies or power at current prices.

4. **Allocation of Goods.** If Seller is unable for any reason to supply the total demands for goods specified in Buyer's order, Seller, at its sole option, may allocate its available supply among any or all buyers on such basis as Seller may deem fair and practical, without liability for any failure of performance which may result herefrom.

5. **Payment.** Terms of sale are net thirty (30) days from the date of invoice, unless otherwise stated. Unpaid balances over thirty (30) days will be subject to a 1.5% monthly service charge. Buyer's obligations to pay Seller are absolute and are not subject to any factor, counterclaim, deduction, withholding, holdback, set-off or any other condition for any reason. Buyer specifically waives any right for any reason to withhold or set-off payments it owes to Seller hereunder, whether available at law, in equity or otherwise under the laws, rules, regulations, ordinances, decrees or orders of any governmental authority. If the financial condition of Buyer results in the insecurity of Seller, in its sole and unfettered discretion, as to the ultimate collectability of the purchase price, Seller may, without notice to Buyer, delay or postpone the delivery of the products; and Seller, at its option, is authorized to change the terms of payment to payment in full or in part in advance of shipment of the entire undelivered balance of said products. In the event of default by Buyer in the payment of the purchase price or otherwise, for any goods, Seller, at its option, without prejudice to any other lawful remedy, may defer delivery, cancel any contract for the sale of goods, or sell any undelivered products on hand for the account of Buyer and apply such proceeds as a credit, without set-off or deduction of any kind, against the contract purchase price. Buyer agrees to pay the balance then due to Seller on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney, accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof.

6. **Taxes and Other Charges.** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer, except for taxes of Seller's income, shall be paid by Buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefor; or Buyer shall provide Seller at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

7. **Warranties.** Seller warrants that its products shall conform to the product limited warranty as provided to Buyer by Seller in the product labeling or catalog. THIS WARRANTY IS EXCLUSIVE AND SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WITHOUT LIMITATION, (I) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR APPLICATION, OR WARRANTY OF QUALITY, OTHER THAN THOSE EXPRESSLY SET FORTH IN THE PRODUCT LABELING OR CATALOG, OR (II) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. BUYER UNDERSTANDS THAT NO EMPLOYEE, OFFICER, AGENT OR REPRESENTATIVE OF SELLER IS AUTHORIZED IN ANY WAY TO MAKE ANY STATEMENT TO THE CONTRARY WHICH SHALL BE BINDING ON SELLER OR TO ASSUME FOR SELLER ANY OTHER LIABILITY IN CONNECTION WITH SELLER'S PRODUCTS. Seller's warranties made in connection with the sale deriving herefrom or related hereto shall be effective only on the conditions set forth from time to time in such warranty; for example and without limiting any other exclusion that may be set forth from time to time in such warranty, such warranty shall not apply to, and Seller shall not be responsible for, any loss or damages arising in connection with the purchase or use of any product (i) which has been repaired by anyone other than an authorized Seller service representative or (ii) which has been repaired or serviced using materials or parts provided, modified or designed by anyone other than Seller or its authorized representatives, or (iii) which has been, altered in any way so as, in Seller's judgment, to affect its stability or reliability, or which has been subject to misuse, negligence or accident, or (iv) which has been subject to improper or negligent installation or storage, or (v) which has been subject to improper cleaning, sterilization or maintenance, or (vi) which has been subject to accidental damage arising from acts of God, electrical power damage, equipment malfunction, unusual stress, unreasonable operating procedures or abnormal or extreme operating conditions or (vii) which has been used otherwise than in accordance with the instructions furnished by Seller. Seller's sole and exclusive obligation and Buyer's sole and exclusive remedy with respect to products proved to Seller's satisfaction to be defective or nonconforming shall be replacement of such products without charge or refund of the purchase price, in Seller's sole discretion, upon the return of such products in accordance with Seller's instructions. SELLER SHALL NOT IN ANY EVENT BE LIABLE FOR INCIDENTAL, EXEMPLARY, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, OF ANY KIND RESULTING FROM ANY USE OR FAILURE OR ACQUISITION OF THE PRODUCTS, (EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE) INCLUDING WITHOUT LIMITATION, LIABILITY FOR LOSS OF USE, LOSS OF WORK IN PROGRESS, DOWN TIME, LOSS OF REVENUE OR PROFITS, FAILURE TO REALIZE SAVINGS, LOSS OF PRODUCTS OF BUYER OR OTHER USE OR ANY LIABILITY OF BUYER TO A THIRD PARTY ON ACCOUNT OF SUCH LOSS, OR FOR ANY LABOR OR ANY OTHER EXPENSE, DAMAGE OR LOSS OCCASIONED BY SUCH PRODUCT INCLUDING PERSONAL INJURY OR PROPERTY DAMAGE UNLESS SUCH PERSONAL INJURY OR PROPERTY DAMAGE IS CAUSED BY SELLER'S GROSS NEGLIGENCE. Claims must be brought within 1 year of shipment, regardless of their nature.

8. **Buyer's Use of Products.** Seller's products are intended for the use set forth in product labeling, and are not to be used for any other purposes. Buyer warrants to Seller that the products shall not be adulterated or misbranded within the meaning of the Federal, Food, Drug and Cosmetic Act. Buyer agrees to comply with instructions furnished by Seller relating to the use of the products and not misuse the products in any manner.

9. **Buyer's Representations and Indemnity.** Buyer represents and warrants that it shall use all products ordered herein in accordance with Paragraph 8 (Buyer's Use of Products). Buyer also agrees that it will satisfy its responsibilities under the Safe Harbor Regulations relating to program "fraud and abuse" promulgated under the Social Security Act and Medicare and Medicaid Patient and Program Protection Act. Buyer agrees to indemnify and hold harmless Seller, its affiliates and their respective employees, agents, successors, directors, officers, and assigns from and against any suits, losses, claims, demands, liabilities, costs and expenses (including attorney and accounting fees) that Seller may sustain or incur as a result of any claim against Seller based upon negligence, breach of warranty, strict liability in tort, contract, or any other theory of law brought by Buyer, its directors, officers, agents, employees, successors or assigns, by Buyer's customers, by end users, by auxiliary personnel (such as freight handlers, etc.) or by other parties, arising out of, directly or indirectly, the failure by Buyer to use Seller's products in accordance with the package labeling or the requirements of the warranty, or by reason of Buyer's failure to perform its obligations contained herein, including without limitation, the failure of Buyer to comply with applicable law. Buyer shall notify Seller in writing within fifteen (15) days of Buyer's receipt of knowledge of any accident, or incident involving Seller's products which results in personal injury or damage to property, and Buyer shall fully cooperate with Seller in the investigation and determination of the cause of such accident and shall make available to Seller all statements, reports and tests made by Buyer or made available to Buyer by others furnishing such information to Seller. Furnishing such information to Seller and any investigation by Seller of such information or incident report shall not in any way constitute any assumption of any liability for such accident or incident by Seller.

10. **Patent Disclaimer.** Seller does not warrant that the use or sale of the products described hereunder will not infringe the claims of any United States or other patents covering the product itself or the use thereof in combination with other products or in the operation of any process.

11. **Returns.** Goods may not be returned except with Seller's permission, and only in strict compliance with Seller's return shipment instructions. Any returned items may be subject to a processing fee as determined in accordance with Seller's policies in effect at the time of the return.

12. **Miscellaneous.** Seller's failure to strictly enforce any term or condition stated herein or exercise any right arising hereunder shall not constitute a waiver of Seller's right to enforce such terms or conditions or exercise such right thereafter. All rights and remedies with regard to this order are cumulative and are in addition to any other rights and remedies Seller may have at law or in equity. Any waiver of a default by Buyer hereunder shall be in writing and shall not operate as a waiver of any other default or of the same default thereafter. If any provision hereof shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. The paragraph headings herein are for convenience only, are not part of the terms and conditions and shall not affect their interpretation. These terms and conditions shall be binding upon, inure to the benefit of, and be enforceable between the parties hereto, and their respective heirs, personal representatives, successors and assigns. All disputes as to the legality, interpretation, application, or performance of this order or any of its terms and conditions shall be governed by the laws of the State of New Jersey, without regard to conflict of laws provisions. Buyer shall be deemed to have conclusively agreed that venue and jurisdiction for any dispute resolution hereunder shall be solely and exclusively with a court of competent jurisdiction located in the State of New Jersey.

13. **Acceptance of Terms.** The terms and conditions of sale on the reverse side hereof are incorporated herein and Buyer's signature hereon or Buyer's acceptance of goods pursuant hereto shall be deemed Buyer's conclusive consent and acceptance to the terms and conditions of sale contained herein and on the reverse side hereof.