

TERMS AND CONDITIONS OF SALE

1. ACCEPTANCE

a) All orders are subject to Seller's written approval and acceptance at its offices in Udaipur, Rajasthan, and shall not become binding obligations of Seller unless and until Seller has issued a written acknowledgement. Sales of goods hereunder are subject to and include the Terms and Conditions of Sale set forth herein and are expressly conditioned upon Seller's assent to any Terms and Conditions of Sale herein which are additional to or different from any terms or conditions of sale contained in any purchase order submitted by Buyer. Without limiting the generality of the foregoing, no acknowledgment by Seller of or reference by Seller to or for performance by Seller under any purchase order submitted by Buyer shall be deemed to be an acceptance by Seller of any terms or conditions contained in such purchase order which are additional to or contrary to the Terms and Conditions of Sale contained herein.

b) Notwithstanding the quantity set forth on Buyer's purchase order, Buyer shall accept and purchase product in a quantity which may be plus-or-minus ten percent (10%) of the quantity ordered, due to overruns and/or under runs in Seller's production process.

2. REPRESENTATIONS – WARRANTIES

a) Seller warrants that the goods sold hereunder (i) shall be free from defects in workmanship or material and (ii) shall conform in all material respects to the specifications set forth in Buyer's purchase order as accepted by Seller. Buyer's sole and exclusive remedy for Seller's breach of warranty shall be limited to, at Seller's option, (i) repairing or replacing goods that are proven to be defective or proven not to conform in all material respects with such specifications or (ii) refunding the sales price received by Seller in respect of such defective or nonconforming goods; provided, however that (1) written notice of such defect or nonconformity shall be given to Seller within thirty (30) days of delivery of such defective or nonconforming goods and (2) where goods are replaced by Seller or where Seller refunds the sales price received from Buyer, Buyer shall return the defective or nonconforming goods to Seller. Seller shall not be responsible for any other damage or loss sustained by Buyer or any third party.

b) The Goods are manufactured and/or supplied by Seller in accordance with Buyer's drawings and/or specifications. Seller does not warrant against infringement arising from the use of such goods by Buyer in combination with other materials or in the operation of any process, and Seller shall have no liability to Buyer by reason thereof.

c) Recommendations by Seller, if any, covering the use, utilization, properties and/or qualities of goods sold hereunder are believed reliable but Seller makes no warranty whatsoever with respect thereto. Use or application of goods sold hereunder is at the discretion of Buyer without any liability or obligation on the part of Seller except as expressly warranted by Seller.

d) The warranties set forth in this Section 2 constitute the only warranties given by Seller and are in lieu of any and all other warranties, express or implied, arising by law or custom, including, but not by way of limitation, the implied

WARRANTY OF MERCHANTABILITY and the implied WARRANTY OF FITNESS FOR PARTICULAR PURPOSE. Any samples submitted by Seller shall not be deemed to create any warranties, express or implied.

3. PRICE

a) The purchase price ("Purchase Price") for the goods sold hereunder shall be as set forth on the front hereof; provided, however, that if all or any part of the goods to be purchased hereunder are to be delivered by Seller to Buyer as of a date which is more than ninety (90) days after the date of Buyer's purchase order, Seller may, at any time on notice to Buyer, given not later than thirty (30) days prior to delivery, with respect only to goods to be delivered more than ninety (90) days after the date of Buyer's purchase order, increase the Purchase Price for such goods and (i) if such increase in Purchase Price is not less than or equal to fifteen percent (15%) of the original Purchase Price, such price increase shall be binding upon Buyer, but (ii) if such increase in Purchase Price is greater than fifteen percent (15%), Buyer shall be entitled to cancel its order with respect only to such goods which are subject to such increase in Purchase Price. In no event shall Seller be liable to Buyer for any damages suffered by Buyer or any claims made by third parties against Buyer, by reason of any such increase in Purchase Price or Buyer's election to cancel its order as a result of any such increase in Purchase Price, even if Seller shall have been advised of the possibility or existence of any such damages or claims.

b) Seller's prices do not include sales, use, excise or similar taxes, and accordingly, in addition to the price specified herein, the amount of any sales, use, excise or other similar tax applicable to the sale of goods hereunder shall be paid by Buyer, or, in lieu thereof, Buyer shall provide Seller with a tax exemption certificate issued by the appropriate taxing authority.

4. PAYMENT

a) Unless otherwise provided on the front hereof, payment of the Purchase Price shall be due and payable immediately upon delivery.

b) Any amounts payable to Seller hereunder which are not paid when due shall thereafter bear interest at the rate of one and half percent (1.5%) per month or the maximum amount permitted by applicable law, whichever is less. Time is of the essence of all payments due hereunder. In the event any payment due Seller is collected at law, or through an attorney-at-law or under advice therefrom, or through a collection agency, Buyer agrees to pay all costs of collection, including without limitation, all court costs and reasonable attorneys' fees.

c) Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owing by Buyer to Seller, as shown on the books and records of Seller, without prejudice to and without discharging the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend or notation appearing on, referring to or accompanying such check or remittance.

5. DAMAGES

a) Force Majeure:

Any delays in or a failure of performance by Seller shall not constitute default or give rise to any claims for damages if and to the extent caused by circumstances beyond Seller's control, directly or indirectly, such as, but not limited to: fire, flood, earthquake, the elements, acts of God; accidents or unavoidable casualties; wars (whether declared or undeclared), rebellions, insurrections or revolutions in any country; riots or civil disorder; strikes; lockouts or labor difficulties; acts, rulings, regulations, decisions or requirements of any tribunal or government agency, board or official; interruptions of transportation facilities or delays in transit; supply shortages, or the failure of any third party to perform any commitment to Seller relative to the manufacture or delivery of the goods; or any other cause, whether similar or dissimilar to the causes enumerated herein, beyond the reasonable control of Seller.

b) LIMITATION OF LIABILITY IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, WHETHER IN CONTRACT OR IN TORT, OR ANY OTHER LEGAL THEORY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY OR NONDELIVERY, CONDITION OR POSSESSION OF ANY OF THE GOODS SOLD HEREUNDER, OR FOR ANY CLAIM MADE AGAINST BUYER BY ANY OTHER PARTY. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE OF THE GOODS SOLD HEREUNDER IN RESPECT OF WHICH SUCH CLAIM IS MADE.

6. SHIPMENTS

a) Shipment and delivery dates are based upon Seller's best judgment, are subject to factory schedules and production limitations, and hence are not guaranteed.

b) Unless otherwise indicated on the front hereof, all goods will be shipped F.O.B. Seller's plant. When goods are shipped F.O.B. Seller's plant, (i) any arrangements made or expenses incurred by Seller for carrier or insurance of goods after delivery shall be for the account of Buyer and promptly paid or reimbursed to Seller by Buyer, in which event, unless Buyer specifies complete instructions as to the method of payment, Seller may exercise its judgment and discretion in choosing the carrier and means of shipment and (ii) Buyer is responsible for notifying the carrier as to any damages to or loss in transit of such goods.

c) In addition to any other remedy available to Seller at law or in equity, if Buyer fails to fulfill the terms of payment, Seller may defer further shipments of goods or may, at its option, cancel the unshipped balance of such goods and bill Buyer for costs of cancellation.

d) Seller reserves the right prior to making any shipments of goods to request from Buyer satisfactory security for performance of Buyer's obligations hereunder.

7. DELIVERIES

a) In the event Seller defers delivery at Buyer's request, Buyer shall indemnify Seller against any and all loss and additional expense incurred by Seller in connection with such deferred deliveries, including, without limitation, demurrage, handling, storage, insurance and similar charges.

Transfer to storage shall be considered delivery for all purposes hereunder, including invoicing and payment, and Buyer shall bear all risks of loss or damage to the goods during storage.

b) Seller may deliver goods in partial shipments and reserves the right to invoice for partial deliveries. Payment for partial deliveries shall be made in accordance with the payment terms provided herein unless otherwise agreed.

c) Where Buyer has declared or manifested an intention not to accept delivery in accordance with the provisions hereof, no tender shall be necessary, but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to deliver in accordance with the provisions hereof, and such notice shall constitute a valid tender of delivery.

8. INSPECTION/LIMITATION OF ACTIONS

a) Buyer shall promptly inspect and test the goods upon delivery. Anything herein to the contrary notwithstanding, to the extent that any defects or nonconformities in the goods are discoverable by inspection upon delivery of the goods to Buyer, all obligations of Seller to Buyer with respect to such defects or nonconformities shall be deemed to be satisfied, and all goods shall be deemed to be free of such defects or nonconformities, unless Buyer notifies Seller of such defects or nonconformities in writing not more than ten (10) days after the date of delivery referencing Seller's shipping slip number. With respect to any claims for shortages, etc., such claims shall not be accepted by Seller unless they are made by Buyer in writing within forty-eight (48) hours after delivery of the goods, and are accompanied by a reference to Seller's shipping slip number.

b) No action, regardless of form arising out of or in connection with the sale of the goods sold hereunder (other than an action by Seller for any amount due to Seller by Buyer) may be brought more than three months after the cause of action has arisen.

9. CHANGES, CANCELLATIONS

a) Specifications changes made subsequent to placing an order are subject to price revisions and to any adjustment necessary to cover material procured and processed and labor expended prior to receipt of revised specifications.

b) Except as provided in Section 3(a) hereof, cancellations shall be only by mutual agreement in writing, based on any adjustment necessary to cover labor expended and material procured.

10. WAIVER

Buyer hereby waives demand, presentment, dishonor, protest, notice of nonpayment, notice of default, and any and all other demands or notices whatsoever. Except as otherwise expressly provided hereunder, no failure on the part of Seller to exercise, and no delay by Seller in exercising any right, power or remedy hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by Seller preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver of or assent by Seller to any breach of or default in any term or condition hereof shall constitute a waiver of or assent to any succeeding breach of or default in the same of any other term or condition hereof.

11. GOVERNING LAW / FORUM.

Regardless of the place of contracting, place of performance or otherwise, this document and all amendments, modifications, alterations or supplements hereto, and the rights of the parties hereunder shall be construed and enforced in accordance with the laws of India. If any controversy or claim between the parties arises under or relating to the transactions contemplated herein, only courts in Udaipur, Rajasthan and no other shall have jurisdiction to hear and decide such matter. Buyer hereby irrevocably-

(a) Consents to the jurisdiction and venue of the courts of Udaipur, Rajasthan in any action arising under or relating to the transactions contemplated herein, and

(b) Waives any and all jurisdictional defenses Buyer may have to the institution of any such action in any such court.

12. SEVERABILITY.

All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws and are intended to be limited to the extent necessary so that they will not render any terms and conditions herein illegal, invalid or unenforceable. If any term or condition contained herein shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms and conditions hereof shall constitute their agreement with respect to the subject matter hereof and all such remaining terms and conditions shall remain in full force and effect

13. ENTIRE AGREEMENT.

The Terms and Conditions contained herein supersede all prior discussions and agreements between the parties with respect to the subject matter hereof, and this document contains the sole and entire agreement between the parties with respect to the matters covered hereby. The sole terms and conditions applicable to the sale of goods hereunder are those set forth herein. Any different or additional terms and conditions appearing in your purchase order (if any) or other communication concerning the purchase of goods shall be void and no part hereof, unless expressly incorporated herein. The Terms and Conditions of Sale contained herein may not be modified or amended except by an instrument in writing signed by one of Seller's duly authorized officers. Unless, within five (5) days of your receipt hereof, you deliver to Seller written objection to the Terms and Conditions of Sale, you shall be deemed to have accepted each and every one of the terms and conditions contained herein.

14. NOTICES

All notices, requests, demands or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by pre-paid, first class, certified or registered air mail, return receipt requested, or by e-mail or facsimile transmission to the intended recipient thereof at the address, e-mail address or facsimile number appearing on the front hereof. Any such notice, demand or communication shall be deemed to have been duly given immediately (if given or made by a confirmed e-mail or facsimile) or five (5) days after mailing

(if given or made by letter addressed to a location within the country in which it is posted), or fourteen (14) days after mailing (if made or given by letter addressed to a location outside the country in which it is posted), and in providing same, it shall be sufficient to show that the envelope containing the notice, demand or communication was duly addressed, stamped and posted, or that receipt of a e-mail message or facsimile was confirmed by the recipient. Either party may change the address, e-mail address or facsimile number to which notices, requests, demands or other communications to such party shall be mailed or sent by giving notice to the other party in the manner provided herein.

15. LIMITATION ON ASSIGNMENT.

Neither party to this transaction may assign all or any portion of its rights hereunder, or delegate or subcontract all or any portion of its obligations hereunder, without the prior written consent of the other party.

16. GENERAL

- a) Goods are sold to accepted manufacturing variations or tolerances, except when otherwise agreed to by both parties.
- b) When furnished or made by Seller, tools and/or dies, together with incidental fixtures and materials necessary for the manufacture of goods ordered, shall remain the property of Seller, be used in the production of goods for Buyer, and be kept in repair by Seller without further charge for the reasonable life expectancy of the tool or dies. Payment to cover the cost of such tools and/or dies is due from Buyer on a net cash basis upon submission of samples. In the event that Buyer does not reorder goods produced by such tools and/or dies for a period of two (2) years, Seller shall have the right to scrap tools and/or dies without notice to Buyer.
- c) Buyer shall protect, defend, indemnify and hold Seller and its officers, employees, agents, licensees and representatives (collectively, the "Indemnitees harmless from and against any and all claims, suits, losses, liabilities, expenses (including costs of suit and attorneys' fees), and damages relating to, resulting from or arising out of any alleged or actual defect in any of the goods sold hereunder, except in the case of gross negligence of Seller. Buyer shall give Seller notice of any such action or proceeding and shall tender the defense to Seller. Buyer shall defend Seller, with respect to each and every claim for which Seller is indemnified by Buyer under this Agreement.
- d) The terms 'written' and 'in writing' used herein shall include documents or communications transmitted electronically, including, without limitation, by way of electronic data interchange.