

TERMS AND CONDITIONS OF SALE - ALBERDINGK BOLEY, INC. ('SELLER')

- 1. Acceptance of Orders.** All orders received by Seller are subject to final acceptance or confirmation by Seller and no terms of orders are binding upon Seller until so accepted.
 - 2. Deliveries.** All deliveries are F.O.B. Seller's facility (UCC TERMS) indicated in Seller's order confirmation or invoice. Seller reserves the right to supply the products described in Seller's invoice or order confirmation ("Products") from any facility operated by Seller, an affiliate of Seller, or a designated distributor of Seller, as best fits Seller's production planning and logistical needs. All risk of loss to Products sold shall pass to the purchaser indicated in Seller's order confirmation or invoice ("Purchaser") upon delivery by Seller of such Products to the carrier. Delivery is conditional on (i) the timely receipt by Seller of documents necessary for the completion of the order, (ii) any down payment, (iii) Purchaser maintaining credit satisfactory to Seller, and (iv) Purchaser's compliance with these terms. Partial deliveries are permissible, and Seller may invoice the Purchaser for each delivery. The Seller will use reasonable efforts to meet delivery schedules, but the Seller will not be liable for any delay in the performance of orders or contracts, or in the delivery or shipment of Products, or for any damages suffered by the Purchaser by reason of such delay, and a delay in delivery shall not entitle the Purchaser to cancel an order. Seller may suspend or delay performance or delivery at any time pending receipt of assurances of Purchaser's ability to pay, including full or partial prepayment or payment of any outstanding amounts owed adequate to Seller in its discretion. Failure to provide such assurances shall entitle Seller to cancel this contract without further liability or obligation to Purchaser.

Where shipment of the goods requires the use by Seller of carboys, drums, barrels, or other returnable containers, title to such containers shall remain in Seller and a deposit in the amount required by Seller must be made prior to delivery to insure the return of the container to the point of shipment. Such containers must be kept in good condition, may not be used for any products other than those shipped therein and must be returned within sixty (60) days for the date of delivery. Purchaser must comply with all applicable regulations in the care and shipment of such containers. On such containers being so returned, Seller will refund the deposit. If Purchaser fails to return the containers in good condition within the time specified, Seller may, without prejudice to its other rights and remedies, declare the deposit forfeited.

If the Products are shipped in tank cars furnished by Seller, Purchaser shall unload such cars within 48 hours (Sundays and holidays excepted) after receipt.
In the event Seller is unable to supply the total amount requested in any purchase order, Seller may allocate its available supply among any or all purchasers on such basis as it deems fair and practical.
 - 3. Prices.** Unless otherwise specified by Seller in the attached document, prices and quantities are quoted F.O.B. Seller's facility (UCC TERMS) indicated in Seller's order confirmation or invoice. Prices are subject to change by Seller without notice to Purchaser, and only those prices set forth on the attached document will apply to the order. Prices do not include sales, use, excise, privilege or any similar tax levied by any government, and Purchaser shall pay any such applicable tax. Upon the request of Seller, Purchaser shall provide Seller a tax exemption certificate acceptable to the appropriate taxing authorities.
 - 4. Terms of Payment.** The purchase price, less any prior down payment, shall be paid in full by Purchaser on tender of delivery of the Products. Extension of credit, if any, may be changed or withdrawn by Seller at any time. Invoices not paid within thirty (30) days after their due date will be subject to carrying charges. Carrying charges in the amount of one and one-half percent (1 1/2%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever is less, shall accrue and be added to the unpaid balance. Purchaser shall reimburse Seller for the costs of collection, including, without limitation, reasonable attorneys' fee, of any overdue amount owed by Purchaser to Seller, and such collection costs shall also be subject to the carrying charges. Purchaser may not hold back or set-off any amounts owed to Seller in satisfaction of any claims asserted by Purchaser against Seller.
 - 5. Returned Products and Claims.** Promptly upon receipt of Products delivered hereunder, Purchaser shall inspect such Products for any damage, defect or shortage. Both prior to the mixing, blending, re-labeling, repackaging, converting or other destruction of the identity of the Products and within fifteen (15) days after Purchaser's receipt of Products, Purchaser must give written notice to Seller of any claim by Purchaser based upon the condition, quantity, or grade of the Products sold or of any claimed nonconformity with Purchaser's specifications, and the notice must indicate the basis of the claim in detail. Purchaser's failure to comply with this paragraph shall constitute irrevocable acceptance by Purchaser of the Products delivered and shall bind Purchaser to pay to Seller the full price of such Products. Products sold shall not be returned without Seller's prior written consent and transportation charges for return shall not be paid by Seller unless authorized in advance.
 - 6. Cancellation/Changes.** Purchaser may not cancel or change an order once placed with and accepted by Seller except with the prior written consent of Seller and upon terms that will indemnify Seller against any loss. Seller may correct mathematical or clerical errors.
 - 7. Limited Warranty.** Unless otherwise specified by Seller in the attached document, Seller warrants that the Products sold to Purchaser will comply with the written description furnished with Purchaser's invoice or packing slip. As Purchaser's sole and exclusive remedy for breach of this warranty, Seller will credit, or in its sole discretion, replace, any Product found by Seller to have been in breach of the above warranty at the time of delivery if (i) Purchaser sets forth in writing to Seller information describing the defective Product, including the type of Product, invoice number, shipment date, and installation date and a full description of any defect, sufficient for Seller to determine if the Product is defective and (ii) such Product is returned (at Purchaser's expense and risk) and received by Seller within fifteen (15) days after delivery. Failure to comply with these requirements shall nullify and void this warranty. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to replace defective Products in the manner specified.

Specifications, limitations and recommended applications and uses for Products may be established or amended by Seller from time to time. Only those specifications, limitations and recommended applications and uses expressly identified as such shall be binding upon Seller. No employee or sales representative of Seller shall have any authority whatsoever to establish, expand or otherwise modify Seller's Product specifications, limitations, or recommended applications without Seller giving its prior express written consent to Purchaser.

Upon request, Seller may furnish technical advice or assistance, as it has available in reference to the use of the Products. All such technical advice or assistance is given gratis and without warranty of any kind. All such advice and assistance is given and accepted by Buyer at its sole risk.
- NO OTHER EXPRESS AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH ON THE FRONT HEREOF AND THOSE SET FORTH ABOVE SHALL APPLY TO THE PRODUCTS.**
- 8. Exclusion of Incidental and Consequential Damages.** Seller shall not in any event be liable for incidental, special, consequential or indirect damages, including without limitation lost profits, whether arising from the sale of products, any defect in the Products, any use of the Products, from Purchaser's inability to use the Products, or otherwise.
 - 9. Excusable Delays.** Seller shall not be liable for delays or failure to perform due, directly or indirectly, to (i) causes beyond Seller's reasonable control, including but not limited to errors, delays, or negligence of carriers or shippers, their employees or agents, (ii) fires, and natural calamities (such as floods, earthquakes, storms, epidemics), (iii) acts (including failure to act) of any governmental authority, wars (declared or undeclared), strikes or other labor disputes, and (iii) unavailability (either in part or total) of raw materials or transport.
 - 10. Selection and Application.** Purchaser is solely responsible for proper selection and application of Products. Purchaser agrees that it will use and apply Products only for their intended uses and according to specifications and limitations established by Seller from time to time. Purchaser shall indemnify and hold Seller harmless from and against any and all damages, claims, or expenses (including reasonable attorneys' fees) arising out of or relating to improper selection, application, use or incorporation of Products or abuse of Products.
 - 11. Patents.** Purchaser shall, at its expense, indemnify and hold Seller harmless from and against any claim, liability, expense (including reasonable attorneys' fees) or loss resulting from any infringement of any patent, trademark, copyright or other property interest of a third party arising out of Seller's compliance with any of Purchaser's designs, specifications, or instructions. If Seller requests, Purchaser shall defend Seller at its expense, in any suit brought against Seller alleging such infringement, provided that Seller gives Purchaser prompt notice of such suit, and Seller gives Purchaser information reasonably requested by Purchaser relating to such suit, and gives reasonable assistance, at Purchaser's expense, to Purchaser with such suit.
 - 12. Hazardous Materials.** Purchaser acknowledges that the Products may be or become considered as hazardous materials under various laws and regulations. Seller has or shall have furnished to Purchaser material safety data sheets, including warnings and safety and health information concerning the Products and /or the containers for Products. Purchaser agrees to disseminate such information so as to give warning of possible hazards to all persons whom Purchaser can reasonably foresee may be exposed to such hazards, including but not limited to Purchaser's employees, agents, contractors, customers and all persons required by law to be so notified. Purchaser shall, at its expense, indemnify and hold Seller harmless from and against any claim, liability, expense (including reasonable attorneys' fees) or loss resulting from any violation of this covenant. If Seller requests, Purchaser shall defend Seller at its expense, in any suit brought against Seller alleging such violation, provided that Seller gives Purchaser prompt notice of such suit, and Seller gives Purchaser information reasonably requested by Purchaser relating to such suit, and gives reasonable assistance, at Purchaser's expense, to Purchaser with such suit.
 - 13. Security Agreement and Remedies.** Purchaser hereby grants to Seller a continuing purchase money security interest in all Products sold and/or delivered to it and to the proceeds thereof. Purchaser shall execute and deliver any financing statements and other documents that Seller may reasonably require for the protection of Seller's security interest and Purchaser hereby authorizes Seller to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of its security interest. Purchaser shall maintain adequate insurance against casualty, loss, fire or theft of the Products for so long as the security interest is in effect.

Upon the occurrence of any default under this or any other contract between Purchaser and Seller, and in addition to any other rights and remedies that Seller may have, Seller shall have the right, exercisable at its option, to (i) suspend or refuse shipment or other performance under this or any other purchase order (ii) declare all or part of Buyer's obligations to Seller immediately due and payable; (iii) require Buyer to assemble the Products subject to a security interest in favor of Seller and deliver them to a location in the United States designated in its sole discretion, at Purchaser's sole expense; and (iv) take possession of the Products without notice to or demand on Purchaser wherever the Products shall be located without any court order or other process of law, and Purchaser hereby waives all claims, demands and liabilities that may arise from any such repossession.
 - 14. Assignment.** Purchaser may not assign its rights or obligations hereunder without the prior written consent of Seller and any purported assignment without such consent shall be of no effect.
 - 15. Limitations.** Any action by Purchaser under or relating to this Agreement or the Products sold must be commenced within one (1) year after such cause of action has accrued.
 - 16. Choice of Law.** This Agreement and any dispute or claim relating to it shall in all respects be governed by and construed according to the laws of the State of North Carolina, excluding its conflict of laws principles. In the event the Purchaser and the Seller are located in countries which are parties to the 1980 United Nations Convention on the International Sale of Goods ("UNCISG"), the parties hereby agree that the purchase and sale of Products and any dispute or controversy relating thereto shall not be governed by the provisions of the UNCISG.
 - 17. Choice of Forum, Venue, and Consent to Jurisdiction.** Except as provided below in this Section, and with respect to an action instituted by Seller for equitable relief, including, without limitation, an action for temporary or permanent injunctive relief, Seller and Purchaser agree that the General Courts of Justice of the State of North Carolina and the United States District Court for the Middle District of North Carolina shall constitute the exclusive forums for the adjudication of any and all disputes or controversies arising out of or relating to this Agreement or the Products. Purchaser consents to the exercise of jurisdiction over it by such courts and agrees that venue is proper and the forum convenient with respect to any such dispute or controversy. Notwithstanding the foregoing, Seller may elect to implead, join, or add Purchaser as a third-party defendant in any legal action (in any forum) brought by a third party against Seller if such legal action, or Seller's defenses or other rights, arises out of or in any manner relates to the parties' obligations under this Agreement or the Products. Purchaser consents to the exercise of jurisdiction over it by such courts, agrees that venue is proper and the forum convenient with respect to any such dispute or controversy, and Purchaser waives any objection to the assertion or exercise by such courts of such jurisdiction.
 - 18. Entire Agreement.** Purchaser and Seller acknowledge that these Terms and Conditions of Sale, together with Seller's invoice, constitute the entire agreement between the Purchaser and Seller with regard to the sale or transfer of the Products and supersede all prior oral or written statements of any kind made by the parties or their representatives. These Terms and Conditions of Sale may not be amended, modified, or supplemented except by written agreement executed by the Purchaser and Seller. The provisions of this Agreement are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision.