



CONDITIONS OF SALE AND TERMS OF PAYMENT - SAMUEL, SON & CO. (USA) INC.

1. **GENERAL:** The Terms and Conditions herein established by Samuel, Son & Co. (USA) Inc., together with its subsidiaries and affiliates (“us”, “we”, “our” or the “Seller”) as may be amended by us from time to time (“Terms and “Conditions”) apply to all dealings with our potential and actual customers (“you” and “your”), whether made by you or us, for any solicitation, submission, inquiry, offer, request or arrangement (a “Communication”) or sale by us with respect to goods we sell (“Product(s)").

2. **ACCEPTANCE OF ORDERS:** No Communication is binding on us unless we actually receive it and we agree, either in writing or by delivery of Product(s) identified in such Communication, to accept it as an order for Product(s) (an “Accepted Order”). Any sample provided by us is not part of an Accepted Order.

3. **NO CANCELLATION:** Accepted Orders cannot be cancelled or modified, in whole or in part, without our prior written consent, which consent may be withheld or subject to conditions and reasonable charges we may impose.

4. **PRICE INCREASES:** All prices are subject to automatic increase without prior notice by an amount equal to price increase(s) and/or surcharge(s) charged to us by our supplier(s) at any time between our acceptance of an Accepted Order and the date delivery is completed by us for any material we allocate to fulfill an Accepted Order.

5. **TAXES:** All prices are subject to all applicable sales and use taxes, excise taxes, customs, duties and tariffs and any other taxes, customs, duties and tariffs now or hereafter imposed and/or levied by any governmental authority with respect to the sale of the Product(s) (“Applicable Taxes”). Unless we agree to an express provision to the contrary, Applicable Taxes will be added to the price you pay. Our failure to charge or collect Applicable Taxes when due shall not relieve you of your obligation for its payment.

6. **PAYMENT TERMS:** Payment terms are set forth in invoices we issue to you. If payment in full on any invoice is not received when due, or if your credit worthiness is deemed unsatisfactory by us at any time, we may take, without incurring any liability, one or more of the following actions: (a) impose a service charge at the rate that is the lesser of (i) 1.5% per month or (ii) the maximum rate allowed by applicable law, on any amount past due commencing from the date of such invoice, (b) modify or accelerate payment terms, and/or (c), withhold delivery of Product(s) under any Accepted Order not yet shipped and/or delay, recall or reclaim shipments of Product(s) on route to you or delivered until arrangements satisfactory to us are made to secure payment for any outstanding invoice and for all open Accepted Orders.

7. **DATES OF DELIVERY:** Delivery dates specified in an Accepted Order or we may provide are approximate and subject to change, Product(s) availability, production schedules, and other prevailing conditions.

8. **YOUR ACCEPTANCE OF PRODUCT(S):** You are responsible to promptly inspect Product(s) delivered and notify us within the time frames set forth in our Claims Policy (a copy of which you received) as the same may be amended by us from time to time (“Claims Policy”), or if no time frame is stated, then within five (5) calendar days following receipt of the Product(s) for which a claim is filed, of any non-conformance of the Product(s) with the Accepted Order. Any shipment varying by up to ten percent (10%) from the quantity or weight specified in the Accepted Order shall be deemed in compliance with the quantity or weight ordered.

9. **RETURNS:** Product(s) may not be returned for credit without our prior written approval. Our approval can be withheld in our sole discretion or we can impose terms and conditions for such approval, including but not limited to imposition of restocking charges.

10. **LIMITED WARRANTY:** We warrant that the Product(s) sold are in conformance with the standards set forth in our Claims Policy ("Limited Warranty"). **THIS LIMITED WARRANTY IS IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED. WE MAKE NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, OR OF CONFORMANCE OF ANY PRODUCT(S) WITH ANY SAMPLE. PRODUCT(S) SOLD BUT NOT MANUFACTURED BY US ARE NOT WARRANTED BY US, BUT ARE SOLD ONLY WITH THOSE WARRANTIES PROVIDED BY THE MANUFACTURER. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF.**

11. **FORCE MAJEURE:** If our performance of any obligation is delayed due to unavailability of Product(s) or any other cause beyond our reasonable control by reason of fire, strike, lock-out, labour trouble, war, epidemic, embargo, flood, delay in transportation, lack or unavailability of trailers and/or railway cars, failure of carriers or sub-trades, shortage of manpower, restrictive governmental laws or regulations (including any trade actions, export controls, tariffs, customs or duties) or to any other cause or reason beyond Samuel's commercially reasonable control (a "Force Majeure"), notwithstanding that such Force Majeure may have existed at the time of submission or acceptance of an Accepted Order, we shall not be liable and any portion of an Accepted Order not filled or shipped will be retained as an Accepted Order and delivered as soon as possible. However, we may elect to cancel the Accepted Order, without liability, if we believe that the Product(s) will not become available within a reasonable period of time as we so determine. We also reserve the right to apportion Product(s) among our customers in such manner as we consider equitable, and our determination shall be conclusive and binding on you without liability to us.

12. **LIMITATION OF OUR LIABILITY:** Your sole remedy for receipt of Product(s) not conforming to an Accepted Order or the Limited Warranty ("Non-Conforming Product(s)") is to file a claim under the Claims Policy. Under no circumstance (including without limitation our delay or failure to deliver Product(s) or our cancellation of an Accepted Order) shall we be liable for any loss (including without limitation loss of income or profits), cost, cover, damage, or expense incurred by you or any third party, or for which you or any third party may be liable, specific or contingent, direct or indirect, incidental or consequential, in any way arising out of and/or resulting from the delivery of Non-Conforming Product(s), our breach of the Limited Warranty or any other failure by us to perform any of our obligations to you. **OUR LIABILITY UNDER ANY CIRCUMSTANCE AND FOR ANY REASON (EXCEPT AS MAY BE EXCLUDED BY LAW) SHALL, AT OUR OPTION, BE TO REPLACE NON-CONFORMING PRODUCT(S) OR REFUND SO MUCH OF THE PRICE PAID OR PROVIDE A REASONABLE ALLOWANCE AS WE DETERMINE AND UNDER NO CIRCUMSTANCE SHALL OUR LIABILITY EXCEED THE PRICE WE CHARGE YOU FOR THE PRODUCT(S) INCLUDED IN AN ACCEPTED ORDER.** You shall indemnify and hold us harmless from and against any and all such liability, loss, cost, cover, damage and expense.

13. **COLLECTION CHARGES:** You shall pay all costs and expenses, including without limitation reasonable attorney's fees and administrative charges, we incur in endeavouring to protect our rights arising out of your failure to perform your obligations to us, including without limitation any attempt to collect any amount you owe us.

14. **EAR COMPLIANCE:** If Product(s) are exported by us, we provide the following statement: "These commodities, technology or software were exported from the United States in accordance with the Export Administration Regulations. Diversion contrary to U.S. law is prohibited."

15. **GOVERNING LAW:** The transactions between you and us are made in New York, shall be governed by the laws of New York, and you agree to submit exclusively to the jurisdiction and venue of the Courts of the Eighth Judicial District of New York in Erie County, New York and the Federal Courts for the Western District of New York in Erie County, New York, with respect to any dispute arising out of any transaction between you and us. **YOU AND WE KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF ANY SUCH DISPUTE.**

16. **NO RIGHT OF SET-OFF:** Each Accepted Order constitutes a separate and distinct contract when accepted by us and you may not withhold payment of an invoice or offset same, in whole or in part, against

sums you claim are due you by us with respect to another Accepted Order, invoice or for any other cause or reason whatsoever.

17. OUR RIGHTS ARE NOT EXCLUSIVE: Our rights hereunder are in addition to and not in lieu of any other rights and remedies available to us at law or in equity.

18. NOTICES: All notices of claims or disputes given by either you or us with respect to any Communication, Accepted Order or these Terms and Conditions shall be in writing and sent by (a) first class mail with a copy by certified mail, return receipt requested, postage pre-paid, or (b) overnight delivery service, charges prepaid, and addressed as follows: (i) if intended for us, to our address for our Branch to which a Communication was sent or an Accepted Order was placed, and (ii) if to you, at your address last known to us. Notice will be effective the first business day after notice is sent.

19. NO OTHER TERMS ACCEPTED: No terms or conditions, other than these Terms and Conditions, shall apply to any Accepted Order and no agreement or understanding in any way adding to or otherwise modifying these Terms and Conditions shall be binding on us unless set forth in a writing signed by us.

20. MISCELLANEOUS: No waiver of any rights or remedies shall be binding on us unless set forth in a written waiver signed by us. We do not give up any of our rights or remedies if we fail or delay in seeking a remedy or if we accept a payment while there is breach by you. Any such waiver, delay or failure by us on one occasion shall not be deemed a waiver by us of any future default by you or of any future right or remedy available to us. The Section, Paragraph and other headings in these Terms and Conditions are for convenience of reference only, and shall not limit or otherwise affect the meaning of any provision contained in these Terms and Conditions. The invalidity or enforceability of any provision in these Terms and Conditions shall in no way effect the validity or enforceability of any other provision.