

## STANDARD MANUFACTURING AND SUPPLY TERMS AND CONDITIONS

These STANDARD MANUFACTURING AND SUPPLY TERMS AND CONDITIONS (“**Terms and Conditions**”) govern the sale, manufacturing, and/or supply of products (the “**Products**”) by TRACO MANUFACTURING, LLC, a Utah limited liability company (“**Manufacturer**”), to any Person (“**Customer**”). These Terms and Conditions are incorporated into each and every Purchase Order received from Customer which may establish in addition to these Terms and Conditions essential commercial terms not in conflict with these Terms and Conditions. In the event of any conflicting provisions in any Purchase Order or any other document received from Customer, these Terms and Conditions shall control and Manufacturer shall proceed with the sale under the assumption that these Terms and Conditions are the sole terms and conditions binding on the parties. Manufacturer and Customer expressly agree that Manufacturer may modify these Terms and Conditions from time to time without notice, and such modifications shall be binding upon Customer. Accordingly, each request for quote, order, confirmation, acceptance of Products and/or payment to Manufacturer by Customer shall be deemed an acknowledgment and acceptance by Customer of these Terms and Conditions as then in effect. These Terms and Conditions, as may be subsequently modified by Manufacturer from time to time without notice, are incorporated by reference into all documents issued by Manufacturer to Customer in connection with the sale and/or provision of Products; provided, however, that these Terms and Conditions shall only apply to the sale of Products by Manufacturer in or to locations within the United States. Manufacturer and Customer are each sometimes referred to as a “party” and, collectively, as “parties”. Unless otherwise defined herein, capitalized terms used in these Terms and Conditions shall the meanings set forth in Section 10 below.

### 1. MANUFACTURING OF PRODUCTS

(a) **Agreement to Manufacture.** Manufacturer agrees to manufacture and/or supply the Products pursuant to these Terms and Conditions.

(b) **Quantities.** Manufacturer shall produce Products in a quantity necessary to fulfill Accepted Purchase Orders during the Term subject to the provisions of these Terms and Conditions.

(c) **Purchase Orders.** During the Term, Customer shall purchase the Products through one (1) or more Accepted Purchase Orders. Each Purchase Order shall (i) specify the Products to be purchased, (ii) the quantity of each Product to be purchased, (iii) the specifications, if any, with respect to each Product, (iv) price of each unit of Product (the “**Price**”), (v) the Consigned Materials (defined below) to be provided by Customer, if any; (vi) the anticipated delivery date of the Products, and (vii) such other relevant terms as agreed by Manufacturer. Each Accepted Purchase Order shall, and hereby does, (x) constitute a separate and distinct contract and sale transaction between Manufacturer and Customer, enforceable according to its terms, and (y) automatically incorporate these Terms and Conditions (and any amendment hereto) as if set forth verbatim in each such Purchase Order. Notwithstanding the foregoing, Customer acknowledges and agrees that these Terms and Conditions shall supersede and render as null and void any conflicting or inconsistent terms or conditions in any Purchase Order or which Customer may include in, pre-print on or append to any Purchase Order (even if such Purchase Order is executed, acknowledged, accepted or fulfilled by Manufacturer subsequent to the date hereof). For the avoidance of doubt and subject to the immediately preceding sentence, a Purchase Order shall not be deemed accepted by Manufacturer unless and until (1) such Purchase Order acceptance confirmation is executed by Manufacturer and confirmed and approved by the Customer, and (2) the Downpayment with respect to such Purchase Order, if any, is paid by Customer (“**Accepted Purchase Order**”). Customer acknowledges and agrees that a Purchase Order may be rejected for any or no reason and without any liability or penalty to Manufacturer. An Accepted Purchase Order shall, subject to the Approved Purchase Quantity Ranges, create a binding agreement between the parties that may not be cancelled unless mutually agreed by the parties. All art work, including, without limitation, all Consigned Materials, must be first approved by the Manufacturer and second by the Customer before any raw materials, finished goods, and/or production will be scheduled.

(d) **Approved Purchase Quantity Range.** Manufacturer will attempt to produce the Requested Order Quantity of each Accepted Purchase Order; provided, however, that Customer expressly acknowledges and agrees that the Produced Order Quantity may vary

due to yield or other production or supply variances. Consequently, Customer agrees that Manufacturer may produce, and Customer shall accept and pay for, any Produced Order Quantity within the Approved Purchase Quantity Range. If any Produced Order Quantity is outside the Approved Purchase Quantity Range (collectively, “**Outside Products**”), then Customer shall: (i) in the event the Produced Order Quantity is *in excess* of the Approved Purchase Quantity Range, (x) purchase all the Produced Order Quantity that is within the Approved Purchase Quantity Range, and (y) mutually agree with Manufacturer on a course of action for the Outside Products; and (ii) in the event the Produced Order Quantity is *less* than the Approved Purchase Quantity Range, the Customer shall purchase all of the Produced Order Quantity and mutually agree with Manufacturer on an appropriate course of action with respect to the shortage.

(e) **Cancelled Purchase Orders.** If Customer cancels an Accepted Purchase Order, Customer expressly agrees that it shall remain obligated to pay the full price together with any and all Fees (defined below) charged by Manufacturer in connection with such Purchase Order, including, without limitation, any material or component sourcing costs or expenses, manufacturing costs or expenses, shipping costs or expenses, or storage costs or expenses, within five (5) days of receiving an invoice therefor. Upon cancellation of an Accepted Purchase Order, any Consigned Materials or other materials or components Manufacturer purchased or produced for such Purchase Order will be delivered to the Delivery Point in accordance with Section 3(a); provided, that, any such Consigned Materials or other materials or components stored in a Product Holding Area or a Distribution Warehouse (collectively, “**Customer-Hold-Over Inventory**”) shall be subject to storage limitations and additional Fees as set forth herein.

### 2. CONSIGNMENT MATERIALS

(a) **Consigned Materials.** The Consigned Materials shall be owned by Customer, delivered to Manufacturer on consignment, and subject to a lien held by Manufacturer to assure payment for manufacturing services provided. All Consigned Materials shall be delivered to Manufacturer in sufficient time and in sufficient quantities to allow Manufacturer to deliver Products on or before a Requested Delivery Date. In the event any Accepted Purchase Order requires Customer to deliver Consigned Materials to Manufacturer, Customer shall deliver 125% of the quantity of Consigned Materials the parties estimate is necessary to fulfill an Accepted Purchase Order so as to allow for a 25% scrap allowance for such Purchase Order (the “**Scrap Allowance**”). If Manufacturer exceeds the Scrap Allowance applicable to an Accepted Purchase Order, Customer shall, at Customer’s expense, promptly deliver such additional Consigned Materials as requested by Manufacturer to fulfill the Accepted Purchase Order.

(b) **Quality and Rejection of Consigned Materials.** Customer assumes complete liability for the quality and quantity of all Consigned Materials. Manufacturer shall not be responsible for pre-existing defects discovered in Consigned Materials. Manufacturer may, but shall not be obligated to inspect, any Consigned Materials for any defects or deficiencies, provided that Manufacturer shall assume no liabilities whatsoever by (i) inspecting any Consigned Materials, or (ii) failing to inspect the Consigned Materials, including, without limitation, with respect to any latent defects of the Consigned Materials. In the event that Manufacturer inspects the Consigned Materials and discovers any defects or deficiencies, Manufacturer will promptly notify Customer and Customer shall immediately upon such notice, deliver such additional or different Consigned Materials as requested by Manufacturer.

(c) **Failure to Provide Consigned Materials.** In the event (i) Manufacturer produces any Product for Customer and such Product is complete *except for* any Consigned Materials to be provided by Customer (each, a "Materially Completed Product"), and (ii) the Requested Delivery Date (x) is within 15 days or (y) has already occurred, then Customer agrees that Manufacturer shall have the right, but not the obligation, in its sole and absolute discretion to: (A) use its own materials, packaging, or labels (as applicable) to complete the Materially Completed Products; and/or (B) deliver the Materially Completed Products in accordance with Section 3 below. In furtherance of the foregoing, Customer expressly agrees that, upon receiving an invoice therefor, Customer shall pay (1) the full Price for such Materially Completed Products (as if such Products were completed) pursuant to the Price(s) set forth in the applicable Accepted Purchase Order, and (2) any and all other costs and expenses (including, but not limited to, labor and overhead costs) associated with completing the Materially Completed Products. Notwithstanding the foregoing, Manufacturer may, in its sole and absolute discretion, elect to delay delivery of the Materially Completed Products until Customer delivers the Consigned Materials to Manufacturer and Manufacturer completes the Materially Completed Products.

(d) **Custom Roll Form Products.** Custom roll form Products may have production splices of up to two (2) per roll.

### 3. DELIVERY; RISK OF LOSS; TITLE; INSPECTION

(a) **Delivery.** The Completed Products shall be deemed delivered upon the earliest to occur of the following (collectively, the "Delivery Point"): (i) the physical pick up by Customer or Customer's representative from the Warehouse; (ii) delivery of possession of the Completed Products from Manufacturer's inventory at the Warehouse to an area designated by Manufacturer, in its sole discretion, to be Customer's inventory at the Warehouse ("Product Holding Area"); (iii) upon payment in full of all amounts (including all fees, charges, costs and expenses) due under the applicable Accepted Purchase Order(s); or (iv) delivery of possession of the Completed Products to a common carrier at the Warehouse. Customer shall bear all responsibility, and shall otherwise hold Manufacturer harmless, for all costs, expenses and liabilities relating to picking up and loading the Completed Products at the Delivery Point, including all storage, freight, insurance, shipping and all other expenses from and after the Delivery Point to the final destination. Without limiting the foregoing, Customer expressly acknowledges and agrees that (x) Customer shall take delivery of the Completed Products immediately upon delivery of possession of the Completed Products to the Delivery Point (the "Delivery Time"), and (y) in the sole and absolute discretion of Manufacturer, Customer may be charged storage fees for Completed Products that remain at the Warehouse following the Delivery Time. Without limiting the foregoing, following the Delivery Time, Manufacturer may, at Customer's sole expense and subject to additional fees to be borne by Customer, ship the Completed Products to Customer. Customer expressly acknowledges and agrees that

Manufacturer shall have no liability whatsoever for shipment of Completed Products to Customer pursuant to the immediately preceding sentence, including, without limitation, shipment of the Completed Products to an incorrect or outdated address or location.

(b) **Risk of Loss.** From and after the Delivery Time, Customer shall be and is solely responsible for all risk of loss or destruction of or damage to the Completed Products and no such loss or damage shall relieve Customer from its payment obligations under these Terms and Conditions or any applicable Purchase Order(s). Manufacturer may (but is not obligated to) obtain, at Customer's request and at Customer's cost and expense, insurance covering damage, loss to or theft of the Completed Products while such Completed Products are located at the Warehouse and/or such Completed Products are in the possession of a common carrier during shipment. Such insurance shall provide coverage only against damage, loss to or theft of Completed Products and shall not cover any other incidental or consequential damages.

(c) **Title.** Notwithstanding Section 3(a) above, all of Manufacturer's title to the Completed Products set forth in any Accepted Purchase Order(s) shall only pass to Customer upon payment in full of all monies (and all fees, costs, charges and expenses) due under such Purchase Order(s).

(d) **Multiple Deliveries.** Manufacturer may, in its sole discretion, and without liability or penalty to Customer, deliver the Completed Products to Customer in multiple, separate and partial deliveries.

(e) **Transportation to Distribution Warehouse.** For the avoidance of doubt, in the event that Manufacturer transports Completed Products to a Distribution Warehouse, the delivery of possession of the Completed Products to a common carrier at the Warehouse shall be considered the Delivery Point.

(f) **Storage of Customer-Hold-Over Inventory.** Manufacturer shall store Customer-Hold-Over Inventory in a Warehouse for a maximum of fifteen (15) days (the "Maximum Hold-Over Inventory Period"). After the expiration of the Maximum Hold-Over Inventory Period, Manufacturer may, in its sole and absolute discretion, at any time (i) ship the Customer-Hold-Over Inventory to Customer at Customer's sole cost and expense, (ii) sell the Customer-Hold-Over Inventory and retain all sale proceeds thereof, or (iii) destroy or otherwise dispose of the Customer-Hold-Over Inventory at Customer's sole cost and expense.

(g) **Inspection.** Customer shall inspect all Completed Products within the Inspection Period. Customer acknowledges and agrees that the Completed Products shall be conclusively and irrevocably deemed accepted if Customer fails to provide written notice to Manufacturer of any defects of the Completed Products prior to the expiration of the Inspection Period. If Customer timely notifies Manufacturer within the Inspection Period, Customer shall, at Customer's expense and risk of loss, ship the Defective Products to the Manufacturer for inspection and testing. If Manufacturer's inspection and testing reveal, to Manufacturer's reasonable satisfaction, that such Products are defective and such defects have not been caused or contributed to by any of the Limitations (defined below), Manufacturer may, in its sole discretion, (i) replace such Defective Products, provided that Manufacturer may request that some or all of the Defective Products be returned to Manufacturer prior to such replacement; or (ii) Credit or refund the Price for such Defective Products. Customer acknowledges and agrees that the remedies set forth in this Section 3(g) are the Customer's exclusive remedies for the delivery of any defective or non-conforming Products. Without limiting the foregoing, Customer acknowledges and agrees that Customer has no right to return for repair, replacement, Credit, or refund for any Product except as set

forth in this Section 3(g). In no event shall Customer reconstruct, repair, alter or replace any Product, in whole or in part, either by itself or through a third party.

(h) **Delivery Date.** Notwithstanding any provision herein to the contrary, Customer expressly acknowledges and agrees that any delivery of the Products to the Customer following the Requested Delivery Date shall not constitute any breach by Manufacturer of these Terms and Conditions or any Purchase Order, and the Manufacturer shall not incur any liability whatsoever with respect to such late delivery thereof.

#### 4. PAYMENT

(a) **Payment Terms.** Customer shall pay all monies due, together with all applicable fees, costs, expenses and charges (collectively, the "Fees"), under any Accepted Purchase Order(s) to Manufacturer no later than 5 p.m. Eastern Standard Time on the dates such Fees are respectively due or, as applicable, within five (5) calendar days of receiving an invoice therefor. Customer shall make all payments in U.S. dollars by wire transfer of immediately available funds or such other method of payment acceptable to Manufacturer in its sole and absolute discretion. Customer shall be responsible for providing complete and accurate billing and contact information to Manufacturer and notifying Manufacturer of any changes to such information. Without limiting the foregoing, Customer shall pay any Downpayment(s) within five (5) calendar days after the applicable Purchase Order(s) are executed by Manufacturer.

(b) **Late Fees.** If Customer fails to make any payment when due then, in addition to all other remedies that may be available: (i) Manufacturer may charge interest on the past due amount at the rate of one and one-half percent (1.5%) per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable Law; (ii) Customer shall reimburse Manufacturer for all costs incurred by Manufacturer in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for ten (10) calendar days following written notice thereof (the "Default Notice Period"), (x) Manufacturer may suspend delivery of the Products until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to Customer or any other Person by reason of such suspension; and (y) to the extent such Products have been delivered and if requested by Manufacturer, Customer shall, at its sole expense, immediately return the Products to such locations as Manufacturer may designate, free and clear of all liens and encumbrances and in the same condition as when delivered to Customer, ordinary wear and tear excepted.

(c) **Other Fees.** Customer shall pay in accordance with Section 4(a), all Fees charged by Manufacturer with respect to each Accepted Purchase Order, including, without limitation, any transportation Fees, daily storage Fees, and Fees charged by Manufacturer in connection with the Consigned Materials. The transportation Fees and daily storage Fees shall be set forth in the applicable Accepted Purchase Order(s). If Manufacturer transports any Completed Products to a Distribution Warehouse, Customer shall pay transfer Fees when (x) the Completed Products are transported to the Distribution Warehouse and (y) the Completed Products are transported from the Distribution Warehouse.

(d) **No Deductions or Setoffs.** All Fees and other amounts payable by Customer under these Terms and Conditions and/or any Purchase Order(s) are exclusive of taxes and similar assessments. Without limiting the foregoing, Customer shall be solely responsible for all sales, use, and excise taxes, and any other similar taxes, duties, fees, and charges of any kind imposed by any international, federal, state, or local governmental or regulatory authority on any amounts payable by Customer under these Terms and Conditions and/or any

Purchase Order(s). In furtherance of the foregoing, Customer expressly agrees that (i) the Products shall only be resold or disposed of by Customer in any jurisdiction or country after discharging all applicable taxes, customs and/or import duties or other charges, including, but not limited to, any charges necessary to domesticate the Products and/or to comply with any Law(s) of such jurisdiction or country; (ii) Manufacturer makes no warranty or representation as to the prior payment or current applicability of such taxes, duties or other charges, either in the United States or elsewhere; (iii) any sales, transfer, turnover, value added, excise or other taxes (except net income taxes imposed on Manufacturer) applicable to the sale and delivery of the Products shall be borne by Customer and Customer shall provide Manufacturer with proof of payment of any such taxes, duties or other charges upon Manufacturer's request; and (iv) Customer shall, upon demand, reimburse Manufacturer for any such taxes, duties or other charges paid by Manufacturer (if any).

(e) **Purchase Money Security Interest.** To secure Customer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Customer to Manufacturer, Customer hereby grants Manufacturer a first-priority security interest, with priority over all other liens, claims, and encumbrances, in all inventory of goods purchased under these Terms and Conditions (including Products, whether or not completed, defective and/or conforming) by Customer from Manufacturer, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Customer acknowledges that the security interest granted under this Section 4(e) is a purchase-money security interest under Utah Law. Manufacturer may file a financing statement for such security interest and Customer shall execute such statements or other documentation necessary to perfect Manufacturer's security interest in such Products. Customer also authorizes Manufacturer to execute, on Customer's behalf, such statements or other documentation necessary to perfect Manufacturer's security interest in such Products. Manufacturer shall be entitled to all applicable rights and remedies of a secured party under applicable Law.

(f) **Credits.** Customer expressly agrees and acknowledges that: (i) any Credits issued by Manufacturer shall automatically expire one (1) year from the date the Credit was issued by Manufacturer to Customer (the "Credit Period"); (ii) a Credit shall only be deemed valid if such Credit is issued to Customer pursuant to a Credit Memo; (iii) a Credit may only be used by Customer during the Credit Period; and (iv) Customer automatically forfeits all rights to any Credit issued by Manufacturer upon the expiration of the Credit Period.

5. **INSURANCE.** During the Term and for so long as any obligations of Customer remain outstanding thereafter, Customer shall, at its own cost and expense, maintain and carry in full force and effect, (a) products liability coverage with limits of not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, and (b) commercial general liability insurance with limits not less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate, with financially sound and reputable insurers, and upon Manufacturer's request, shall provide Manufacturer with a certificate of insurance evidencing the insurance coverage specified in this Section. The certificate of insurance shall name Manufacturer as an additional insured. Customer shall provide Manufacturer with at least thirty (30) days' advance written notice in the event of a cancellation or material change in such insurance policies.

#### 6. INTELLECTUAL PROPERTY

(a) **License.** During the term of these Terms and Conditions, Customer grants to Manufacturer a limited, non-exclusive license to use any Intellectual Property, including without limitation any

Customer Formulas and Consigned Materials, of Customer provided to Manufacturer to be used solely in connection with the performance of Manufacturer's obligations under these Terms and Conditions and any Accepted Purchase Order.

(b) **Reservation of Rights.** Customer acknowledges and agrees that; (i) except to the extent provided in a separate written agreement between Customer and Manufacturer, Manufacturer (or its licensors) shall retain all IP Rights used to create, embodied in, used in, and otherwise relating to the Products and any of their component parts; (ii) any and all of Manufacturer's IP Rights are the sole and exclusive property of Manufacturer or its licensors; (iii) Customer shall not acquire any ownership interest in any of Manufacturer's IP Rights under these Terms and Conditions or any Accepted Purchase Order; (iv) any goodwill derived from the use by Customer of Manufacturer's IP Rights inures to the benefit of Manufacturer or its licensors, as the case may be; (v) if Customer acquires any IP Rights in or relating to any product or good (including any Product) purchased under these Terms and Conditions (including any rights in any Trademarks, derivative works or patent improvements relating thereto), by operation of Law, or otherwise, such rights are deemed and are hereby irrevocably assigned to Manufacturer or its licensors, as the case may be, without further action by either party; and (vi) Customer shall use Manufacturer's IP Rights only in accordance with these Terms and Conditions and any instructions of Manufacturer. Customer further agrees that all Tooling used to manufacture the Products is owned exclusively by Manufacturer ("Manufacturer Tooling"), and Customer has no right, title or interest in or to any of the Manufacturer Tooling.

## 7. WARRANTY; LIMITATION OF LIABILITY

(a) **Limited Product Warranty.** Subject to the Limitations (defined below), Manufacturer warrants to Customer that for a period of thirty (30) days from the delivery of the Completed Products, the Completed Products will be free from significant defects in material and workmanship (, the "Limited Warranty").

(b) **Limited Warranty Limitations.** Notwithstanding the foregoing, the Limited Warranty shall not and does not apply to any Completed Product that (collectively, the "Limitations"): (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper storage, improper handling, abnormal physical stress, and/or abnormal environmental conditions by any Person other than Manufacturer; (ii) has been reconstructed, repaired, or altered by any Person other than Manufacturer and its authorized representatives; (iii) has been used with any third-party party products, or other hardware, products or materials that have not previously been approved by Manufacturer in writing; or (iv) is defective due, at least in part, to any Consigned Materials.

(c) **DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN SECTION 7(a) ABOVE, MANUFACTURER EXPRESSLY DISCLAIMS, AND CUSTOMER ON BEHALF OF ITSELF AND ITS AFFILIATES EXPRESSLY WAIVES, (i) ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCTS, REGARDING TITLE, CONDITION, DESIGN, OPERATION, MERCHANTABILITY, FREEDOM FROM CLAIMS OF INFRINGEMENT OR THE LIKE, FITNESS FOR USE FOR A PARTICULAR PURPOSE, QUALITY OF MATERIALS OR WORKMANSHIP, ABSENCE OF DISCOVERABLE OR NONDISCOVERABLE DEFECTS, OR THAT THE PRODUCTS ARE IN COMPLIANCE WITH ANY APPLICABLE GOVERNMENT REQUIREMENTS, REGULATIONS OR LAWS (INCLUDING THE PERFORMANCE OF GOODS OR PRODUCTS TO STANDARDS SPECIFIC TO THE COUNTRY OF IMPORT); (ii) ANY OTHER EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCTS (INCLUDING ANY IMPLIED WARRANTY ARISING BY LAW, A

COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE OR OTHERWISE); AND (iii) ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY REGARDING THE CHARACTERIZATION OF THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER(S) OR ANY TRANSACTION PURSUANT TO THESE TERMS AND CONDITIONS OR ANY PURCHASE ORDER(S). CUSTOMER EXPRESSLY WAIVES, RELEASES, RENOUNCES, AND DISCLAIMS EXPECTATION OR RELIANCE ON ANY SUCH WARRANTY OR WARRANTIES. MANUFACTURER SHALL NOT HAVE ANY RESPONSIBILITY OR LIABILITY TO CUSTOMER OR ANY OTHER PERSON, WHETHER IN CONTRACT OR TORT, ARISING OUT OF ANY NEGLIGENCE OR STRICT LIABILITY OF THE MANUFACTURER, OR ITS RESPECTIVE AFFILIATES, LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS OR AGENTS FOR: (1) ANY LIABILITY, LOSS, OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY OR INDIRECTLY BY THE PRODUCTS, ANY INADEQUACY, DEFICIENCY OR DEFECT OF THE PRODUCTS, OR BY ANY OTHER CIRCUMSTANCES IN CONNECTION WITH THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER(S), ANY TRANSACTION PURSUANT TO THESE TERMS AND CONDITIONS OR ANY PURCHASE ORDER(S), OR ANY PRODUCTS; (2) THE USE, OPERATION, PERFORMANCE, OWNERSHIP, DISPOSITION, DELIVERY, OPERATION, TRANSPORTATION, MAINTENANCE, REPAIR, IMPROVEMENT, STORAGE, OR REPLACEMENT OF THE PRODUCTS OR ANY RISKS RELATING TO THE SAME; OR (3) ANY CONSEQUENTIAL DAMAGES, INCLUDING FOR INTERRUPTION OF SERVICE, LOSS OF BUSINESS, OR ANTICIPATED PROFITS.

(d) **LIMITATION OF LIABILITY.** IN NO EVENT WILL MANUFACTURER OR ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS OR AGENTS BE LIABLE UNDER OR IN CONNECTION WITH THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER(S), THE PRODUCTS OR THE SUBJECT MATTER OF THESE TERMS AND CONDITIONS OR ANY PURCHASE ORDER(S), OR ANY TRANSACTIONS CONTEMPLATED BY THESE TERMS AND CONDITIONS OR ANY PURCHASE ORDER(S), UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (i) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (ii) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY; (iii) COST OF REPLACEMENT GOODS OR SERVICES; (iv) LOSS OF GOODWILL OR REPUTATION; OR (v) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER CUSTOMER OR ANY OTHER PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(e) **CAP ON LIABILITY.** IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF MANUFACTURER AND ITS AFFILIATES, LICENSORS, SERVICE PROVIDERS, SUBCONTRACTORS, SUPPLIERS AND AGENTS ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, ANY PURCHASE ORDER(S) OR THE PRODUCTS, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE TOTAL AMOUNTS PAID TO MANUFACTURER PURSUANT TO THE PURCHASE ORDER(S) CONTEMPLATING THE PRODUCTS GIVING RISE TO THE CLAIM. THE FOREGOING

LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. THE PARTIES AGREE THAT THE PROVISIONS OF THIS SECTION 7 ALLOCATE THE RISKS BETWEEN MANUFACTURER AND CUSTOMER AND THAT MANUFACTURER'S PRICING REFLECTS THE ALLOCATION OF THIS RISK, AND THE MANUFACTURER WOULD NOT OTHERWISE FURNISH OR SELL THE PRODUCTS BUT FOR THE INCLUSION OF THIS SECTION 7(e).

## 8. TERM & TERMINATION

(a) **Term.** The term of these Terms and Conditions shall commence on the Effective Date and shall continue until terminated in accordance with this Section 8 (the "**Term**"). Unless otherwise agreed to by the Parties, these Terms and Conditions may be terminated by either party upon the delivery of one hundred twenty (120) days' prior written notice to the other party.

(b) **Early Termination.** Notwithstanding Section 8(a) or any provision to the contrary, Manufacturer may immediately terminate these Terms and Conditions, effective upon delivering written notice to Customer, if (1) Customer fails to pay any amount when due under these Terms and Conditions or any Purchase Order(s), and such failure continues for more than ten (10) calendar days after Manufacturer's delivery of written notice thereof; (2) Customer breaches of any of its obligations, covenants, representations or warranties under this these Terms and Conditions or any Purchase Order(s); (3) Customer becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (4) Customer files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency Law; (5) makes or seeks to make a general assignment for the benefit of its creditors; or (6) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

(c) **Customer's Termination Obligations.** In the event of any termination of these Terms and Conditions in accordance with Section 8(a), Customer agrees to continue to pay all outstanding amounts (including any Fees) Customer is obligated to pay pursuant to any Purchase Order(s) effected prior to the date of the termination notice, including any amounts, monies and Fees Customer is obligated to pay after the effective date of termination of these Terms and Conditions; provided, however, that in the event that (x) Customer terminates these Terms and Conditions or (y) Manufacturer terminates these Terms and Conditions pursuant to Section 8(b), all monies, amounts and Fees that would have become due and payable had these Terms and Conditions remained in effect until the final payment date(s) under any Purchase Order(s) outstanding as of the date of the termination notice, shall become immediately due and payable, and Customer shall pay all such monies, amounts and Fees, together with all previously accrued but not yet paid monies, amounts and Fees, on receipt of Manufacturer's invoice therefor.

(d) **Manufacturer's Termination Obligations.** Unless these Terms and Conditions are terminated pursuant to Section 8(b), Manufacturer will fulfill its obligations under any Purchase Order(s) outstanding as of the date of the termination notice; provided, however, that Manufacturer shall not have any obligation or responsibility to accept or otherwise perform under any Purchase Order(s) sent by Customer after the date of the termination notice.

(e) **Survival.** The provisions set forth in this Section 8 and Sections 3, 4, 5, 6, 7, 9 and 11 shall survive any expiration or termination of these Terms and Conditions together with any provision or other right or obligation of the parties in these Terms and Conditions that, by its nature, should survive termination or expiration

of these Terms and Conditions.

9. **INDEMNIFICATION.** Customer shall indemnify, defend, and hold harmless Manufacturer, and each of its affiliates, subcontractors, licensors, service providers, suppliers, and agents (together with each such Person's respective officers, directors, managers, employees, agents, successors, and assigns) (each, an "**Indemnitee**") from and against any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind (including reasonable attorneys' fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers), incurred by such Indemnitee resulting from any Action by a third party (other than an affiliate of Manufacturer) relating to or arising from, or are alleged to arise out of or relate to (collectively, a "**Claim Against Indemnitee**"): (i) Customer's failure to comply with any applicable Laws relating to the Products, including, without limitation, any Laws applicable to the purchase, sale, maintenance, storage, ownership, transportation, exportation, importation, operation or use of the Products; (ii) failure to pay and all applicable taxes, custom and/or import duties or other charges relating to the Products, including, without limitation, any sales, transfer, turnover, value added, excise or other taxes, duties or fees; (iii) infringement or violation of any IP Rights of any third-party relating to any Intellectual Property, including, without limitation, the Consigned Materials and Customer Formulas, provided by Customer to Manufacturer; (iv) allegation of facts that, if true, would constitute Customer's breach (whether such breach is by Customer or any affiliate of Customer) of any of its representations, warranties, covenants, or obligations under these Terms and Conditions or any Purchase Order(s); (v) the death, disability or bodily injury of any agent, employee, third party or other Person; or (vi) the damage, loss, or destruction of any real property or any tangible personal property in connection with the maintenance, storage, ownership, transportation, exportation, importation, operation or use of the Products.

10. **CERTAIN DEFINITIONS.** Capitalized terms used but not defined in other Sections of these Terms and Conditions shall have the meanings to given to such terms in this Section.

"**Action**" means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.

"**Approved Purchase Quantity Range**" means following purchase quantity ranges of Products that Customer shall be required to pay for based upon the Requested Order Quantity set forth in the Accepted Purchase Order(s): (i) with respect to a Requested Order Quantity of 1,000 or less, the purchase quantity range shall be 50% to 150% of the Requested Order Quantity; (ii) with respect to a Requested Order Quantity of 1,001 to 5,000, the purchase quantity range shall be 70% to 130% of the Requested Order Quantity; (iii) with respect to a Requested Order Quantity of 5,001 to 10,000, the purchase quantity range shall be 80% to 120% of the Requested Order Quantity; (iv) with respect to a Requested Order Quantity of 10,001 to 50,000, the purchase quantity range shall be 85% to 115% of the Requested Order Quantity; (v) with respect to a Requested Order Quantity of 50,001 or more, the purchase quantity range shall be 90% to 110% of the Requested Order Quantity.

"**Completed Products**" means any (i) Products Manufacturer produces for an Accepted Purchase Order that comply with the Limited Warranty, and (ii) Materially Completed Products, whether or not such Products, comply with the Limited Warranty.

"**Consigned Materials**" means any and all materials (including

packaging, labels, raw materials, etc.) that Customer is to provide to Manufacturer pursuant to a Purchase Order.

“Credit” means any invoice or billing adjustment or other amounts that may be credited against amounts due and owing by Customer under these Terms and Conditions pursuant to a Credit Memo.

“Credit Memo” means Manufacturer’s approved form of a credit memorandum, pursuant to which Manufacturer expressly issues a Credit to Customer.

“Customer Formula” means any research findings, product-development plans, product processes, formulas or methods provided by Customer in connection with any Products set forth in Accepted Purchase Order(s).

“Defective Product” means any Completed Product that does not comply with the Limited Warranty.

“Distribution Warehouse” means a distribution warehouse selected by Manufacturer, in its sole discretion, to store the Completed Products.

“Downpayment” means, with respect to a Purchaser Order, a non-refundable downpayment to be paid by Customer equal to fifty percent (50%) (or other amount as mutually agreed by the parties) of the total Price of the Products requested in such Purchase Order.

“Effective Date” means effective date set forth in the first Purchase Order entered into between the Parties.

“Inspection Period” means the earlier of (x) five (5) calendar days following Customer’s receipt of the Completed Products or (y) thirty (30) calendar days following delivery by Manufacturer to the Delivery Point.

“Intellectual Property” means any intellectual property in any jurisdiction throughout the world, including, but not limited to: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto and all patents, patent applications and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, extensions and reexaminations thereof, (ii) Trademarks, Internet domain names, uniform resource locators and e-mail addresses, and rights in telephone numbers, together with all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith and all applications, registrations and renewals in connection therewith, (iii) all copyrightable works, all copyrights, and all applications, registrations and renewals in connection therewith, (iv) all trade secrets and business and technical information and other confidential and proprietary information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals), (v) all software and firmware, including computer programs, machine-readable instruction sets or data in computerized form, whether in source code, object code or other form, and application programming interfaces, architecture, files, data, databases and related documentation, (vi) all other proprietary rights, and (vii) all copies and tangible embodiments thereof (in whatever form or medium).

“IP Rights” means any and all industrial and intellectual property rights, whether registered, granted applied or otherwise, now or hereafter in existence (including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the Laws of any jurisdiction throughout in any part of the world) comprising or relating to any Intellectual Property, and all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar

to, or required for the exercise of, any Intellectual Property however arising.

“Law” means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, or other requirement of any federal, state, local, or foreign government or political subdivision thereof, or any arbitrator, court, or tribunal of competent jurisdiction.

“Person” means any individual, firm, corporation, partnership, limited liability company, trust, estate, joint venture, association, governmental authority or other entity.

“Produced Order Quantity” means the quantity of Products that Manufacturer actually produces for an Accepted Purchase Order.

“Purchase Order” means the Manufacturer approved forms submitted by Customer to Manufacturer (including any order confirmation forms), as executed and delivered by Customer and Manufacturer (including execution and delivery by way of online or electronic acceptance).

“Requested Delivery Date” means the requested delivery date for Products set forth in an Accepted Purchase Order.

“Requested Order Quantity” means, with respect to an Accepted Purchase Order, the quantity of each Product set forth in such Accepted Purchase Order.

“Trademarks” means all rights in and to U.S. and foreign trademarks, service marks, trade dress, trade names, brand names, logos, corporate names and domain names, and other similar designations of source, sponsorship, association, or origin, together with the goodwill symbolized by any of the foregoing, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection in any part of the world.

“Tooling” means, collectively, all tooling, dies, print plates test and assembly fixtures, gauges, jigs, patterns, casting patterns, cavities, molds, and documentation (including engineering specifications and test reports) used by Manufacturer in connection with its manufacture and sale of the Products, together with any accessions, attachments, parts, accessories, substitutions, replacements and appurtenances thereto.

“Warehouse” means Manufacturer’s warehouse facility (or a facility of any subcontractor of Manufacturer), including, without limitation, any Distribution Warehouse, where the Completed Products are physically located.

## 11. MISCELLANEOUS

(a) **Entire Agreement.** These Terms and Conditions, together with any Manufacturing and Supply Agreement entered into between the parties (each an “MSA”) and all Purchase Orders entered into between the parties hereto and attachments thereto, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning it subject matter. However, to the extent of any conflict or inconsistency between the provisions in the body of these Terms and Conditions, and any MSA or Purchase Order, the terms of these Terms and Conditions shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in any of Customer’s purchase orders (including any order forms) or other order or purchase documentation of Customer shall incorporate into or form any part of these Terms and Conditions, and all such terms or conditions of such order or purchase documentation shall be null and

void. Manufacturer and Customer expressly agree that Manufacturer may modify these Terms and Conditions from time to time without notice, and such modifications shall be binding upon Customer.

(b) **Confidential Information.** These Terms and Conditions, each Purchase Order, and the transactions contemplated hereby and thereby, and all non-public, confidential, or proprietary information of Manufacturer, including, but not limited to, documents, data, or business operations, disclosed by a Manufacturer to Customer, whether disclosed orally or disclosed or accessed in written, electronic, or other form or media, and whether or not marked, designated, or otherwise identified as “confidential,” in connection with these Terms and Conditions or any Purchase Order are confidential, solely for the purpose of these Terms and Conditions and the transactions contemplated hereby, and may not be disclosed or copied unless authorized by Manufacturer in writing. Manufacturer shall be entitled to injunctive relief for any violation of this Section 11(b). Notwithstanding the foregoing, this confidentiality obligations in this Section 11(b) shall not apply to information that is: (i) in the public domain; (ii) known to Customer at the time of disclosure; or (iii) rightfully obtained by Customer on a non-confidential basis from a third party.

(c) **Assignment.** Customer shall not assign or otherwise transfer any of its rights, or delegate or otherwise transfer any of its obligations or performance under these Terms and Conditions or any Purchase Order(s), in each case whether voluntarily, involuntarily, by operation of Law, or otherwise, without Manufacturer’s prior written consent.

(d) **Force majeure.** In no event will Manufacturer be liable or responsible to Customer, or be deemed to have defaulted under or breached these Terms and Conditions or any Purchase Order, for any failure or delay in fulfilling or performing any term of these Terms and Conditions, when and to the extent such failure or delay is caused by any circumstances beyond Manufacturer’s reasonable control (a “**Force Majeure Event**”), including acts of God, flood, fire, earthquake or explosion, war, terrorism, invasion, riot or other civil unrest, epidemics or pandemics as defined by the United States Centers for Disease Control and Prevention, embargoes or blockades in effect on or after the date of these Terms and Conditions, national or regional emergency, strikes, labor stoppages or slowdowns or other industrial disturbances, passage of Law or any action taken by a governmental or public authority, including imposing any tariff, tax, embargo, export or import restriction, quota, or other restriction or prohibition or any complete or partial government shutdown, national or regional shortage of adequate power or telecommunications or transportation, or any other change in economic condition. Either party may terminate these Terms and Conditions if a Force Majeure Event continues substantially uninterrupted for a period of thirty (30) days or more. In the event of any failure or delay caused by a Force Majeure Event, Manufacturer shall give prompt written notice to Customer stating the period of time the occurrence is expected to continue and use commercially reasonable efforts to end the failure or delay and minimize the effects of such Force Majeure Event.

(e) **Governing Law and Venue.** These Terms and Conditions, together with any Purchase Order(s) and any transactions contemplated hereby or thereby, shall be governed by and construed in accordance with the Laws of the State of Utah without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of Utah. ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS OR THE RIGHTS OR LICENSES GRANTED HEREUNDER WILL BE INSTITUTED EXCLUSIVELY IN THE FEDERAL COURTS OF THE UNITED STATES OR THE COURTS OF THE STATE OF UTAH IN EACH CASE LOCATED IN THE CITY OF SALT LAKE AND COUNTY

OF SALT LAKE, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION, OR PROCEEDING. Service of process, summons, notice, or other document by mail to such party’s address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

(f) **WAIVER OF JURY TRIAL.** EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(g) **Notices.** Any notice to be given hereunder shall be in writing and sent and addressed to the parties as provided on the signature page hereto. Notices sent in accordance with this Section 11(g) will be deemed effectively given: (i) when received, if delivered by hand or sent via certified mail; (ii) when received, if sent by a nationally recognized overnight courier; (iii) when sent, by email, (in each case, with confirmation of transmission), if sent during the addressee’s normal business hours, and on the next business day, if sent after the addressee’s normal business hours; and (iv) in the case of notice sent via certified mail and delivery is refused by the recipient, on the date when such delivery is refused.

(h) **No Third-Party Beneficiaries.** These Terms and Conditions are for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of these Terms and Conditions.

(i) **Waiver; Severability.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in these Terms and Conditions, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from these Terms and Conditions or any Purchase Order(s) will operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. If any term or provision of these Terms and Conditions or any Purchase Order(s) is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of these Terms and Conditions or the Purchase Order(s) or otherwise invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify these Terms and Conditions or any Purchase Order(s) so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

(j) **Attorneys’ Fees.** In the event that any action, suit, or other legal or administrative proceeding is instituted or commenced by either party against the other party arising out of or related to these Terms and Conditions or any Purchase Order(s), the prevailing party is entitled to recover its reasonable attorneys’ fees and court costs from the non-prevailing party.

(k) **Equitable Relief.** Customer acknowledges and agrees that a breach or threatened breach by Customer of any of its obligations under Sections 6 and 11(b) would cause Manufacturer irreparable harm for which monetary damages would not be an adequate remedy and that, in the event of such breach or threatened breach, Manufacturer shall be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other

relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.

(l) **Counterparts.** The Purchase Order(s) may be executed in counterparts, each of which is deemed an original, but all of which together are deemed to be one and the same agreement. A signed copy of any Purchase Order(s) delivered by facsimile, email, or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of such Purchase Order(s).