



MacDiarmid, LLC
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TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY.** This Terms and Conditions of Sale constitutes the entire agreement between MacDiarmid, LLC., a Massachusetts corporation (“Seller”) and the maker (“Buyer”) for the purchase products (the “Products”) described in any applicable purchase order accepted by Seller (each, an “Order”). Except to the extent expressly agreed to by Seller in a writing signed by an authorized officer of Seller, any different, conflicting or additional terms contained in an Order, Order acknowledgment, sales agreement or other document shall be void. Seller shall not be deemed to have waived any provision of this Terms and Conditions of Sale by failing to object to provisions that may appear on, be incorporated by reference in, or attached to an Order. Seller hereby reserves the right to accept each Order, and each acceptance shall be conditional upon the acceptance by Buyer of this Terms and Conditions of Sale. Any revised and follow-on orders accepted by Seller shall be deemed to be an Order and subject to this Terms and Conditions of Sale. Seller’s acknowledgement of receipt of the revised or follow-on orders shall not constitute acceptance.

2. **TITLE AND DELIVERY.** Dates of all planned shipments are estimated and not guaranteed. All Products will be tendered and shipped Ex-Works Seller’s plant Newburyport, Massachusetts, unless agreed to otherwise. Title and risk of loss or damage to the Products shall pass to Buyer when Seller places the Products at the disposal of the Buyer at Seller’s facilities. Seller assumes no responsibility for damage or loss to the Products when placed by Seller in transit for delivery to Buyer. All sales are final. Seller shall use reasonable commercial efforts to meet agreed delivery dates. Delivery of Products and performance of Seller’s obligations under this Terms and Conditions of Sale is at all times subject to excusable delays by reason of labor troubles of any kind, civil disobedience, fires, extreme weather conditions or other acts of God, accidents to machinery, shortages of material or equipment, government embargoes, blockades, seizure or freeze of assets or any other acts of government, or any breach of obligations by third parties. In the absence of specific instructions, Seller will select the carrier and ship freight prepaid and added to the price of the Product. Seller reserves the right to charge for any special routing, packing, labeling, handling or insurance requested by the Buyer and agreed to by Seller. Seller will not be deemed responsible for any liability in connection with any shipment because of the selection of a carrier or failure to obtain insurance.

3. **ACCEPTANCE.** Buyer shall upon delivery of Products inspect and either accept or reject such Products within a reasonable period not to exceed then (10) days of delivery (the “Acceptance Period”). In the event that Products do not comply with these Terms and Conditions of Sale, Buyer shall promptly notify Seller and provide a specific written explanation of the basis for rejection. Buyer shall be deemed to have accepted any Product delivered hereunder and to have waived any right to reject in the event that Seller does not receive such notice of rejection within the Acceptance Period. In the event that Buyer rejects any Products

and to the extent that Seller determines to its satisfaction that such Product was rightfully rejected, Seller shall repair or replace such non-conforming Product within a reasonable time period, at Seller's option.

4. **PRICES AND PAYMENTS.** Seller reserves the right to correct any pricing mistakes that deviate from the pricing set forth in any quote. Subject to Section 7 (Product Changes), each Order will be billed at the quoted price for sixty (60) calendar days from the date of such quote, and thereafter at the price in effect at the time of shipment.

Seller may charge certain additional non-recurring set-up, routine maintenance and refurbishment charges for tooling, as well as charges for the construction of new tooling. The price quoted by Seller to Buyer is based on the volume levels previously communicated by the Buyer to the Seller; if volume levels decrease, additional tooling set-up charges may apply and shall be paid by Buyer before any subsequent orders are processed by the Seller. Prices also do not include applicable taxes, including but not limited to excise, sales or use taxes. Any taxes (other than taxes due on Seller's net income) that are payable on transactions hereunder shall be the sole responsibility of Buyer. Seller reserves the right to invoice Buyer for any such taxes that are or may become payable by Seller. Each Order is subject to increase sufficient to compensate for any tax, excise, duty or levy hereafter enacted and imposed by any government authority, or for any expenses or charges due to war, hostilities, or other disorders, domestic or foreign, whereby the cost of the production or sale of articles to which such prices apply shall be increased. Prices quoted and orders accepted are also subject to change due to increases in costs of manufacture, processing, or wages, resulting from the operations of any Federal, State, or municipal law or regulatory measure hereafter adopted and/or due to increased costs of labor, services or materials. All quotations are made and each Order is accepted subject to approval of Seller's credit department. Credit terms are net thirty (30) calendar days from date of invoice and payment shall be made in United States currency, unless Seller shall otherwise agree in writing. All late payments shall be subject to a late charge at a rate of one and one-half percent (1 ½%) of such amounts overdue per month or, if less, the maximum rate permitted by applicable law, from the original due date until full payment has been made. Buyer hereby grants Seller a purchase money security interest in all Products sold to Seller to secure punctual payment and due performance of all of Buyer's obligations hereunder. Buyer agrees to execute and hereby authorizes the filing of all financing statements and other documents, and to take all other actions that Seller may reasonably request to perfect, protect, continue or maintain such security interests. Seller at all times reserves the right to evaluate Buyer's credit standing and, if Buyer fails to qualify for credit under Seller's criteria, Seller may modify or withdraw credit terms without notice and require guarantees, letters of credit, security or payment in advance for further deliveries of Products or performance hereunder.

In the event that Buyer is delinquent in any payment obligation to Seller, Seller may withhold future shipments until all delinquent amounts and late interest, if any, are paid in full and, if such delinquent amounts remain unpaid thirty (30) calendar days after written notice, then:

Declare Buyer's performance in breach and terminate the Order;

Repossess Products for which payment has not been made;

Withhold performance including, without limitation, future shipments under the Order until all delinquent amounts and late interest, if any, are paid;

Deliver future shipments on a cash basis only;

Charge inventory carrying charges on Products;

Recover all costs of collection including, without limitation, reasonable attorneys' fees; or

At Seller's option, combine any of the above rights and remedies as may be permitted by applicable law.

The above remedies are in addition to all other remedies available at law or in equity. This Section 4 shall survive the acceptance and complete performance of all applicable Orders.

5. LIMITED WARRANTY.

Seller warrants that at time of delivery to the applicable carrier for delivery to Buyer, its Products will comply with applicable Seller drawings and will be materially free from defects in workmanship and material. These warranties shall run to Buyer, its successors and assigns, provided, however, that Buyer shall indemnify Seller against any costs or damages relating to any additional warranty granted to its successors or assigns. The warranty shall be valid for twelve (12) months after delivery of the Products to Buyer or six (6) months after date of first use, whichever occurs first.

Buyer must notify Seller in writing of a failure to comply with applicable Seller drawings or defects in workmanship or material (a "Nonconformance") within the warranty period and return the Product to Seller within thirty (30) calendar days after such discovery. Upon timely receipt of such notification and Seller's determination to its satisfaction after examination that such Product contained a nonconformance, Seller's obligation and Buyer's remedy under this warranty is limited to either repair or replacement of any Product, at Seller's option. All Products repaired or replaced hereunder shall be warranted only for the unexpired portion of the original warranty period. For all purposes hereof, normal wear and tear shall not constitute a Nonconformance.

All warranties relate to the Product at the time of delivery to the carrier for delivery to Buyer. Seller shall not be liable for warranty claims if the Product has been exposed or subjected to:

Any maintenance, repair, installation, handling, transportation, storage, operation or use which is improper or otherwise not in compliance with Seller's instructions or applicable government regulation or law;

Any alteration, modification or repair performed by anyone other than Seller or those specifically authorized in writing by Seller;

Any accident, contamination, foreign object damage, abuse, neglect or negligence after delivery to the applicable carrier for delivery to Buyer;

Any damage precipitated by failure of Product not under warranty or by any product not supplied by Seller; or

Any use of counterfeit or replacement parts that are neither manufactured nor approved by Seller for use in Products.

Seller's obligations under this warranty are conditioned upon Buyer's obligation to maintain records, which will accurately reflect operating time, and maintenance performed on the Product and establish the nature of any unsatisfactory condition of the Product and reasonably establish that such condition existed at the time provided herein. Buyer shall, upon the request of Seller, promptly delivery to Seller copies of such records as necessary to substantiate any warranty claims.

THIS WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR USE AND WARRANTIES ARISING FROM COURSE OF PERFORMANCE, DEALING, USAGE OR TRADE, ALL OF WHICH ARE HEREBY EXPRESSLY DISCLAIMED. NO EXTENSION OR EXPANSION OF THIS WARRANTY SHALL BE BINDING UPON SELLER UNLESS SET FORTH IN WRITING AND SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE.

BUYER IS SOLELY RESPONSIBLE TO ENSURE THAT THE PRODUCT IS IN COMPLIANCE WITH FEDERAL AND STATE LAWS AND REGULATIONS WHICH MAY APPLY TO THE PRODUCT AS A RESULT OF BUYER'S OR ITS ASSIGNS' ACTUAL OR INTENDED USE OF THE PRODUCT, EVEN IF BUYER MAKES SELLER AWARE OF SUCH USE. WITHOUT LIMITING THE FOREGOING, SELLER EXPRESSLY MAKES NO REPRESENTATIONS AND WARRANTIES THAT: (i) THE PRODUCT COMPLIES WITH THE FEDERAL FOOD, DRUG AND COSMETIC'S ACT AND REGULATIONS THEREUNDER OR (ii) THE PRODUCTS DO NOT INFRINGE ANY INTELLECTUAL PROPERTY RIGHTS, EVEN IF SELLER HAS BEEN MADE AWARE OF THE POTENTIAL FOR SUCH INFRINGEMENT.

6. **TOOLING.** Unless otherwise agreed in writing, all tooling, dies, special dies, patterns, patents, jigs, gages, fixtures, drawings, designs, samples, tooling aids, molds and/or any other property furnished by Seller by the Order (the "Tooling") is the property of Seller. Seller shall maintain a lien for monies owed hereunder on all Tooling and/or material not owned by Seller for any amounts owing by Buyer. Seller agrees that any Tooling owned by Buyer and in the possession of Seller will be insured against the perils covered by a fire policy with a standard extended coverage endorsement at Buyer's expense. Buyer will pay on demand all (i) personal property taxes, (ii) sales and use taxes and (iii) excise taxes in each case to the extent on any such Tooling and/or materials owned by Buyer in possession of Seller.

7. **PRODUCT CHANGES.** Seller at all times reserves the right in its sole discretion without consent of Buyer to incorporate changes, additions or improvements to Products, including, but not limited to their design and application, to be delivered hereunder. Any designs or specifications that are modified at the request of Buyer after the date of the quoted price may cause Seller to adjust the quoted price of the Products.

8. **CONFIDENTIALITY.** “Proprietary Information” means any information, in whatever form, marked as being confidential or proprietary or which otherwise, by its nature, should reasonably be known by the receiving party to be confidential or proprietary.

Proprietary Information may be used only for purposes consistent with the express intent of this Terms and Conditions of Sale. Without limiting the scope of the forgoing, Buyer agrees that it will not: (i) use Seller’s Proprietary Information for the manufacture or procurement of products which are the subject of this Order or any similar or competing products, or cause said products to be manufactured by or procured from any other source, or reproduce, redesign or reverse engineer said products, or reproduce said data and information; or (ii) disclose or make available to any third party any Proprietary Information without obtaining Seller’s prior expense written consent.

Buyer shall have no duty to protect information that is: (i) developed by Buyer independently of Seller prior to receipt by Buyer of the other Proprietary Information as supported by Buyer’s written records; or (ii) rightfully obtained without restriction by Buyer from a third party; or (iii) publicly available other than through the fault or negligence of Buyer; (iv) released without restriction by Seller to anyone as supported by Buyer’s written records; or (v) known to Buyer prior to the time of its disclosure, without an existing duty to protect the information.

9. **LIMITATION OF LIABILITY.**

SELLER’S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ORDER, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM THE DESIGN, DEVELOPMENT, MANUFACTURE, SALE, DELIVERY, RESALE, REPAIR OR USE OF ANY PRODUCT COVERED BY OR FURNISHED UNDER ANY ORDER SHALL IN NO CASE EXCEED THE CONTRACT PRICE ALLOCABLE TO THE PRODUCT OR PART THEREOF, OR SERVICE THAT GIVES RISE TO THE CLAIM.

NOTWITHSTANDING ANYTHING IN ANY ORDER TO THE CONTRARY, SELLER WILL NOT BE LIABLE FOR ANY SPECIAL DAMAGES, INDIRECT DAMAGES, INCIDENTAL DAMAGES, CONSEQUENTIAL DAMAGES, OR LOSS OF PROFITS INCURRED BY BUYER OR ANY THIRD PARTY, EVEN IF THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED TO SELLER IN ADVANCE OR COULD HAVE BEEN REASONABLY FORESEEN BY SELLER.

THESE EXCLUSIONS OF TYPES OF DAMAGES AND LIMITATIONS ON THE AMOUNT OF DAMAGES SET FORTH HEREIN SHALL APPLY REGARDLESS OF THE THEORY OF LIABILITY, WHETHER BASED ON

CONTRACT, INDEMNITY, WARRANTY, TORT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER LEGAL THEORY. THESE EXCLUSIONS OF TYPES OF DAMAGES SHALL BE DEEMED INDEPENDENT OF, AND SHALL SURVIVE ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY UNDER THE TERMS OF THIS AGREEMENT.

10. **INDEMNIFICATION.** Buyer at its expense will indemnify and hold Seller harmless with respect to every claim that may be brought against Seller: (A) for any alleged infringement of any present or future patent, copyright, industrial design right or other proprietary right; (B) based on Buyer's activity under an Order, or the manufacture, sale, or use of the Products (i) alone, (ii) in combination by reason of their content, design or structure or (iii) in combination in accordance with Buyer's recommendations; or (C) for any alleged infringement of applicable State or Federal laws and regulations relating to the use of the Products, including but not limited to the Federal Motor Vehicle Safety Standards under the National Traffic and Motor Safety Act of 1996, as amended. Buyer will investigate and defend or otherwise handle every such claim, and at Seller's request, assist Seller in Seller's investigation, defense, or handling of any such claim. Buyer will pay all expenses and damages or settlement amounts that Seller may sustain by reason of each such indemnified claim. Buyer's obligations will apply even though Seller furnishes all or any portion of the design and specifies all or any portion of the processing used by Buyer.

11. **GOVERNING LAW:** Each Order and this Terms and Conditions shall be interpreted in accordance with the laws of the Commonwealth of Massachusetts, U.S.A., exclusive of any choice of laws provisions. Seller and Buyer expressly agree to exclude from each Order and this Terms and Conditions the United Nations Convention on Contracts for the International Sale of Goods, 1980, and any successor thereto.

12. **TERMINATION OF ORDER:** Either Party may terminate any or all unperformed Orders:

By giving written notice if the other Party materially breaches the Order and fails to remedy the breach within ninety (90) calendar days after the non-breaching Party delivers written notice that specifies the grounds for the material breach, except for Buyer's failure to make payment for delivery when, after thirty (30) calendar days of delinquency, Buyer shall be deemed in default and Seller may terminate such Order and any additional outstanding Orders without notice.

Without notice if either Party files a petition in bankruptcy for liquidation or reorganization, makes an assignment for the benefit of creditors, consents to the appointment of a receiver, trustee or other custodian for all or a substantial part of its property, is adjudicated bankrupt, fails to cause to be vacated, set aside or stayed within thirty (30) calendar days any court order appointing a receiver, trustee or other custodian for all or a substantial part of its property or ordering relief against it in any involuntary case of bankruptcy or admits in writing its inability to pay its debts as they mature.

13. **ASSIGNMENT:** Neither Party shall assign any rights nor delegate any obligations under any Order or any portion thereof without the advance, written consent of the

other Party, which consent shall not be unreasonably withheld. Any attempt to assign or delegate in violation of this clause shall be void. Notwithstanding the forgoing, Seller may assign any Order in the event of a merger, consolidation or reorganization, or in connection with a sale of all or substantially all of the assets of the business of Seller to which the Order relates.

14. **WAIVER:** Failure by either Party to assert any of its rights under an Order shall not be deemed a waiver of such rights, nor shall any waiver be implied from the acceptance of any payment of service. No waiver of any right shall extend to or affect any other right a Party may possess or to any subsequent similar or dissimilar event.

15. **SEVERABILITY:** If any provision of an Order or these Terms and Conditions of Sale is determined by an arbitrator or court of competent jurisdiction to be illegal, invalid, or unenforceable, for any reason, then such provision shall be deemed stricken for purpose of the dispute in question, but only to the extent necessary to make the remaining portion of the provision legal, valid and enforceable, if possible, and all other provisions of such Order and these Terms and Conditions of Sale shall remain in full force and effect.

16. **AUTHORIZED REPRESENTATIVES:** Every material, communication between the Parties relating to the performance or administration of an Order or these Terms and Conditions of Sale, shall be made in writing and, if to Buyer, to Buyer's authorized purchasing representative or, if to Seller, to Seller's authorized contracts representative.

17. **NOTICES:** All notices required under this Order shall be in writing and shall be deemed received when delivered either:

Five (5) calendar days after mailing by certified mail, return receipt requested; or

One (1) business day after deposit for next day delivery with a commercial carrier.

18. **ENTIRE AGREEMENT:** The provisions contained herein and incorporated in any Order constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all previous agreements, communications, or representations, either verbal or written between the Parties hereto. Any oral understandings are expressly excluded. No Order or provision of these Terms and Conditions may be changed, altered, supplemented or added to at any time except by a writing that expressly states a mutual intent to amend the Order and these Terms and Conditions and is executed by the authorized representatives of the Parties.