



SERVICES TERMS AND CONDITIONS

- 1. Entire Agreement.** These Terms and Conditions of Services provided (the "Terms"), together with an agreed and signed written agreement, if any, between Buyer and Seller ("Agreement Terms"), contain the entire and exclusive agreement between the parties regarding the sale of each Product. The Terms, together with the Agreement Terms, if any, are referred to herein as the "Contract". If there is a conflict between the Terms and the Agreement Terms, the Agreement Terms shall govern. All terms and conditions contained in any prior or subsequent oral or written communication, including, without limitation, terms and conditions contained in Buyer's purchase order, which are different from or in addition to the Contract are hereby rejected and shall not be binding on Seller, and Seller hereby objects thereto. No addition to, or alteration or modification of, the Contract shall be valid unless made in a writing signed by an authorized representative of each party specifically referring to the Contract. Any action by Buyer in furtherance of a sale or purchase of Product shall constitute acceptance of the Contract.
- 2. Quality Control.** Buyer is to provide all required Quality Control Specifications and Quality Control Test Procedures to Seller. All said Specifications and Procedures must be agreed to by Seller prior to any services being provided.
- 3. Purchase Mechanism.** Buyer shall purchase Services by placing a purchase order or a release order (in either case, "Purchase Orders") with Seller by Buyer's standard purchase order or by electronic data interchange. Buyer shall purchase and take possession of all finished product within forty-eight (48) hours of purchase order requested shipping date. If not removed within forty-eight (48) hours finished product will transferred to a third party facility and warehouse and service fees will apply. Buyer shall purchase and take possession of all exclusive raw materials, held for the Buyer within sixty (60) days of its arrival at Seller's warehouse. If not, Seller shall invoice Buyer for said products remaining in Seller's inventory after the sixty (60) day period. Any Product(s) remaining in Seller's care after the sixty (60) day period, will be subject to a monthly warehousing fee. Any finished products and/or exclusive raw materials in Seller's inventory for a period of (six) 6 months shall be invoiced and shipped to Buyer's facility. Should Buyer prefer the products be disposed of rather than delivered to their facility, Buyer will be invoiced for all disposal cost incurred by Seller.
- 4. Payment and Credit.** The price for Product is the price in effect on the date of shipment, unless otherwise agreed by the parties. Payment for the full amount of each invoice shall be made to Seller, addressed as indicated on the invoice and in the currency stated on the invoice. The terms of payment are net thirty (30) days from date of invoice, unless otherwise agreed in writing by both parties. All claims by Buyer shall be made by written notice to Seller in accordance with the provisions of Section 15 of these Terms, and no offset or deduction from any invoice is permitted. Acceptance by Seller of bank draft, cheque, or other media of payment is subject to



immediate collection of the full face amount thereof. If at any time the financial responsibility of Buyer or the credit risk involved shall become unsatisfactory to Seller, Seller reserves the right to a) require cash or satisfactory security prior to subsequent shipments or deliveries; and/or b) change the payment terms; and/or c) stop shipments; and/or d) reduce Buyer's available credit limit and/or e) terminate this agreement. The election by Seller to exercise of any its options shall not affect the obligation of Buyer to take and pay for the contracted Product. Buyer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Seller in the collection of any sum payable by Buyer to Seller. Seller shall be entitled to interest on any overdue sum at the maximum rate allowed by applicable law.

5. **Taxes.** In addition to the purchase price, Buyer shall pay Seller any and all governmental taxes, charges or duties of any kind that Seller may be required to collect or pay upon sale, transfer or shipment of Product ("Tax").

6. **Weights.** Seller's weight and/or measurements shall govern unless proven to be in error.

7. **Shipments.** All freight charges shall be paid by Buyer or such other third parties as designated by Buyer. Any payment for freight charges incurred by Seller shall be submitted to Buyer as an additional expense on Seller's next issued invoice, and reimbursed by Buyer in accordance with the payment terms of this Agreement.

8. **Containers.** If shipment requires use of returnable containers, title to such containers shall remain with Seller and a deposit in an amount determined by Seller shall be made at the time the shipment is ordered. Such containers and tote bins shall be returned in good condition within sixty (60) days from the date of shipment, freight charges collect. Upon such return, Seller shall refund the deposit.

9. **Breach and Termination.** If Buyer breaches any term of the Contract or any other contractual obligation in favor of Seller, (a) Seller may choose to defer any or all further shipments or other performance under the Contract and performance of any other contractual obligation in favor of Buyer until Buyer cures its breach, or (b) Seller may immediately terminate the Contract if Buyer fails to cure such breach within ten (10) days after receipt of written notice from Seller describing such breach. In the event of a termination, all outstanding payment obligations or other indebtedness of Buyer to Seller shall be due and payable no later than fifteen (15) days after delivery of notice of termination. Acceptance by Seller of less than the full amount due shall not be a waiver of any of Seller's rights under the Contract or applicable law. Notwithstanding any provision in the Contract, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations under the Contract and any other contractual obligation in favor of Seller. In addition, in the event that Buyer fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of Buyer to Seller



against any outstanding payment obligations or other indebtedness that Seller or any of its affiliates may owe Buyer. Seller shall have the right to dispose of or recycle scrap packaging materials. Any Buyer supplied raw materials will either be returned to Buyer by Seller for credit, if applicable, or disposed of at Buyer's expense. Any Finished Product will be either sold to Buyer or disposed of at Buyer's expense. Any Buyer packaging, will be disposed of at Buyer's expense. Any processed material not meeting specification will be disposed of at Buyer's expense if it is the result of Buyer input, or at Seller's expense if as a result of Seller input.

10. **Force Majeure.** Either Party affected by a Force Majeure Event ("Affected Party") shall not be liable for its failure to fulfill any term of this Contract, other than the obligation to pay any sum when due or to provide security, if and to the extent that such fulfillment has been delayed, hindered, curtailed or prevented by any circumstance or event outside its reasonable control, or by fire, explosion, strike, plant malfunction, unplanned shutdown, shutdown in anticipation of a breakdown, or Seller's inability to acquire from its usual supply source(s) Product, materials or services ("Force Majeure Event"). When a Force Majeure Event at one or more of Seller's supply sources results in a shortfall of Product available to meet its supply obligations, Seller shall apportion any reduced quantity of Product amongst Seller, its customers and its Affiliates in a manner it determines to be fair and reasonable. Seller shall not be required to acquire Product to replenish any shortfall in Product arising as a result of a Force Majeure Event. Should Seller acquire any quantity of Product following a Force Majeure Event, Seller may use or distribute such Product at Seller's sole discretion. Buyer may acquire any shortfall quantity of Product from other sources at Buyer's own risk and cost. The affected Party shall promptly notify the other Party in writing with reasonable details of such event.

11. **Laws and Compliance.** Seller shall provide or make available to Buyer a Material Safety Data Sheet (MSDS) for each Product. The MSDS contains Product information and describes precautions, if required, associated with such things as transportation, delivery, unloading, discharge, storage, handling and use of the Product. Buyer will familiarize itself with all such information and precautions, including but not limited to safety and health information contained in MSDSs or otherwise transmitted to Buyer by Seller at any time. Buyer will instruct its personnel, agents, contractors, customers or any third party who may be exposed to the Product about such information and precautions, and make copies available to such parties. Buyer assumes full liability and responsibility for compliance with the MSDS. In addition, Buyer shall comply with all applicable laws, statutes, ordinances and regulations of any Governmental Authority. Seller assumes no liability for Buyer's failure to comply with Buyer's obligations arising under any and all applicable laws, statutes, ordinances and regulations of any Governmental Authority. Buyer shall defend, indemnify and hold harmless Seller from and against all claims, demands, causes of action, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments (each, a "Claim") arising out of or related to (i) Buyer's (or others') processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any Product (or any product containing Product) or (ii) Buyer's violation of any Applicable Laws. Seller assumes no



liability for failure of discharge implements or unloading equipment used by Buyer, whether or not supplied by Seller.

12. **Ownership and Licenses.** Any work performed by Seller for Buyer is being created at the request of Buyer. Upon termination of this Agreement, the licenses hereunder shall automatically terminate and Seller shall cease all use of Buyer's intellectual property, including but not limited to patents and trademarks. SINCE SELLER HAS NO CONTROL OVER BUYER'S (OR OTHERS') PROCESSING, SALE, USE, OR DISPOSITION OF ANY PRODUCT (OR ANY PRODUCT CONTAINING PRODUCT), INCLUDING, WITHOUT LIMITATION, THE ADMIXING, REACTING OR COMBINING OF ANY PRODUCT WITH OTHER PRODUCTS, CHEMICALS OR MATERIALS, BUYER ASSUMES THE ENTIRE LIABILITY AND RESPONSIBILITY THEREFORE AND AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS SELLER FROM AND AGAINST ALL CLAIMS ARISING OUT OF OR RELATED TO INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS, PATENTS ON PROCESSES PRACTICED BY BUYER OR PATENTS ON PRODUCTS MADE BY BUYER.

13. **Confidentiality.** Neither party shall disclose, release or publish to any third party, whether orally or in writing, any terms and conditions of this Contract, any discussions and negotiations between the parties relating to this Contract, or any confidential and/or proprietary information protected by agreement between the parties, without the prior written consent of the other party. Seller shall maintain all Confidential Information in electronic format and other electronic records owned by Buyer or created by or on behalf of in performing its obligations hereunder, including without limitation, financial and product information, in a safe and secure manner with access limited to those employees and contractors with a need to know.

14. **Warranties.** Seller hereby represents, warrants and covenants to Buyer as follows: i) The Services shall be performed using personnel, equipment, and material qualified or suitable to perform the processing contemplated by this Agreement and shall be performed in a careful and workmanlike manner in accordance with the highest accepted standards of the industry at the time of performance and with the provisions of this Agreement; ii) Each shipment of Finished Product to Buyer shall be free of any claim of any nature by any third party. Any equipment utilized in connection with performance hereunder shall be safe and in proper working order and conform to all applicable regulatory requirements and any materials utilized shall be of good quality and will conform to all applicable regulatory requirements; and iii) Seller shall comply with the requirements of federal, provincial and local laws, rules, regulations and ordinances applicable to the processes to be performed hereunder, including without limitation, all laws governing the generation, handling, storage, treatment, or disposal of waste. Seller shall have obtained all licenses, permits, approvals, registrations, or other documents which are or shall be required for its performance hereunder. iv) Seller has complied with all specifications provided by Buyer and has not substituted for any component, regardless of whether such substitute is considered equivalent, without the express written approval of Buyer.



SELLER WARRANTS THAT AT THE TIME OF DELIVERY (I) PRODUCT IS FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND SECURITY INTERESTS; AND (II) PRODUCT COMPLIES WITH SELLER'S PUBLISHED SPECIFICATIONS (OR AS OTHERWISE REFERENCED IN THE CONTRACT). SELLER MAKES NO OTHER WARRANTY OR GUARANTEE OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY. ANY TECHNICAL SUPPORT, ASSISTANCE OR ADVICE FURNISHED OR RECOMMENDATION MADE BY SELLER OR ITS REPRESENTATIVE CONCERNING ANY USE OR APPLICATION OF ANY PRODUCT IS BELIEVED TO BE RELIABLE AND IS AT NO CHARGE AND AN ACCOMMODATION TO BUYER. SELLER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO ITS ACCURACY OR COMPLETENESS OR OF THE RESULTS TO BE OBTAINED WITH REGARD TO ANY HANDLING OF ANY PRODUCT, BUYER ASSUMES FULL RESPONSIBILITY FOR QUALITY CONTROL, TESTING AND DETERMINATION OF SUITABILITY OF PRODUCT FOR ITS INTENDED APPLICATION OR USE.

15. **Claims.** BUYER SHALL INSPECT THE PRODUCT SUPPLIED HEREUNDER IMMEDIATELY AFTER DELIVERY. EXCEPT WITH RESPECT TO QUANTITY CLAIMS, ANY CLAIM ASSERTED BY BUYER RELATING TO THE QUALITY OR SPECIFICATIONS OF THE PRODUCTS, SHALL BE MADE IN WRITING, WITH SUPPORTING DOCUMENTATION, TO SELLER WITHIN TEN (10) DAYS AFTER RECEIPT OF THE SHIPMENT OF PRODUCT THAT IS THE SUBJECT OF THE CLAIM, OR SUCH CLAIM SHALL BE DEEMED TO BE BARRED AND TO HAVE BEEN WAIVED BY BUYER WITH RESPECT THERETO. ONLY DIFFERENCES IN NET WEIGHT OR VOLUME, AGAINST INVOICED QUANTITY, IN EXCESS OF 0.5% MAY BE SUBJECT TO QUANTITY CLAIMS. QUANTITY CLAIMS MUST BE RECEIVED BY SELLER IN WRITING WITHIN FORTY-EIGHT (48) HOURS AFTER DELIVERY OF PRODUCTS. SELLER SHALL BE GIVEN A REASONABLE OPPORTUNITY TO INSPECT ANY SHIPMENT SUBJECT TO A QUANTITY CLAIM.

16. **Limitation of Liability.** SELLER'S TOTAL LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTION ASSOCIATED WITH THE CONTRACT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO REPLACEMENT OF NONCONFORMING PRODUCT OR PAYMENT IN AN AMOUNT NOT TO EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCT FOR WHICH DAMAGES ARE CLAIMED, AT SELLER'S OPTION. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES INCLUDING, WITHOUT LIMITATION, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. SUCH EXCLUDED INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES INCLUDE LOSS OF PROFITS, LOSS OF PRODUCTION, LOSS OF USE, OR ANY OTHER INDIRECT DAMAGE OR LOSS OF ANY KIND OR CHARACTER TO BUYER, ITS CUSTOMERS, OR OTHER PERSONS OR ENTITIES. ANY ATTEMPT TO REMEDY OR CORRECT A CLAIMED DEFECT BY PERSONS OR ENTITIES NOT AUTHORIZED TO PERFORM SUCH WORK BY SELLER OR CONTINUED USE OF SUCH PRODUCT SHALL VOID THE PRODUCT WARRANTY SET FORTH IN SECTION 14 ABOVE AND BUYER IS DEEMED TO HAVE ACCEPTED THE PRODUCT AS IS, WITH NO FURTHER OBLIGATION OF SELLER TO BUYER. IF REQUESTED BY SELLER, BUYER SHALL RETURN THE NONCONFORMING PRODUCT TO SELLER STRICTLY IN ACCORDANCE WITH SELLER'S WRITTEN INSTRUCTIONS CONCERNING SHIPPING,



HANDLING, INSURANCE, AND OTHER MATTERS AS TO WHICH SELLER ISSUES INSTRUCTIONS. FAILURE TO COMPLY WITH THESE PROVISIONS SHALL INVALIDATE ANY CLAIM BY BUYER FOR BREACH OF WARRANTY. BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO THE PRODUCT OR OTHERWISE ARISING UNDER THE CONTRACT WITHIN ONE YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.

17. **Title; Risk of Loss.** Unless otherwise provided in the Contract (e.g., an INCOTERM), risk of loss of Product shall transfer at Seller's storage facility. In addition, unless otherwise provided in the Contract, title to Product shall transfer to Buyer simultaneously with risk of loss.

18. **Independent Contractor.** Seller's relationship to Buyer shall be that of an independent contractor. Seller's employees, methods, and the Facility used herein shall at all times be under Seller's exclusive direction and control. Seller assumes full responsibility for the payment of all federal, provincial and local taxes of whatever sort, and unemployment compensation taxes, withholding taxes, and all other taxes or charges applicable to Seller's business, employees, facilities and materials for performing services hereunder or applicable to Seller's income hereunder.

19. **Records.** Seller shall prepare and maintain detailed accounting records in accordance with generally accepted accounting principles consistently applied ("GAAP") reflecting the following information: (i) the dates and quantities of all Materials delivered to Seller; (ii) the dates and quantities of all Finished Product delivered to Buyer; and (iii) any other information that is reasonably requested by Buyer from time to time, in such detail as reasonably requested by Buyer in regard to the production and purchase of Buyer Material, and Finished Product. Seller shall permit or arrange for Buyer to have access to and to audit at all reasonable times all such records and correspondence as reasonably requested by Buyer. Seller shall preserve such records for a period of not less than five years following the termination of this Agreement.

20. **Governing Law.** The Contract and any dispute or claim arising out of or in connection with it shall be governed by the laws of the province of Ontario without regard to conflict of laws principles. The UN Convention on Contracts for the International Sale of Goods is excluded. Any disputes or claims arising out of or in connection with the Contract shall be exclusively referred to and finally resolved by the courts of the province of Ontario. The Parties waive any objection to such proceedings on the grounds of venue or that the proceedings have been brought in an inappropriate forum and each stipulates that such courts shall have in personam jurisdiction over them for the purpose of litigating any dispute or claim. In the performance of this Contract, each Party shall comply with all applicable laws and governmental decrees, rules, regulations and orders.