

**ADM Products, LLC**  
**Terms and Conditions of Sale**

THIS TERMS AND CONDITIONS OF SALE BECOMES THE AGREEMENT ("AGREEMENT") BETWEEN ADM PRODUCTS, LLC ("SELLER") AND BUYER FOR THE SALE OF GOODS AND/OR SERVICES DESCRIBED ON THE FACE OF THE ORDER ACKNOWLEDGEMENT (COLLECTIVELY REFERRED TO AS "ITEMS"). ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYER'S ASSENT TO THIS AGREEMENT AND THE TERMS AND CONDITIONS SET FORTH HEREIN, WHICH ARE IN LIEU OF AND REPLACE ANY AND ALL TERMS AND CONDITIONS SET FORTH ON THE BUYER'S PURCHASE ORDER, SPECIFICATIONS, OR OTHER DOCUMENT ISSUED BY BUYER. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS OR CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY THE BUYER EITHER BEFORE OR AFTER ISSUANCE OF THIS ACKNOWLEDGEMENT SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE UNDER THIS ACKNOWLEDGEMENT AND SHALL NOT BE BINDING IN ANY WAY ON THE SELLER. IF BUYER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND DELIVERED TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED 10 DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY EXCEPTION. OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS HEREIN. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF.

**1. Taxes**

Prices do not include any taxes, now or hereafter enacted, applicable to the Items on this transaction. Taxes will be added by Seller to the sales price where Seller invoices the same to comply with law, and will be paid by Buyer unless Buyer provides Seller with a proper tax exemption certificate.

**2. Prices, Releases and Setoff**

Prices apply only if the quantity ordered hereunder is released for shipment within twelve (12) months (or longer if mutually agreed to in writing) from the date of Seller's receipt of Buyer's order. Otherwise, Seller's standard price in effect at time of release shall apply to quantity shipped and Buyer shall pay the difference in price, if any, and Seller has the right to terminate this contract. In such event, Buyer is liable for termination charges as set forth in Paragraph 14a. Buyer grants to Seller the right at any time during the course of this contract to revise prices hereunder by Seller's giving to Buyer written notice, such revised prices to apply to all goods thereafter shipped.

If buyer provides written objection within ten (10) days following notice of a price change established by Seller, Seller shall have the option of terminating this contract with no liability to Seller.

Buyer waives any rights of setoff, except with respect to its claims against Seller which arise from transactions with the Seller's division at the address shown on the face hereof.

**3. Title and Delivery**

All shipments of goods shall be delivered F.O.B. Seller's plant, and title and liability for loss or damage thereto shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination. Seller may deliver goods in installments. Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or tort, (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays.

All provisions of the Paragraph 3 apply to both domestic and international shipments, except that title to goods shipped outside the U.S. shall pass at the point of destination; risk of loss or damage and all expense associated with goods shipped outside the U.S. shall be the responsibility of the Buyer.

**4. Quantities**

Any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Buyer's order and the stated unit price will continue to apply.

**5. Terms and Method of Payment**

Where Seller has extended credit to Buyer, terms of payment shall be half due upon receipt of purchase order and the remaining half due after the time of delivery to Buyer. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. If the goods are delivered in installments, Buyer shall pay separately for each installment. Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection of the goods. If shipments are delayed by Buyer, payments are due from the date when Seller is prepared to make shipments. Goods held for Buyer are at Buyer's risk and expense. All deliveries and performance of work covered by this acknowledgement shall at all times be subject to the credit approval of Seller, and Seller may at any time decline to make any shipments or deliveries, or perform any work, except upon receipt of payment or upon terms and conditions or security arrangements satisfactory to Seller.

**6. Contingencies and Force Majeure**

Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised

ordinary care in the prevention thereof. Seller may allocate production and deliveries among seller's customers.

#### **7. Substitutions and Modifications of Goods**

Seller may modify the specifications of goods designed by Seller, and substitute goods manufactured to such modified specifications for those specified herein, provided such goods substantially conform to this Agreement.

#### **8. Legal Compliance**

Buyer, at all times, shall comply with all applicable federal, state and local laws and regulations. Export of the products covered by this quotation or acknowledgment may be subject to export license control by the U.S. government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the U.S. including the Export Administration Act and regulations promulgated there under.

#### **9. Changes**

Any notice or instruction from the Buyer received subsequent to Seller's acknowledgment, including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing.

#### **10. Limited Warranty; Customer Returns**

THE FOLLOWING IS IN LIEU OF ALL WARRANTIES EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OBLIGATION ON THE PART OF SELLER.

Seller makes no warranty as to experimental or developmental goods or goods not manufactured by Seller, provided that as to goods not manufactured by Seller, Seller, to the extent permitted by Seller's contact with its supplier shall assign to

Buyer any rights Seller may have under any warranty of the supplier thereof. Seller's warranties are herein above set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

#### **11. Product Indemnity**

Buyer agrees to indemnify and hold harmless Seller for all claims, whether arising in tort or contract, against Buyer and/or Seller, including Attorney's fees, expenses and costs, arising out of Seller's products to Buyer's designs and/or products, or Seller's assistance in the application of Seller's products.

#### **12. Exclusive Remedies**

If the goods furnished by Seller fail to conform to Seller's exclusive limited warranty, Seller's sole and exclusive liability shall be (at Seller's option) to repair, replace or credit Buyer's account for any such goods which are returned by Buyer during the applicable warranty period set forth above, provided that (i) Seller is promptly notified in writing upon discovery by Buyer that such goods failed to conform to this contract with a detailed explanation of any alleged deficiencies; Buyer must obtain a Return Material Authorization ("RMA") number from Seller before returning any product under warranty to Seller, (ii) such goods are

returned to Seller, F.O.B. Seller's plant, and (iii) Seller's examination of such goods shall disclose to Seller's satisfaction that such alleged deficiencies actually exist and were not caused by accident, misuse, neglect, alteration, improper installation, unauthorized repair or improper testing. If Seller elects to repair or replace such goods, Seller shall have a reasonable time to make such repairs or replace such goods. If, however, Seller concludes that the goods returned are not defective, Buyer will be notified, the product returned at Buyer's expense, and a charge made for examination and testing.

THIS IS THE SELLER'S ONLY LIABILITY AND BUYER'S EXCLUSIVE REMEDY FOR ANY CLAIM, WHETHER ARISING IN TORT OR CONTRACT, AND IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

#### **13. Acceptance of Product**

Acceptance shall be presumed conclusively to have occurred thirty (30) days following delivery of product to Buyer, unless Buyer has accepted the product prior to that date.

#### **14. Termination and Cancellation**

(a.) Buyer may terminate this contract in whole, or from time to time, in part, upon thirty (30) days advance written notice to Seller. In such event, Buyer shall be liable for termination charges which shall include: 1. a price adjustment based on the quantity of goods actually delivered, and 2. if goods ordered are a standard catalog item, Buyer will pay a cancellation and stocking charge for each unit cancelled equal to 20% of the purchase order item price, or if goods are non-standard items built to the Buyer's custom order, Buyer will pay for all cost, direct and indirect, incurred and committed for this contract, together with a reasonable allowance for prorated expenses and anticipated profits. (b.) If, in Seller's judgment, the Buyer's financial condition does not justify the terms of payment specified, Seller may cancel this contract unless Buyer shall immediately pay for all goods which have been delivered and pay in advance for all goods prior to delivery.

#### **15. Non-Waiver of Default and Collection Rights**

In the event of any default by Buyer, Seller may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If Seller elects to continue to make shipments, Seller's actions shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default. In the event Seller resorts to a third party or to litigation in order to collect amounts due Seller, Buyer agrees to pay costs of collection for amount owed to Seller, including, but not limited to, attorney's fees, court costs, and interest in the amount of 1% per month

(12% per annum), from the date the amount is due.

#### **16. Applicable Law and Forum**

The validity, performance and construction of this contract shall be governed by the laws of the state in which Seller resides, as shown on the face hereof and such state shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising of this transaction.

**17. International Orders**

International orders are subject to applicable U.S. export laws and restrictions applicable at the time of order shipment.

**18. Assignment**

This contract is binding upon and inures to the benefit of the parties and the successors and assigns of the entire business and good will of Buyer, or of that part of the business used in the performance of this contract, but shall not be otherwise assignable, without the prior consent of Seller.

**19. Sizes, and Samples**

Quotations are preferably made on the basis of Buyer's prints. When quotations are made on the basis of samples or otherwise, the dimensions on which the quotation is based will be stated. USE OF, OR REFERENCE TO SAMPLES, SHALL NOT ENLARGE, AFFECT OR ALTER THE LIMITED AND EXCLUSIVE WARRANTY (PARAGRAPH 10) OR REMEDY (PARAGRAPH 12).

Where Buyer requires samples from Seller to verify completion of fitting-up, Buyer will pay for such fitting-up within (30) days after receipt of the samples, unless Buyer within such period gives Seller a detailed written description of any allowable variance from specifications, in which case Buyer will promptly pay upon correction of such variances.

**20. Severability of Terms**

If any phrase, clause or provision shall be declared void, the validity of any other provisions shall not be affected thereby.

**21. Modification**

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON THE FACE HEREOF, AND NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS CONTRACT SHALL BE BINDING UPON SELLER UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER LOCATED AT SELLER'S APPROPRIATE ORDER ENTRY LOCATION.