



# STANDARD TERMS & CONDITIONS FOR THE SALE OF WIDESPEC OR OFF-GRADE PRODUCTS

Revised: July 2020

1. Seller and Buyer are independent contracting parties, not principals or agents, partners, or joint venturers. Seller's acceptance of Buyer's order is made expressly conditional on Buyer's assent to these terms and conditions, and Buyer's acceptance of product shall constitute assent to these terms and conditions. Upon Seller's acceptance of Buyer's order, these terms, together with Buyer's order, shall together comprise the "**Order**". Notwithstanding inconsistent, supplemental, additional, or different terms contained in Buyer's purchase order, acknowledgement, acceptance or other document, any Order shall be governed solely and exclusively by these terms and conditions and those contained in any applicable sales contract or credit application executed by the parties. Seller may revise these Terms and Conditions at any time, with such revisions to take effect when published at Seller's website.
2. **THE PRODUCTS ARE OFFERED BY SELLER AND PURCHASED BY BUYER "AS-IS," "WHERE IS", AND "WITH ALL FAULTS," WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE, EXPRESS, IMPLIED, OR OTHERWISE. SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED.** The purchase price and these terms and conditions are the result of arms-length bargaining between the parties, each of whom represents it is familiar with transactions of this kind. Buyer is not relying upon any Seller statements or representations regarding the product's value, physical condition, environmental condition, or other attributes.
3. **SELLER'S LIABILITY (AND BUYER'S SOLE AND EXCLUSIVE REMEDY) WITH RESPECT TO ANY DEFECTIVE PRODUCT OR WARRANTY NONCONFORMITY SHALL BE LIMITED TO THE REPLACEMENT OF THAT PORTION OF PRODUCT OR A CREDIT TO BUYER IN THE AMOUNT OF THE INVOICE FOR SUCH PRODUCT, AS SELLER MAY ELECT.** Seller's liability is conditional upon Buyer's proper use, handling, and storage of the product. For claims of shortage, Seller's analysis of quality and weights shall govern except in the case of proved error. Any claims for shortages must be greater than one-half of one percent (0.5%) of the gross weight of any shipment of packaged product or greater than one percent (1%) of the gross weight of bulk shipments. Claims for bulk shipments shortages must be supported by certified scale tickets and Seller shall have the opportunity to have an independent weighing.
4. Except for obligations to make payments when due, neither party shall be responsible for any failure to perform obligations assumed under any Order where such failure is directly or indirectly attributable to a Force Majeure Event, provided that the impacted party must provide the other party prompt written notice of the Force Majeure Event. As used herein, "**Force Majeure Event**" means any event or circumstance beyond the impacted party's reasonable control that prevents said party from complying with its obligations under an Order, whether or not foreseeable. When Seller is impacted by a Force Majeure Event, Seller may increase the purchase price by the amount of Seller's increased costs, may allocate its available supply of product in an equitable manner, and may terminate this transaction without liability as to any unallocated portion of the order.
5. Seller will not sell or sample product for any application which is (i) governed at any level by the Federal Acquisition Regulations, 48 C.F.R. §1.001-99.9999; or (ii) intended for use as a Class III medical device as defined in





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21 C.F.R. §862-892. Any Buyer purchasing product for use in a federal contract (including federal subcontracts) or for manufacture of a Class III medical device must notify Seller of Buyer's intended end use time of Buyer's order. If Buyer fails to notify Seller in accordance with this section, **BUYER SHALL INDEMNIFY SELLER AGAINST ANY AND ALL CLAIMS, LIABILITIES, OR EXPENSES (INCLUDING FINES AND PENALTIES AND LEGAL FEES) ARISING DIRECTLY OR INDIRECTLY FROM BUYER'S FAILURE TO PROVIDE SUCH NOTICE.**

6. **SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, OF MERCHANTABILITY, FITNESS FOR ANY PURPOSE OR USE, ALLEGEDLY ARISING FROM USAGE OF ANY TRADE OR FROM ANY COURSE OF DEALING, OR OTHERWISE. NO ORAL OR WRITTEN STATEMENT OR REPRESENTATION – INCLUDING WITHOUT LIMITATION ANY TECHNICAL SUPPORT – BY SELLER, ITS AGENTS, OR ITS EMPLOYEES SHALL CREATE OR EXPAND A WARRANTY OBLIGATION BEYOND THE WARRANTY EXPRESSLY PROVIDED IN THE ORDER, AND BUYER DISCLAIMS RELIANCE, AND IS NOT RELYING, ON ANY SUCH ORAL OR WRITTEN STATEMENT OR REPRESENTATION NOT EXPRESSLY PROVIDED IN THE ORDER IN EVALUATING WHETHER TO SUBMIT THE ORDER.**

7. Any action by the Buyer for claimed breach by Seller must be commenced within one (1) year after the date Buyer receives the product. **IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSSES OR EXPENSES OF ANY KIND OF BUYER OR OF ANY OF BUYER'S CUSTOMERS, INCLUDING, WITHOUT LIMITATION, PRODUCTION COSTS, CLAIMED LOSS OF ANTICIPATED PROFITS, INJURY TO CREDIT, REPUTATION OR GOOD WILL. BUYER ASSUMES ALL RISKS AND LIABILITY FROM THE HANDLING AND USE OF THE PRODUCTS AND SHALL BE SOLELY RESPONSIBLE FOR TESTING AND DETERMINING SUITABILITY OF USE IN A PARTICULAR APPLICATION.** Under no circumstances will Seller's aggregate liability for any cause of action directly or indirectly arising out of the Order exceed the Order price.

8. Seller makes no representation that Buyer's use or resale of the product, whether alone or in combination with another material or substance, will not infringe any third party patent or intellectual property rights. Buyer assumes all risk of infringement by accepting the product.

9. Seller may, at its option, provide complimentary technical support, advice, product processing consultations, and other information to Buyer in conjunction with Buyer's product purchase (the "**Technical Support**"). Buyer represents that it is a sophisticated party and shall utilize its independent skill and expertise in the application of any Technical Support. Buyer shall employ any Technical Support at its own risk. **BUYER AGREES SELLER'S LIABILITY (AND BUYER'S SOLE AND EXCLUSIVE REMEDY) FOR ANY AND ALL DAMAGES ARISING FROM SELLER'S TECHNICAL SUPPORT, INCLUDING SELLER'S NEGLIGENCE OR GROSS NEGLIGENCE IN THE PROVISION OF SUCH TECHNICAL SUPPORT, SHALL BE LIMITED TO DIRECT DAMAGES ACTUALLY INCURRED BY BUYER, AND IN NO INSTANCE SHALL BE MORE THAN THE PRICE PAID BY BUYER FOR THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES, LOSSES OR EXPENSES OF ANY KIND OF BUYER OR OF ANY OF BUYER'S CUSTOMERS, INCLUDING, WITHOUT LIMITATION, PRODUCTION COSTS, CLAIMED LOSS OF ANTICIPATED PROFITS, INJURY TO CREDIT, REPUTATION OR GOOD WILL.**





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10. Title and risk of loss or damage to product shall pass to Buyer as the product passes into the transportation equipment at Seller's shipping point. However, for product sold by Seller for export overseas to a non-U.S. location, title and risk of loss of product shall transfer from Seller to Buyer at the first point upon which the delivering marine vessel crossed the outer boundary of the United States Exclusive Economic Zone. For product sold by Seller to Buyer that is transported by land to Mexico or Canada, title and risk of loss of the product shall transfer from Seller to Buyer at the frontier in the relevant border city between the U.S. and the adjoining jurisdiction (not unloaded) but prior to the customs border of the applicable foreign jurisdiction. If Seller is to pay freight, selection of the carrier and routing of shipments is at Seller's option.
11. Shipping dates are approximate and conditional upon availability of product. Seller does not guaranty delivery on a specific date and time.
12. Seller's quoted price does not include taxes. Any tax (other than on Seller's income), excise, duty or governmental charge imputed to the products or Seller's acquisition, storage, or shipment of the products, shall be for the account of Buyer. All sums shall be considered due and payable within terms as invoiced, are payable in legal US tender unless otherwise indicated, and made payable to the order of Seller at the designated address. If Buyer is in any respect in default of any provisions of this contract, Seller may elect to defer further deliveries until the breach is cured or terminate the contract without prejudice as to any other remedy available. If, in Seller's sole discretion, the financial responsibility of Buyer becomes unsatisfactory, Seller may reduce or eliminate the credit limit then in effect (if any) and/or demand advance cash payment and may withhold shipments until receipt. Interest on unpaid balances shall accrue at the lesser of 1% per month or the highest rate permitted by law.
13. Seller shall not be obligated to deliver in any month more than a proportionate part of the maximum quantity specified in a sales contract between the parties, determined by dividing such maximum quantity by the total number of months included in the contract period. If Buyer fails to take in any month all of such proportionate part, the undelivered quantity may, at Seller's election, be cancelled from the contract.
14. Buyer shall comply with all applicable laws and regulations governing the product, use of the product, or resale of the product or goods made with the product, including but not limited to laws and regulations governing the export of product, trade restrictions, embargos, and the United States Foreign Corrupt Practices Act.
15. The product sold hereunder may be or become hazardous, whether singly or in combination with other goods or products. Buyer will take all steps necessary to familiarize, inform and warn its employees, agents, customers, and contractors who may handle or come into contact with the products of all the hazards pertaining to, and proper procedures for safe use of, the product and of the containers or equipment in which the product may be handled, shipped, or stored. Buyer also undertakes to label as appropriate any materials which it makes or resells that includes the product sold hereunder. **BUYER WILL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND AGAINST ANY CLAIM, LIABILITY OR EXPENSE (INCLUDING LEGAL FEES) INCLUDING, BUT NOT LIMITED TO, INJURY OR DEATH ARISING DIRECTLY OR INDIRECTLY FROM BUYER'S FAILURE TO SO FAMILIARIZE, INFORM, AND WARN. THESE UNDERTAKINGS APPLY IN FULL MEASURE**





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**WHETHER SELLER IS ALLEGED OR FOUND TO BE CONCURRENTLY, PARTIALLY OR JOINTLY NEGLIGENT OR AT FAULT OR LIABILITY WITHOUT FAULT IS SOUGHT TO BE IMPOSED ON SELLER. BUYER HEREBY DISCLAIMS AND WAIVES ANY AND ALL OBLIGATIONS (WHETHER ARISING UNDER STATUTE OR OTHERWISE) OF SELLER TO INDEMNIFY, DEFEND, OR HOLD BUYER HARMLESS AGAINST ANY LOSS, INJURY, OR DAMAGE ARISING OUT OF PERSONAL INJURY, DEATH, OR PROPERTY DAMAGE ALLEGEDLY CAUSED BY BUYER'S OR BUYER'S END CUSTOMER'S USE OF SELLER'S PRODUCT.**

16. Seller's waiver, whether express or implied, of any breach of these terms and conditions shall not be deemed to be a continuing waiver of any subsequent or continuing breach, whether of like or different nature, nor shall such waiver limit or waive, by reason of any course of performance, dealing, usage of trade or otherwise, Seller's rights to enforce and compel strict compliance with every term and condition herein.

17. The terms of this contract (i) may not be modified, terminated, or waived except as expressly provided herein or agreed to in writing by the party to be charged; (ii) may not be assigned by Buyer; and (iii) shall be governed by and construed in accordance with the laws of the State of Texas without giving effect to choice of law principles. All claims, including tort claims, arising directly or indirectly out of these terms and conditions or any incorporating Order will be filed exclusively in the state or federal courts located in Harris County, Texas. The Parties expressly waive all objections to this venue and assent to personal jurisdiction therein. **JURY WAIVER. THE PARTIES KNOWINGLY AND IRREVOCABLY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF THESE TERMS AND CONDITIONS OR ANY ORDER INCORPORATING THEM.**

18. **Canadian Buyers: THE PARTIES HERETO ACKNOWLEDGE AND ARE SATISFIED THAT THE FOREGOING BE DRAWN UP IN THE ENGLISH LANGUAGE; LES PARTIES AUX PRÉSENTES RECONNAISSENT QU'ILS ONT EXIGÉ QUE CE PRÉCEDE SOIT RÉDIGÉ EN ANGLAIS.**

