

## ENCAPSY, LLC – STANDARD TERMS AND CONDITIONS OF SALE

1. **Governing Terms and Conditions:** The terms and conditions set forth in this document are intended to establish standard terms and conditions of sale for all sales by Encapsys, LLC ("Seller") to the purchaser ("Buyer") unless otherwise provided in a written agreement signed by and between Buyer and Seller. This document, together with the quotations, order acknowledgments, invoices and specifications (and all supplements and attachments thereto issued by Seller from time to time) shall constitute the entire agreement ("Agreement") between Buyer and Seller for each such sale. In the event of any inconsistency between these standard terms and conditions and the provisions on the quotation, order acknowledgment or invoice or on any supplement or attachment thereto, the provision contained on the quotation, order acknowledgment or invoice or on such supplement or attachment shall control. Additional or different terms provided in Buyer's purchase order which vary in any degree from any of the terms herein are hereby objected to and rejected. If this Agreement shall be deemed an acceptance by Seller in response to an offer by Buyer and if any terms herein are additional to or different from any terms of such offer, then the issuance of this Agreement by Seller shall constitute an acceptance expressly conditioned upon Buyer's assent to all of the terms and conditions of this Agreement. Any conduct by Buyer (including, without limitation, payment for, or use of, the goods) which recognizes the existence of a contract pertaining to the subject matter hereof shall constitute acceptance by Buyer of this Agreement and all of its terms and conditions.

2. **Prices, Taxes and Permits:** All prices are subject to change without notice. Seller's price shall be its price in effect at the time of shipment. In addition, sales, use, franchise, license, excise and other taxes in respect of manufacture, sale or delivery of the goods furnished hereunder, export or import duties and inspection fees, and all interest and penalties thereon, shall be paid by Buyer unless a proper exemption certificate is furnished. If Buyer shall fail to pay and discharge any such amounts when due, Seller may at its option, pay the same, in which event Buyer shall promptly reimburse Seller for such sums paid.

3. **Terms of Payment:** Subject to on-going credit approval by Seller, the terms of payment shall be net thirty (30) days from date of invoice, and Buyer's payment shall be cash in United States funds payable pursuant to Seller's instructions. Seller reserves the right to withhold shipment for Buyer's: (a) late payment; (b) non-payment; and (c) failure to provide assurances of payment upon request by Seller. Seller further reserves the right to make delivery in installments, and all such installments are to be separately invoiced and paid for at the then current price when due per invoice, without regard to subsequent deliveries. Any payment that is not received by the date required herein shall accrue interest at a rate of eighteen percent (18%) of the outstanding balance per annum, or the maximum rate allowed by applicable law, whichever is lower, from the date such payment is due until the full invoiced amount and accrued interest is fully paid. In addition, Buyer shall be responsible for Seller's collection costs and attorneys' fees in collecting any past due amounts.

4. **Delivery, Title & Risk of Loss:** Unless otherwise agreed in writing, delivery shall be ex works, Seller's manufacturing facility, Portage, Wisconsin. Buyer assumes all responsibility for risk of loss of, or damages to or caused by, the goods furnished hereunder, upon delivery. Title to the goods shall transfer to and vest in Buyer at the same time that risk of loss transfers to Buyer, to the extent permissible by law. The term ex works shall have the meaning given to it by INCOTERMS 2010 as published by the International Chamber of Commerce or any superseding definitions of the INCOTERMS published by the International Chamber of Commerce. Buyer shall have the obligation to obtain any export license or authorization required if the goods are to be exported. Delivery dates are approximate and subject to confirmation. If Buyer delays shipment, payments are to be made as specified and the goods furnished hereunder shall be held at Buyer's risk and subject to reasonable storage charges. Buyer shall be responsible for any delays in unloading shipments and any applicable demurrage charges

5. **Warranties:** Seller warrants to Buyer that at the time of delivery: (a) the goods sold hereunder shall conform to Seller's then current specifications; and (b) Seller has good title to such goods; and (c) such goods are free and clear of all liens and encumbrances created by Seller. Seller makes no warranty of any results Buyer might obtain in any particular application. Buyer's sole and exclusive remedy for any breach of warranty shall be limited, in Seller's sole discretion, to replacement at Buyer's installation of any defective goods or refund of the purchase price thereof. Buyer shall not return goods unless authorized in advance in writing by Seller. Seller shall have the right to inspect the goods at Buyer's installation. Buyer's failure to give written notice that goods are non-conforming within thirty (30) days of delivery shall constitute a waiver by Buyer of all warranty claims. Notwithstanding the foregoing warranties and remedies, Seller shall have no obligation hereunder if the goods become defective as a result of improper storage, contamination, adulteration, improper use or misapplication after delivery thereof to Buyer. The above warranties extend only to Buyer. **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, BY SELLER. BUYER ACKNOWLEDGES THAT IT IS PURCHASING THE GOODS SOLELY ON THE BASIS OF THE COMMITMENTS OF SELLER EXPRESSLY SET FORTH HEREIN. SELLER MAKES NO WARRANTIES WHATSOEVER FOR THE USE OF GOODS PROVIDED BY SELLER IN ANY APPLICATION AND BUYER SHALL BE RESPONSIBLE FOR COMPLYING WITH ALL APPLICABLE LAWS AND REGULATIONS RELATING TO THE MANUFACTURE, SALE AND END USE PRODUCT FOR BUYER'S APPLICATIONS.**

6. **LIMITATION OF LIABILITY:** SELLER SHALL NOT BE LIABLE TO BUYER IN ANY ACTION OR CLAIM FOR INCIDENTAL, SPECIAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, EXEMPLARY OR STATUTORY DAMAGES ARISING OUT OF OR RELATED TO THIS CONTRACT, WHETHER THE ACTION IN WHICH RECOVERY OF DAMAGES IS SOUGHT IS BASED UPON CONTRACT, TORT (INCLUDING, TO THE GREATEST EXTENT PERMITTED BY LAW, THE SOLE, CONCURRENT OR OTHER NEGLIGENCE, WHETHER ACTIVE OR PASSIVE, AND STRICT LIABILITY OF SELLER), STATUTE OR OTHERWISE EVEN IF SELLER HAS BEEN ADVISED OF SUCH POSSIBILITY OF SUCH DAMAGES. SELLER'S LIABILITY FOR ANY CLAIM OF ANY KIND, FOR ANY LOSS OR DAMAGE ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THIS AGREEMENT, OR FROM THE PERFORMANCE OR BREACH THEREOF, SHALL IN NO CASE EXCEED (AT SELLER'S SOLE DISCRETION) THE PURCHASE PRICE ALLOCABLE TO THE GOODS HEREOF WHICH GIVES RISE TO THE CLAIM OR THE REPLACEMENT OF SUCH DEFECTIVE GOODS BY SELLER. FOR UNDELIVERED GOODS, SELLER'S LIABILITY IS LIMITED TO THE DIFFERENCE BETWEEN THE MARKET PRICE AND SELLER'S PRICE. SELLER SHALL NOT BE LIABLE FOR PENALTY CLAUSES OF ANY DESCRIPTION. ANY ACTION RESULTING FROM ANY CLAIM ARISING UNDER THIS AGREEMENT WHICH IS BROUGHT BY BUYER AGAINST SELLER MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.

7. **Intellectual Property.** Notwithstanding anything to the contrary in this agreement, Seller (i) represents that, to the best of its knowledge, as of the date of manufacture of the goods, the goods themselves (other than Buyer's specific combination of the goods with other substances to form a product, or in the operation of any process to make such Buyer's product) do not infringe any copyrights, design patents, utility patents, trademarks, trade secrets or similar intellectual property rights (collectively "IP RIGHTS") of any third party. Seller shall not be liable, and no warranty to Buyer shall apply if infringement arises from combination of the goods with any material not supplied by Seller, or arises in the operation of any process, or arises from any alteration in the goods made by Buyer, or as a direct result of Seller being required to adhere to a specification provided by Buyer.

Buyer must determine the appropriateness of the intended use both from an intellectual property and product safety standpoint. Buyer shall fully indemnify and defend Seller for any claims arising as a result of Buyer's application, combination, use, or alteration of the goods. Buyer shall indemnify, defend and save harmless Seller where the alleged infringement is the result of the application, use or alteration to which the goods are put by Buyer or others, or if infringement is based upon the use of goods in connection with materials not manufactured by Seller or in a manner for which the goods were not designed by Seller or were modified by or for Buyer in a manner to cause them to become infringing.

Seller makes no representations and warranties concerning IP RIGHTS related to Buyer specified adders and/or Buyer-supplied materials being in the goods. Other than as set forth herein, Buyer assumes all risk of infringement, violation or misappropriation of third party IP RIGHTS and Seller makes no representations and warranties to Buyer.

8. **INDEMNITY**: SELLER SHALL NOT BE LIABLE TO BUYER FOR, AND BUYER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS SELLER AND ITS RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS AND EMPLOYEES, AND THE SUCCESSORS AND ASSIGNS OF THE FOREGOING, FROM AND AGAINST, ALL OR ANY PART OF ANY CAUSES OF ACTION, CLAIMS, LIABILITIES, LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) (COLLECTIVELY "CLAIMS") FOR INJURY, ILLNESS OR DEATH TO PERSONS (INCLUDING, WITHOUT LIMITATION, THIRD PARTIES AND BUYER'S EMPLOYEES AND ITS AGENTS, CONTRACTORS, SUBCONTRACTORS AND CUSTOMERS, AND THEIR RESPECTIVE EMPLOYEES) AND DAMAGES TO OR LOSS OF PROPERTY (INCLUDING, WITHOUT LIMITATION, THAT OF BUYER OR THIRD PARTIES) ARISING OUT OF OR RESULTING FROM BUYER'S PURCHASE, OWNERSHIP, TRANSPORTATION, RECEIPT, HANDLING, STORAGE, PROCESSING, ALTERATION, USE, DISPOSAL OR RESALE OF THE GOODS, ALONE OR IN COMBINATION WITH OTHER SUBSTANCES OR IN THE OPERATION OF ANY PROCESS.

9. **Force Majeure**: Seller shall be relieved from liability hereunder for failure to perform any or all of its obligations, for the time and to the extent of such failure to perform where Seller's failure is occasioned by any cause or causes of any kind or character reasonably beyond the control of Seller (any such cause herein called "Force Majeure"), including, without limitation: Acts of God, accidents, fire, explosion, flood and hurricanes; strikes, lockouts or other industrial disturbances; riots or civil commotion; war, declared or undeclared; compliance with any laws, rules, regulations, ordinances, codes or Executive Orders of any kind and nature now or hereafter in effect promulgated by any federal, state, county or local government, or any other government (domestic or foreign) or any other governmental agency (domestic or foreign)(collectively, the "Laws") including, without limitation, priority, rationing, allocation or pre-emption orders or regulations affecting the conduct of Seller's business which Seller in its sole discretion deems it advisable to comply with as a legal or patriotic duty; cancellation of Seller's license to operate its plant; shortage or breakdown or other failure of facilities used for manufacture or transportation; shortage of labor; inability to secure, in Seller's sole discretion, all at reasonable prices or on account of shortages of, transportation, power, fuel, materials or supplies; or total or partial shutdown due to Seller's normal plant turnaround or as required by Seller's operation. If Seller is rendered unable by Force Majeure to carry out its obligations under this Agreement, Seller shall give notice to Buyer, and upon the giving of such notice the obligations Seller, so far as they are affected by such Force Majeure shall be suspended during the continuance of any inability so caused. Upon the cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such delay shall not, except by mutual agreement, operate to extend the term of this Agreement or obligate Seller to make up deliveries or Buyer to purchase quantities so missed. Settlement of strikes or lockouts shall be entirely within the sole discretion of Seller, and Seller shall not be required to settle strikes or lockouts by acceding to the demands of the employees involved, when such course is inadvisable in Seller's sole discretion. Seller shall not be responsible for reasonable delays in filling any order when due. "Reasonable delays" include, without limitation, delays to which Buyer, when notified, makes no objection. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. In the event of inability, for any reason, to supply the goods to be furnished hereunder, Seller may allocate its available supply of goods or raw materials among any or all Buyers, as well as departments, divisions, subsidiaries or affiliates of Seller or among Seller's product lines on such basis as Seller may in its sole discretion deem practical without liability for any failure of performance which may result therefrom.

10. **Compliance with Laws**: Buyer shall comply with all Laws in any way relating to Buyer's purchase, ownership, transportation, receipt, handling, storage, processing, alteration, use, disposal or resale of the goods, alone or in combination with other substances or in the operation of any process. Buyer agrees that it will not resell, export or dispose of any goods or product obtained from Seller into any country or to any entity in violation of the US export control regulations or sanctions.

11. **Responsible Practices**: Buyer acknowledges that Seller has furnished product literature or information, such as a Safety Data Sheet ("SDS"), that includes warnings and safety and health information related to the goods furnished hereunder. Buyer shall: (a) familiarize itself with such information; (b) adopt and follow safe handling, storage, transportation, use, treatment and disposal practices with respect to the goods furnished hereunder, including, without limitation, special care and practices as Buyer's use of the goods requires including, without limitation, all such practices required by applicable Laws; (c) instruct its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, transportation and disposal of the goods furnished hereunder (including, without limitation, information contained in Seller's most current SDS); and (d) comply with applicable safety and environmental Laws and take action necessary to avoid spills or other dangers to persons, property or the environment. Seller may suspend goods shipments and/or cancel this Agreement on fifteen (15) days notice if Buyer fails to comply with any of its commitments under this Section. Buyer shall indemnify, defend and hold Seller harmless against any and all third party causes of action, claims, liabilities, losses, costs, damages and expenses (including, without limitation, attorneys' fees and expenses) to the extent arising out of Buyer's failure to comply with any of its commitments under this Section.

#### 12. **Confidentiality**

Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Agreement. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within twenty (20) days after the oral or visual disclosure. In addition, prices for Products and Services shall be considered Seller's Confidential Information.

Receiving Party agrees: (i) to use the Confidential Information only in connection with the Agreement and use of Products and Services, (ii) to take reasonable measures to prevent disclosure of the Confidential Information to third parties, and (iii) not to disclose the Confidential Information to a competitor of Disclosing Party. Notwithstanding these restrictions, (a) Seller may disclose Confidential Information to its affiliates and subcontractors in connection with performance of the Agreement, (b) a Receiving Party may disclose Confidential Information to its auditors, (c) Buyer may disclose Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Agreement, and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Agreement entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

The obligations under this Section 12 shall not apply to any portion of the Confidential Information that: (i) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (ii) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (iii) is independently developed by Receiving Party, its representatives or affiliates, without reference to the Confidential Information; (iv) is required to be disclosed by law or valid legal process provided that the Receiving Party intending to make disclosure in response to such requirements or process shall promptly notify the Disclosing Party in advance of such disclosure and reasonably cooperate in attempts to maintain the confidentiality of the Confidential Information.

Each Disclosing Party warrants that it has the right to disclose the information that it discloses. Neither Buyer nor Seller shall make any public announcement about the Agreement without prior written approval of the other party. As to any individual item of Confidential Information, the restrictions under this Section 12 shall expire five (5) years after the date of disclosure. Section 12 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

13. BUYER's Representation. Seller's representations, warranties and covenants to no apply to aspects of Seller's manufacture and handling of the goods specifically disclaimed in this agreement and do not apply to what Buyer does with the goods after delivery including, but not limited to, Buyer's transportation, storage, handling and/or use of the goods; Buyer's transportation, storage, handling, use and/or sale of the Buyer's products containing the goods; and /or any transportation, storage, handling, use and/or sale of the goods or Buyer's products containing the goods by a third party.

Buyer represents to Seller that Buyer is professional and has experience with respect to the safety, use and handling of chemicals. Buyer represents, warrants and covenants that Buyer's manufacture and handling of Buyer's products using the goods under this agreement shall at all times be in compliance with applicable governmental, legal, regulatory and professional requirements, including without limitation all applicable laws, codes, regulation, rules, ordinances, judgements, orders and decrees, including, without limitation, those related to IP RIGHTS, fair trade and antitrust, customs, labor, employment, working conditions, worker health and safety, branding and labeling, adulteration and contamination, board of health and environmental matters (collectively "LAWS"). Buyer will, at its own expense indemnify, defend and hold harmless Seller from and against all claims that arise from Buyer's product or arise from goods after delivery to Buyer, or that relate to Buyer's breach of any Buyer warranty herein, or that relate to damage to property, including the environment, environmental remediation, improper disposal, or death of injury to persons.

14. Miscellaneous: All notifications, requests, demands and other communications required or permitted under this Agreement (including, without limitation, notices of breach and/or termination of this Agreement) shall be in writing and addressed and delivered to the recipient at the address, facsimile number or email specified by a party pursuant to this provision. Notice shall be deemed given: (a) on delivery, when delivered in person or by courier during a business day, otherwise on the next business day after delivery; (b) the same day, when sent by facsimile or email during a business day, otherwise on the next business day after transmission or sending, provided that the sender has a transmission report confirming transmission of the correct number of pages to the other party's facsimile number or proof that the email has been sent to a proper email address, or (c) five (5) business days after deposit in the government mail service to be sent by certified mail, return receipt requested. This Agreement may only be modified or amended in a writing signed by both parties. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited. However, Seller shall have the right to terminate this Agreement if any provision related to price is invalid or unenforceable. Seller's failure to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of any right to exercise the same or different rights in any subsequent instance. Seller's waiver of any breach of this Agreement by Buyer in a particular instance shall not operate as a waiver of subsequent breaches of a same or different kind. Any waiver must be in writing and signed by Seller. Seller may assign its rights and delegate its obligations under this Agreement. Buyer's rights and obligations under this Agreement are personal in nature and shall not be transferable by assignment, delegation, operation of law, subcontract or otherwise without Seller's prior written consent and any attempt to do so shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. The rights and remedies of Seller in this Agreement are cumulative and not exclusive. Seller's rights and remedies and Buyer's obligations and responsibilities which have accrued before, or by their nature would extend beyond, the expiration, termination or other cancellation of this Agreement, shall survive such expiration, termination or other cancellation and continue to bind the parties and their permitted successors and assigns indefinitely until fulfilled or waived (including, without limitation, Sections 3, 5, 6, 7, 8, 11, 13 and 14). This Agreement shall be governed by the laws of the state of Wisconsin without regard to principles of conflict of laws. Both parties hereby irrevocably consent and submit to the exclusive jurisdiction of the state courts of Wisconsin, USA and of the United States District Courts located in the state of Wisconsin, USA in connection with any litigation arising out of the Agreement, and both parties hereby expressly waive any objection they have or may have as to the venue of any such courts. The rights and obligations of the parties under this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

Seller and Buyer agree that their transactions may be evidenced and conducted by the electronic (including facsimile) transmission of communications without the necessity of a "hard copy." Electronic documents shall be deemed "signed" by the insertion of a typed (in lieu of a handwritten) signature, or by other circumstances if it reasonably appears that the author or sender intended that the electronic communication be given legal effect.

The parties are and shall remain independent contractors with respect to each other, and nothing in this Agreement shall be construed to place the parties in the relationship of partners, joint ventures, fiduciaries or agents. Neither party is granted any right or authority to assume or to create an obligation or responsibility, express or implied, on behalf of or in the name of the other of bind the other in any manner whatsoever.

In the event that legal action is necessary in order to resolve any dispute relating to transactions subject to these terms and conditions, including an action by Seller to recover sums due on the sale of products, the Seller shall be entitled to recover its actual reasonable attorney fees, court costs and other expenses of enforcement, incurred in connection therewith.

If any portion of these terms and conditions are determined by a court or government agency having competent jurisdiction to be invalid or unenforceable, the remainder of said terms and conditions shall remain in full force and effect.

**BUYER HEREBY ACKNOWLEDGES THAT SELLER HAS SUFFICIENTLY CALLED TO BUYER'S ATTENTION THE UNDERLINED AND BOLD FACED PROVISIONS OF THESE TERMS AND CONDITIONS.**