

VI-CHEM CORPORATION

TERMS AND CONDITIONS OF SALE

1. **The Agreement.** All sales by VI-CHEM CORPORATION (the "Seller") shall be governed by the following terms and conditions of sale. The agreement between Seller and Buyer with respect to the sale of goods described in the Seller's quote (the "goods") shall consist only of the terms appearing herein and in the Seller's quote or proposal and any attachments, exhibits and supplements (the "contract") together with any terms mutually agreed to in writing hereafter by Seller and Buyer. Buyer's issuance of a purchase order to Seller constitutes an acknowledgment of the Seller's quote as the first document exchanged in the contract formation process containing the essential elements of an offer. Seller objects to and shall not otherwise be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller. The contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they differ from, modify, add to or detract from the contract, shall not be binding on Seller. There are no agreements, promises or understandings, either verbal or written, that are not fully expressed herein. No statements, recommendations, or assistance by either party has been relied upon by either party or shall constitute a waiver by either party of the provisions hereof.

2. **No Implied Acceptance.** Notwithstanding any contrary provision in Buyer's purchase order, no action by Seller such as delivery of goods, the rendering of services or the commencement of work on goods to be specially manufactured for Buyer, will be deemed an acceptance by Seller of any purchase order from Buyer with terms different than those contained in this contract.

3. **Termination or Modification.** The contract may be modified or terminated only upon Seller's written consent. If all or part of the contract is terminated, Buyer, in the absence of

contrary written agreement with Seller, shall pay termination charges based upon expenses and costs incurred in the production of the goods to the date such termination is accepted by Seller plus a reasonable profit, except that any goods completed on or prior to Seller's acceptance of such termination shall be accepted and paid for in full by Buyer.

4. **Terms of Payment.** Payment terms are net thirty (30) days from the date of shipment unless otherwise provided in the contract. Payments shall be made to Seller at the address specified in the invoice. Pro rata payments shall become due, as shipments are made. If any shipment is delayed by Seller at the request of Buyer, payment shall become due on the date when Seller is prepared to make shipment. Prices are F.O.B. Seller's shipping point unless otherwise stated in the contract. When any payment is not paid on or before its due date, Buyer agrees to pay a late charge on the sum outstanding, from the due date for receipt of payment to the actual date of receipt of payment, at a rate of one and one half percent (1.5%) per month on the unpaid balance. If a payment is not paid on or before its due date, Buyer agrees that Seller may also cease performance under any and all of Buyer's purchase orders whether or not related to the late payment. Whenever, in the judgment of Seller, the financial condition of the Buyer does not justify the continuation of production or shipment on the specified terms of payment, the Seller may require full or partial payment in advance. Seller shall have a security interest in all tools, molds, and dies and other property of Buyer, which come into the possession of Seller, as security for all sums owing from Buyer to Seller from time to time.

5. **Delivery.** Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer, and all shipments are subject to Seller's production schedule. Seller shall in good faith endeavor to meet estimated delivery dates. Seller may ship overages or underages to the extent of 10% of quantity ordered. Seller shall not be responsible for claims for error in quantity, weight or number not made within ten (10) days after Buyer's receipt of goods. Seller will not be liable for any delay in performance of this contract or delivery of goods when the delay is caused directly or indirectly by fire, flood, accident, riot, acts of God, war, governmental interference, strikes or other labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, failure of tooling or the repair, maintenance or rehabilitation of the tooling, or any other cause or causes

whatsoever beyond its control. In the event Seller is delayed in performance by Buyer or at Buyer's request, Buyer will be responsible for any resulting increase in cost, including handling and insurance charges and storage charges, and Seller may invoice goods ready for shipment with payment to be made in accordance with the payment schedule as if the goods had been shipped. In the event delay is caused by Buyer's failure to furnish information necessary for Seller's performance, Seller may extend the shipment date for a reasonable time in proportion to the period of Buyer's delay.

6. **Installment Deliveries as Separate Sales.** Each installment of goods to be delivered pursuant to this contract is to be considered as a separate sale and Buyer shall be liable to pay the agreed price for each such installment without regard to any failure to deliver other installments, and Seller's breach or default in the delivery of any installment shall not give Buyer the right to refuse to receive any other installments.

7. **Risk of Loss.** Buyer assumes all risk of loss of goods upon delivery by Seller to carrier. Seller agrees to package the goods, put them in the possession of a carrier, make appropriate arrangements for their transportation, and obtain and deliver documents necessary to enable Buyer to obtain possession of the goods. Seller shall not be obligated to obtain insurance or to prepay transportation costs unless it has agreed to be responsible for said costs. Buyer agrees to pay all loading, unloading and other charges incidental to transportation. Seller will attempt to follow Buyer's shipping instructions, but may make reasonable changes thereto. Whether or not Seller pays shipping charges, risk of loss shall pass to Buyer upon delivery of the goods to a carrier. Breach of this contract shall have no effect upon this provision controlling the risk of loss.

8. **Limited Warranties.** Seller warrants that for a period of thirty (30) days from the date of delivery the goods will be free from defects of material and workmanship. SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE HEREBY SPECIFICALLY DISCLAIMED. IN PARTICULAR, BUT WITHOUT LIMITING THE

GENERALITY OF THE FOREGOING EXCLUSION, (i) IF THE GOODS ARE MADE ACCORDING TO BUYER'S SPECIFICATIONS, SELLER DOES NOT WARRANT ADEQUACY OF SUCH SPECIFICATIONS OR THAT THE GOODS WILL PERFORM IN ACCORDANCE WITH SUCH SPECIFICATIONS, (ii) IF ANY GOODS FURNISHED HEREUNDER ARE MADE BY ANY SUPPLIER OTHER THAN SELLER, SELLER DOES NOT PROVIDE ANY WARRANTY WITH RESPECT TO SUCH GOODS, (iii) SELLER DOES NOT WARRANT THAT THE GOODS ARE IN COMPLIANCE WITH LAWS OF ANY COUNTRY, AND (iv) IF THE GOODS ARE MODULES OR ASSEMBLIES, SELLER DOES NOT WARRANT DESIGN, DESIGN PERFORMANCE, DURABILITY OR SYSTEM INTEGRATION OF THE MODULES, ASSEMBLIES OR ANY COMPONENTS THEREOF. Seller's sole obligation under the foregoing warranties will be limited to either, at Seller's option, replacing or repairing defective goods or refunding the purchase price paid for such goods previously paid by Buyer, and Buyer's exclusive remedy for breach of any of such warranties will be enforcement of such obligation of Seller. These warranties will not extend to goods subjected to misuse, abuse, neglect, damage, accident or improper installation or maintenance or which have been altered or repaired by anyone other than Seller or its authorized representative. Seller shall not be liable on any claim for defective goods, which is not made within thirty (30) days after such goods have been received by Buyer.

9. **Remedies and Limitation of Liability.** In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, Seller may request the return of the goods and tender to Buyer the purchase price previously paid by Buyer, and in such event, Seller shall have no further obligation under the contract except to refund such purchase price upon redelivery of the goods. No goods may be returned without Seller's written request. If Seller requests the return of the goods, the goods will be redelivered to Seller at Buyer's expense by lowest cost mode of transportation unless otherwise authorized in writing by Seller. Seller reserves the right to inspect any claimed defect, repair defective goods or install replacement parts, and perform any adjustment incident to satisfactory operation of the goods. In the event Buyer claims Seller has breached any of its obligations under the contract, whether of warranty or otherwise, and Seller has not delivered any goods to Buyer, Seller may tender to Buyer the purchase price previously paid by Buyer, and, in such event, Seller shall have no

further obligation under the contract except to refund such purchase price previously paid by Buyer. The remedies contained in this and the preceding paragraph shall constitute the sole recourse of Buyer against Seller for breach of any of Seller's obligations under the contract, whether of warranty or otherwise. In no event shall Seller be liable for incidental, consequential or special damages, including without limitation, lost revenues, profits or recall expenses, nor shall Seller's liability on any claim for damages arising out of or connected with the contract or the manufacture, sale, delivery or use of the goods exceed the purchase price of the goods previously paid by Buyer to Seller. Any warranty rights which Seller may have relating to any goods provided by other suppliers will be assigned to Buyer upon request. Seller shall not be liable for failure to perform its obligations under the contract resulting directly or indirectly from circumstances beyond Seller's reasonable control.

10. **Indemnification.** Buyer shall indemnify Seller against, and hold Seller harmless from, any and all claims and liabilities, including reasonable attorney's fees, arising out of, connected with, or resulting from the goods, including but not limited to, the design, manufacturing, selection, delivery, possession, use or operation of the goods. Seller's entire liability for goods is limited as set forth in paragraph 9 above.

11. **Patents.** Buyer shall indemnify Seller against liability, loss, damage or expense in any instance involving alleged violation of patent rights relating to Buyer's specifications and/or the goods resulting from those specifications. Buyer shall bear the full burden for all liability, loss, damage or expense in any such instance. Such indemnification of Seller against all liability, loss, damage or expense pursuant to this provision shall include, but is not limited to, litigation expenses, reasonable attorney's fees, and damages awarded under an adverse judgment or established by way of compromise settlement where both Buyer and Seller have notice of and consent to such compromise settlement.

12. **Changes.** Changes in the work to be performed under the contract may be made only if Buyer submits written instructions for such changes and if Seller accepts those changes in writing. If any such approved changes in drawings, materials, quantities, dates of performance

or design of the, in Seller's sole judgment, increase Seller's costs, Seller may condition approval of any such change on agreement by Buyer to a price increase to recoup such cost increase, plus reasonable return.

13. **Cancellation/Reschedule of Purchase Orders.**

A. In the event of any cancellation of all or part of any purchase order by Buyer, Buyer agrees to pay Seller for all reasonable and allocable materials, material management, labor, overhead and general and administrative costs and expenses incurred as a result of any such cancellation, plus a reasonable profit hereby stipulated to be ten percent (10%) of such costs and expenses within thirty (30) days from the date of Seller's invoice setting forth such costs and expenses.

B. In the event of any cancellation, inventory carrying charges will be assessed at a rate of two percent (2%) per month on the value of such inventory until the relevant inventory is disposed of and paid for by Buyer.

C. In the event of any reschedule of delivery of goods by Buyer for a period of more than two weeks, inventory carrying charges will be assessed at a rate of two percent (2%) per month until such goods are shipped.

14. **Disclosure and Use of Technical Information.** Any technical information disclosed by either Buyer or Seller to the other during the term of this agreement is proprietary to each and may not be used by the other or disclosed by the other to any other entity without the written consent of the owner of the technical information. Any technical information owned or developed by Seller, including but not limited to, patents, trademarks, copyrights, know-how and proprietary information, and used for the supply of goods under this contract shall remain the sole and exclusive property of Seller. Except as authorized in writing by and on terms acceptable to Seller, Buyer shall have no right to disclose any technical information to any third party or to have any third party make any goods that use the technical information owned by Seller.

15. **Governing Law and Forum.** The formation and performance of the contract shall be governed by the Uniform Commercial Code, as adopted in the state of Michigan. Any action for breach of the contract, including any breach of warranty, must be commenced within one (1) year after the cause of action has accrued. This contract shall not be subject to or governed by

the United Nations Convention on Contracts for the International Sale of Goods. Any legal or equitable actions arising out of or relating to this contract or any other contract between the parties, shall be brought only in federal or state court in Michigan. Seller and Buyer agree that such court shall have in *personam* jurisdiction over the parties.

16. **Taxes.** Sales, use, occupation, excise and other taxes upon the production, sale or use of the goods are not included in the price and such taxes or any costs in connection therewith, wherever levied and whether imposed before or after payment of invoice, shall be paid by Buyer.

17. **Minimum Purchase Requirements.** Buyer hereby acknowledges and agrees that the prices set forth in this contract are contingent upon Buyer's agreement to purchase the total quantities set forth in the Buyer's request for quote/proposal. If Buyer fails to purchase at least ninety percent (90%) of the quantities of goods contained in its request for quote/proposal, Buyer agrees that the pricing on the goods delivered to Buyer shall be adjusted retroactively to reflect the impact of lower volume on material pricing, labor efficiencies and other cost and expenses of Seller. Buyer hereby agrees to pay Seller such additional sums within thirty (30) days of the date of Seller's invoice for payment.

18. **Assignment and Delegation.** No right or interest in this contract shall be delegated or assigned by Buyer without the written permission of Seller. Any attempt at assignment or delegation shall be void unless made in conformity with this paragraph. Buyer warrants that it is purchasing for its own account and not as an agent.

19. **Service and Replacement Parts.** At the expiration of the production period of Buyer's purchase order, and upon request by Buyer, Seller will provide service parts and replacement parts for the goods at the price and for the period of time mutually agreed upon by Seller and Buyer.

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