



## TERMS AND CONDITIONS/FORCE MAJEURE

### **GENERAL FORMULATIONS, INC. Standard Terms and Conditions of Sale**

All sales of General Formulations, Inc. products are made on the following terms and conditions. The product or products being sold by General Formulations are referred to below as the "goods," and General Formulations is referred to as "Seller."

#### **1. PAYMENT TERMS**

1% 10, net 30 days. Payment in full of the prices is due thirty (30) days after shipment, without discount, except that if at any time Seller determines that Buyer's financial condition or credit rating does not justify a sale on credit or if Buyer is in default on any payment to Seller, Seller may require advance payment or may ship C.O.D. Any payment not made when due shall accrue a late charge of 1-1/2% per month (but not in excess of the maximum rate allowed by law). Payment must be made at Seller's office in Sparta, Michigan.

#### **2. DELIVERY AND RISK OF LOSS**

Delivery will be F.O.B. Seller's plant or other point of origin, but risk of loss of the goods shall pass to Buyer upon identification of the goods to this contract. Shipping dates are estimates only, and time is not of the essence. Seller may ship all the goods at one time or in portions from time to time. Seller shall have the right to determine the method of shipment and routing of the goods, unless otherwise specified by Buyer.

#### **3. TAXES**

Seller's price does not include any privilege, occupation, personal property, value-added, sales, excise, use or other taxes, and Buyer shall be liable for all such taxes, whether or not invoiced by Seller.

#### **4. UNAVOIDABLE DELAY**

If Seller is unable to finish and ship the goods to Buyer on time because of anything Seller cannot control (including, but not limited to, casualty, labor trouble, governmental act or regulation, plant breakdown, power failure, accidents, unavailability of supplies or transportation, or acts of God), the estimated delivery time will be extended accordingly, and Seller will not be liable to Buyer for any damages caused by the delay.

#### **5. CHANGES**

Seller shall have the right to make design or engineering changes in its parts, equipment, processes and methods of manufacture, but shall make no changes in operational or dimensional specifications submitted by Buyer without Buyer's prior approval.

#### **6. DISCLAIMER OF WARRANTIES AND LIMITATION OF LIABILITY**

**SELLER MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, AS TO THE GOODS AND, IN PARTICULAR, MAKES NO WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR ANY PARTICULAR PURPOSE, AND BUYER IS SOLELY RESPONSIBLE FOR DETERMINING THE PROPER APPLICATION AND USE OF THE GOODS.** Seller shall have no tort liability to Buyer with respect to any of the goods and shall not be liable for consequential or incidental damages arising from any product defect, delay, nondelivery or other breach. Buyer shall have no right of rejection of or revocation of acceptance of the goods.

#### **7. SOLVENCY AND SECURITY INTEREST**

Buyer represents that Buyer is solvent. Seller retains a security interest in the goods to secure payment of the price and all other indebtedness now and in the future owing by Buyer to Seller. At Seller's request, Buyer will sign and deliver to Seller a financing statement evidencing this security interest.

#### **8. PERMITS AND COMPLIANCE**

Seller is not responsible for obtaining any permits, inspections or licenses required for installation or operation of the goods. Seller makes no promise or representation that the goods will conform to any federal, state or local laws, ordinances, regulations, codes or standards.

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## **9. QUANTITIES**

Seller may overrun or underrun the agreed-upon quantities by up to 10%, and Buyer will pay Seller at the unit price for quantities that Seller delivers within these limits. Any claim by Buyer that Seller failed to deliver the agreed-upon quantity of goods (subject to any adjustment under the preceding sentence) must be submitted to Seller in writing within thirty (30) days after Buyer receives the goods. If Buyer fails to do so, it will be conclusively presumed that the proper quantity was delivered.

## **10. CANCELLATION**

Buyer has no right to cancel its agreement to purchase the goods from Seller. If, however, Seller agrees in writing to permit cancellation, Buyer will immediately pay to Seller a cancellation charge in an amount equal to the purchase price less allowances (in amounts determined by Seller) for (a) the realizable value to Seller of any standard components purchased or ordered by Seller before cancellation, (b) the realizable scrap value to Seller of the remaining material and tooling purchased, fabricated or ordered by Seller before cancellation, and (c) any direct labor costs saved by Seller by reason of the cancellation.

## **11. INDEMNITY**

Buyer will indemnify and hold harmless Seller from and against all damages, losses, claims and expenses, including attorney fees, incurred by Seller as a result of (a) any breach by Buyer of any of its obligations under the terms of sale, or (b) any claimed unfair competition or patent, trademark or copyright infringement or any other claim resulting from Seller's manufacture of the goods to Buyer's specifications.

## **12. SELLER'S RIGHTS**

Seller has all rights and remedies given to sellers by applicable law, and Seller's right and remedies are cumulative and may be exercised from time to time. No waiver by Seller of any right on one occasion will be a waiver of any future exercise of that right.

## **13. TIME FOR BRINGING ACTION**

Any action by Buyer against Seller for breach of this Agreement or for any other claim arising out of or relating to the goods or their design, manufacture, sale or delivery must be brought within one year after the cause of action accrues.

## **14. APPLICABLE LAW**

This agreement between Seller and Buyer shall be considered to have been made in the State of Michigan, and it shall be governed by and interpreted according to Michigan law.

Any action arising out of or relating to this agreement may be brought in any federal or state court in Kent County, Michigan, having jurisdiction of the subject matter, and Buyer irrevocably consents that any such court shall have personal jurisdiction over Buyer and waives any objection that the court is an inconvenient forum.

## **15. COMPLETE AGREEMENT; AMENDMENT**

The terms on the reverse side, these standard terms, and the product and price designations contained in Schedule A represent the entire agreement between Buyer and Seller. Any change in this agreement must be by a signed writing.

## **FORCE MAJEURE**

The company shall not be liable for any loss, damage, delay, changes in shipment schedules or failure to deliver caused by accidents, fire, strikes, riots, civil commotion, insurrection, war, the elements, embargoes, failure of carriers, inability to obtain transportation facilities, government requirements, acts of God or public enemy, prior orders from customers or limitations on the company's or its supplier's production or marketing activities or any other causes or contingencies beyond the company's control.