

JOHN MEZZALINGUA ASSOCIATES, LLC - TERMS AND CONDITIONS OF SALE

1. Agreement: These terms and conditions govern the sale of products (“**Products**”) by John Mezzalingua Associates, LLC d/b/a JMA (“**JMA**”) to its customer (“**Buyer**”). These terms and conditions of sale (“**Agreement**”) constitute the final, complete and exclusive agreement between Buyer and JMA relating to the subject matter hereof and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written relating to such subject matter (including, without limitation, any prior “Terms and Conditions of Sale” published by JMA), unless otherwise specifically agreed to in a writing signed by an authorized representative of JMA. Any term or condition in any order, confirmation or other document furnished by Buyer at any time, which is in any way inconsistent with or in addition to the terms and conditions set forth herein is hereby expressly rejected, and JMA’s acceptance of any offer or order of Buyer is expressly made in reliance of Buyer’s assent to all terms and conditions hereof. Buyer’s acceptance of delivery of any Products shall constitute Buyer’s acceptance of these terms and conditions. In the event of conflict between the terms and conditions set forth herein and any other forms, purchase orders, documents or instruments of Buyer, the provisions contained herein shall prevail. Stenographic and clerical errors are subject to correction. A quotation is not a contractual offer and any order resulting from a quotation is subject to approval and acceptance by JMA.

2. Prices: The prices applicable to the Products shall be as quoted by JMA to Buyer and are subject to change. Unless otherwise specified, prices quoted do not include any applicable property, sales, use, privilege or other taxes, or any export or import taxes, customs duties, brokerage fees, freight, insurance, container packing or the like, all of which shall be invoiced to and paid by the Buyer. Applicable taxes, if any, shall be paid by the Buyer either directly to the taxing authority or, if collected by the JMA, to JMA upon receipt of JMA’s invoice for the amount of the tax. In the case of controversy as to whether a transaction is taxable, Buyer agrees to remit the amount of the tax to the JMA pending a specific ruling from the taxing authority which collects the tax.

3. Purchase Order Process: Buyer shall place orders for the Products to be purchased hereunder by submitting one or more purchase orders to JMA. Each such purchase order is intended for convenience only and shall state the descriptions and quantities of Products being ordered and the requested shipment dates for such Products. In no event shall any terms and conditions set forth on a purchase order submitted by Buyer other than the terms and conditions set forth herein, including, without limitation, any preprinted terms and conditions of Buyer, be binding on JMA. In addition, no purchase order submitted by Buyer shall be binding on JMA unless and until JMA has accepted such purchase order by written acknowledgment or by shipment of the Products applicable to such purchase order.

4. Payments: Unless otherwise agreed to by JMA in writing, payment terms shall be net 30 days from the date of invoice. If shipments are delayed by Buyer, invoices may be rendered on the date(s) JMA is prepared to make shipment(s). If completion of manufacture or shipment is delayed by Buyer, invoices may be rendered when delay is ascertained, based upon percentage of completion. Products held as a result of Buyer’s inability or refusal to accept delivery is at the risk and expense of Buyer. Interest at the rate of one and one-half percent (1-1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid in full by Buyer within thirty (30) days of the due date thereof. Such interest shall be in addition to the purchase price payable hereunder. In the event JMA commences a legal action or suit to collect the purchase price or any part thereof, Buyer shall, in addition to the full purchase price, be liable for all costs and expenses of such legal action or suit (including reasonable attorneys’ fees).

5. Shipment: Shipment/delivery dates are approximate. All Products will be shipped EXW (Incoterms 2010) JMA’s manufacturing facility. Title and risk of loss shall pass to Buyer upon delivery to common carrier for shipment to Buyer, notwithstanding any prepayment of shipping charges by JMA, if so required by carrier. All shipment costs shall be paid by Buyer, and if prepaid by JMA, the amount thereof shall be reimbursed to JMA.

6. Rejection; Damage Claims; and Shortages: Buyer’s right to reject any Products supplied hereunder is conditioned upon Buyer giving JMA a written notice of rejection setting forth the basis thereof within ten (10) days of Buyer’s receipt of shipment. Failure to give such notice within such time constitutes acceptance of such Products. Products may only be returned when authorized by JMA in writing, and then only on such terms as the JMA may specify. All returns will be subject to a 20% handling charge, and freight must be prepaid by Buyer. All claims for damaged or missing Products must be noted on the bill of lading at the time of receipt and Buyer must immediately thereafter file a claim with JMA and the freight carrier. JMA shall not have any liability for, or any obligation to consider, any claims for damaged Products or Product shortages which are not received by JMA, in writing, within ten (10) days of Buyer’s receipt of shipment. Claims so received by JMA within such ten-day period will be considered by JMA, but will only be allowed when justified in JMA’s sole and absolute discretion. ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON BUYER AND ALL CLAIMS FOR LOSS OR DAMAGE IN TRANSIT OR FOR NON-DELIVERY SHALL BE MADE AND PROSECUTED BY BUYER AGAINST THE CARRIER.

7. Delay: JMA shall make reasonable efforts to deliver the Products hereunder in accordance with the requested delivery date(s), provided that JMA shall not be liable for any delay in delivery due to causes beyond JMA’s reasonable control, such as acts of God, acts of the government, strikes, wars, acts of hostility, delays of carriers, inability to obtain necessary labor or raw materials from usual suppliers, breakdown of manufacturing facility, or change in economic conditions. JMA shall not be liable for any damages or penalties whatsoever whether direct or indirect, special, incidental or consequential, resulting from JMA’s failure or the failure of JMA’s suppliers to perform or delay in performing unless otherwise agreed in writing by an authorized officer of JMA. Buyer agrees that any delay in delivery shall not affect the validity of any orders or these terms and conditions.

8. Limited Warranties; Disclaimers:

(a) JMA represents and warrants that the Products delivered by JMA to Buyer shall: (i) conform to agreed-upon specifications for the Product(s), to the extent any specifications were made part of an order; and (ii) be free from faulty workmanship and defective materials. The foregoing warranties shall be limited to a one year period commencing on the date of shipment of the applicable Product(s) (the “**Warranty Period**”) provided (i) the Products have been properly cared for and used in accordance with JMA’s instructions, if any, and (ii) Buyer promptly notifies JMA in writing of any warranty claim during the Warranty Period. The warranties provided by JMA in this Section 8(a) are the only warranties provided by JMA with respect to the Product(s) sold hereunder, and may be modified or amended only by a written instrument signed by JMA. Buyer’s remedies and JMA’s aggregate liability with respect to the warranties provided by JMA in this Section 8(a) are set forth in and limited by this Section 8 and Section 9 below.

(b) In the event any Product fails to meet the warranties in Section 8(a) above during the Warranty Period, JMA’s sole obligation, in JMA’s sole discretion, shall be to either repair or replace the non-conforming Product.

(c) JMA shall not be liable for any repairs or other claim if alterations have been made to the Products by the Buyer or others without the JMA’s written consent. Equipment and accessories furnished by third parties are warranted only to the extent of the original manufacturer’s warranty to the JMA and then only to the extent that such original manufacturer’s warranty is assignable by JMA to Buyer.

(d) THE EXPRESS WARRANTIES OF JMA STATED IN SECTION 8(a) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS WITH RESPECT TO THE PRODUCTS. JMA’S WARRANTY OBLIGATIONS AND BUYER’S REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SECTION 8.

9. Limitation of Liability: Notwithstanding anything to the contrary contained in this Agreement, JMA’s aggregate liability in connection with the sale of Product(s) hereunder, regardless of the form of action giving rise to such liability (whether in contract, tort or otherwise), shall not exceed the aggregate purchase price for Products paid by Buyer to JMA pursuant to an applicable order. JMA shall not be liable for any extraordinary, exemplary, special, indirect, consequential or incidental damages of any kind, including without limitation, lost profits, even if JMA has been advised of the possibility of such damages. Except as provided in Section 8(a) above, and subject to the limitations set forth herein, JMA shall not be liable for any claims of third parties relating to any Products, and Buyer will defend JMA and hold JMA harmless against all losses, liabilities, damages, claims and expenses, including, reasonable attorneys’ fees, arising out of or in connection with the use or sale of Products by Buyer or Buyer’s employees, agents, customers, or contractors. THE FOREGOING STATES THE ENTIRE LIABILITY OF JMA WITH REGARD TO THIS AGREEMENT AND JMA’S SALE OF PRODUCT(S) HEREUNDER. THE LIMITATIONS CONTAINED IN SECTIONS 8 AND 9 ARE A FUNDAMENTAL PART OF THE BASIS OF JMA’S BARGAIN HEREUNDER, AND JMA WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.

10. Confidential Information; No License: Technical information contained in plans, drawings, specifications, photographs and other documents disclosed or furnished by JMA constitutes confidential and proprietary property of JMA. Buyer, in the absence of express prior written consent of JMA, shall hold all such confidential and proprietary information in confidence and may not sell or dispose of any portion thereof. The sale of Products shall not be construed as granting Buyer any license under any trademark, copyright, or other intellectual property of JMA.

11. Default: If Buyer shall fail to pay all or any part of the sums due or to become due to JMA, fail to keep and/or perform any of Buyer’s obligations herein, become insolvent or become a party to any federal or state insolvency proceeding or receivership, or become a judgment debtor, any sum due or to become due may, at the option of the JMA, become immediately due and payable in full and concurrently, or in the alternative JMA may at its option terminate this Agreement and exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default.

12. Indemnification: If JMA manufactures or supplies Products to Buyer specifications, Buyer agrees to defend, indemnify and hold harmless JMA from and against any claim, suit, demand, or action, whether actual or threatened, alleging that the Products or any component thereof infringes a patent, copyright, trade secret, or any other proprietary right of any third party, and Buyer shall indemnify JMA against all costs, expenses, and damages arising from any such claim, suit, demand, or action.

13. Cancellation: Orders may be cancelled by Buyer only with the written consent of JMA and upon reimbursement to JMA for any and all expenses and other losses incurred by JMA as a result of such cancellation, including JMA’s actual out of pocket costs, overhead and anticipated profit.

14. Changes: JMA reserves the right to make, at any time, such changes in Product design, selection or components, construction, arrangement or equivalent as shall in its judgment constitute an improvement over former practice. Changes in materials, supplies, labor and/or changes made at the request of Buyer shall be at the expense of Buyer. Buyer hereby agrees to pay for the same upon receipt of the JMA’s invoice. Changes or alterations made by Buyer or made by JMA (over its recommendation against the same) shall be at Buyer’s sole risk and responsibility.

15. Retained Security Interest: Until such time as the entire purchase price of the Products have been paid, Buyer hereby grants to JMA a first priority purchase money security interest in the Products supplied pursuant to the terms hereof. The rights and remedies of JMA, as a secured party with respect to the Products shall be governed by the Uniform Commercial Code, or equivalent statute(s) of the State in which the Products are located. Buyer authorizes JMA to execute and record on behalf of Buyer such financing statements and other instruments as JMA may deem necessary to perfect or protect its security interest in the Products.

16. Notices: Notices may be delivered by overnight courier or fax, with proof of delivery, or by United States mail, registered or certified mail, with postage prepaid, in each case addressed to the party being notified at such party's address referred to on the face of this document, or at such other address as such party shall have notified the other party in writing.

17. Not Transferable: This Agreement is not transferable or assignable by Buyer either directly or by operation of law without the prior written consent of JMA.

18. Headings. Paragraph headings are for convenience only and shall not be construed to define or limit the operative provisions hereof.

19. Amendments: No amendment, change to or modification to these terms, or any schedules or attachments hereto, shall be valid unless the same shall be in writing and signed by the party or parties to be charged therewith.

20. Applicable Law: The rights and duties of the parties under this Agreement shall be governed by the laws of the State of New York without regard to conflict of law rules otherwise applicable. The United Nations Convention on Contracts for the International Sale of Goods shall not apply and is specifically disclaimed by the parties.