



**ALLEGIS CORPORATION
TERMS AND CONDITIONS OF SALE**

1. Applicability

(a) These terms and conditions of sale (these “Terms”) are the only terms which govern the sale of the goods (the “Goods”) by Allegis Corporation, or its affiliates (“Seller”), to the buyer (“Buyer”) named on the Sales Confirmation (defined below).

(b) The accompanying invoice (the “Sales Confirmation” and these Terms (collectively, this “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms prevail over any of Buyer’s terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms and Seller hereby expressly rejects Buyer’s terms and conditions.

2. Delivery

(a) The Goods will be delivered within a reasonable time after the receipt of Buyer’s purchase order, subject to availability of finished Goods. Seller shall not be liable for any delays, loss or damage in transit.

(b) Unless otherwise agreed in writing by the parties, Seller shall deliver the Goods to Seller’s warehouse or the manufacturer’s delivery point, as applicable (the “Delivery Point”), using Seller’s standard methods for packaging and shipping the Goods. Buyer must take delivery of the Goods within one day of Seller’s notice to Buyer that the goods have been delivered to the Delivery Point. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point.

(c) Seller may, in its sole discretion, without liability or penalty, make partial shipments of the Goods to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of Buyer’s purchase order.

(d) If for any reason Buyer fails to take delivery the Goods on the date fixed pursuant to Section 2(b), or if Seller is unable to deliver the Goods at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Goods until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).



3. Non-Delivery

- (a) The quantity of any installment of the Goods as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.
- (b) Seller shall not be liable for any non-delivery of the Goods (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within one day of the date when the Goods would in the ordinary course of events have been received.
- (c) Any liability of Seller for non-delivery of the Goods shall be limited to replacing the Goods within a reasonable time or adjusting the invoice respecting such Goods to reflect the actual quantity delivered.

4. Quantity

If Seller delivers to Buyer a quantity of Goods of up to ten percent more or less than the dollar value set forth in the Sales Confirmation, Buyer shall not be entitled to object to or reject the Goods or any portion of them by reason of the surplus or shortfall and shall pay for such Goods the price set forth in the Sales Confirmation adjusted pro rata.

5. Shipping Terms

Delivery shall be made FOB Seller's warehouse.

6. Title and Risk of Loss

Title and risk of loss passes to Buyer upon delivery of the Goods at the Delivery Point. As collateral security for the payment of the purchase price of the Goods, Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Goods, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under the Minnesota Uniform Commercial Code.

7. Amendment and Modification

These Terms may only be amended or modified in a writing which specifically states that it amends these Terms and is signed by an authorized representative of each party.



8. Inspection and Rejection of Nonconforming Goods

(a) Buyer shall inspect the Goods within one day after receipt (“Inspection Period”). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as required by Seller. “Nonconforming Goods” means only the following: **(i)** the goods shipped are different than identified in Buyer’s purchase order; or **(ii)** the goods’ label or packaging incorrectly identifies its contents.

(b) If Buyer timely notifies Seller of any Nonconforming Goods, Seller shall, in its sole discretion, **(i)** replace such Nonconforming Goods with conforming Goods, or **(ii)** credit or refund the Price for such Nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the Nonconforming Goods to the Delivery Point. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer’s shipment of Nonconforming Goods, ship to Buyer, pursuant to the terms hereof, the replaced Goods.

(c) Buyer acknowledges and agrees that the remedies set forth in Section 8(b) are Buyer’s exclusive remedies for the delivery of Nonconforming Goods. Except as provided under Section 8(b), all sales of the Goods to Buyer are made on a one-way basis and Buyer has no right to return the Goods purchased under this Agreement to Seller.

9. Price

(a) Buyer shall purchase the Goods from Seller at the prices (the “Prices”) set forth in Seller’s published price list in force as of the date that Seller accepts Buyer’s purchase order.

(b) All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such taxes, duties and charges.

10. Payment Terms

(a) Unless Seller has extended credit to Buyer pursuant to its Terms and Conditions of Credit, Buyer shall pay all invoiced amounts prior to Seller’s delivery of the goods to the Delivery Point. If Seller has extended credit to Buyer pursuant to its Terms and Conditions of Credit, all invoiced amounts are due to Seller within 30 days of Seller’s invoice. Buyer shall make all payments here-under by wire transfer or check and in U.S. dollars.

(b) Buyer shall pay interest on all late payments at the lesser of the rate of 2% per month or the highest rate permissible under applicable law, calculated daily and compounded monthly. Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys’ fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights here-under), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due here-under.

(c) Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller’s breach, bankruptcy or otherwise.



11. Limited Warranty

(a) Seller warrants to Buyer that for a period of one year from the date of shipment of the Goods (“Warranty Period”), that the Goods will be free from defects in material and workmanship.

(b) EXCEPT FOR THE WARRANTY SET FORTH IN SECTION 11(a), SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(c) Products manufactured by a third party (“Third Party Product”) may constitute, contain, be contained in, incorporated into, attached to or packaged together with, the Goods. Third Party Products are not covered by the warranty in Section 11(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD PARTY PRODUCT, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (c) WARRANTY OF TITLE; OR (d) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

(d) Seller shall not be liable for a breach of the warranty set forth in Section 11(a) unless: **(i)** Buyer gives written notice of the defect, reasonably described, to Seller within 15 days of the time when Buyer discovers or ought to have discovered the defect; **(ii)** Seller is given a reasonable opportunity after receiving the notice to examine such Goods and Buyer (if requested to do so by Seller) returns such Goods to Seller’s place of business at Seller’s cost for the examination to take place there; and **(iii)** Seller reasonably verifies Buyer’s claim that the Goods are defective.

(e) Seller shall not be liable for a breach of the warranty set forth in Section 11(a) if: **(i)** Buyer makes any further use of the Goods after giving such notice; **(ii)** the defect arises because Buyer failed to follow Seller’s oral or written instructions as to the storage, installation, commissioning, use or maintenance of the Goods; or **(iii)** Buyer alters or repairs the Goods without the prior written consent of Seller.

(f) Subject to Section 11(d) and Section 11(e) above, with respect to the Goods during the Warranty Period, Seller shall, in its sole discretion, either: **(i)** repair or replace the Goods (or the defective part) or **(ii)** credit or refund the Price of the Goods at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return the Goods to Seller.

(g) THE REMEDIES SET FORTH IN SECTION 11(f) SHALL BE BUYER’S SOLE AND EXCLUSIVE REMEDY AND SELLER’S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 11(a).



12. Limitation of Liability

(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HERE-UNDER.

(c) The limitation of liability set forth in Section 12(b) above shall not apply to **(i)** liability resulting from Seller's gross negligence or willful misconduct and **(ii)** death or bodily injury resulting from Seller's acts or omissions.

13. Compliance with Law

Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes anti-dumping or countervailing duties or any other penalties on Goods.

14. Termination

In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: **(i)** fails to pay any amount when due under this Agreement; **(ii)** has not otherwise performed or complied with any of these Terms, in whole or in part; or **(iii)** becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

15. Waiver

No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege here-under precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.



16. Confidential Information

All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by

Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller’s request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section 16. This Section 16 does not apply to information that is:

(a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

17. Force Majeure

Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Seller including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lockouts, strikes or other labor disputes (whether or not relating to either party’s workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

18. Assignment

Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section 18 is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

19. Relationship of the Parties

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

20. No Third-Party Beneficiaries

This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.



21. Governing Law

All matters arising out of or relating to this Agreement is governed by and construed in accordance with the internal laws of the State of Minnesota without giving effect to any choice or conflict of law provision or rule (whether of the State of Minnesota or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of Minnesota.

22. Submission to Jurisdiction

Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of Minnesota in each case located in the City of Minneapolis and County of Hennepin, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

23. Notices

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a “Notice”) shall be in writing and addressed to the parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving party in writing. All Notices shall be deemed to have been given:

- (a) when delivered by hand (with written confirmation of receipt);
- (b) one day after the date sent if sent by a nationally recognized overnight courier (receipt requested);
- (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or
- (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid.

24. Severability

If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

25. Survival

Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: Compliance with Laws, Confidential Information, Governing Law, Submission to Jurisdiction and Survival.