



## TERMS AND CONDITIONS OF SALE OF SPIROL INTERNATIONAL CORPORATION

The terms and conditions of sale set forth below constitute the Contract between Spirol International Corporation, or the Spirol International subsidiary to which the purchase order was directed (hereinafter "Seller"), and the party to whom the offer is submitted (hereinafter "Buyer"). Any attempt by Buyer to alter the terms and conditions by counter offer or conditional acceptance shall be void and of no effect. These terms and conditions shall be deemed accepted by Buyer, and the Contract concluded between Buyer and Seller shall be on the basis of these terms and conditions, unless written notice to the contrary is received by Seller and is accepted in writing by Seller.

If this Contract responds to or follows any request for quotation and/or purchase order by Buyer which could be reasonably construed as an "offer" from Buyer and which offer contains terms and conditions ("Buyer's Terms") different from and/or additional to those set forth below, then this Contract shall not constitute an acceptance of Buyer's "offer" on Buyer's Terms. Seller's acceptance of Buyer's "offer" is expressly subject to the terms and conditions set forth below. In the event of any conflict between Buyer's Terms and these terms and condition, these terms and conditions will govern.

**PRICES:** Prices quoted in the Contract are based on EXW (Incoterms 2010) Spirol shipping location and are exclusive of sales taxes or any other taxes and shipping charges or any other delivery charges, unless otherwise specified. If the price of raw materials increases or if the shipment of all or any part of an order is delayed by Buyer, Seller shall have the right to increase the price to reflect the increased price of the raw materials or the increased price of the delayed goods in effect at the time of shipment. Buyer acknowledges that agreed upon pricing is often dependent on Buyer's meeting future conditions with respect to quantities requested and shipped over a specific time period, if Buyer fails to meet such conditions Seller may charge retroactive price adjustments or require Buyer to meet the conditions upon which the pricing was based.

**PAYMENT:** Payment shall be net thirty (30) days after date of invoice, unless otherwise specified. Seller may issue an invoice for goods ready for shipment even though shipment is delayed by Buyer. Under no circumstances will the thirty (30) day term be construed to begin after the goods arrive at the Buyer's place of business or after the occurrence of any other event or contingency. Any amount paid beyond the terms stated on the invoice are subject to interest equal to the lesser of eighteen percent (18%) per annum or the highest amount permitted by law, calculated daily. Buyer shall also pay Seller any reasonable attorney fees and costs of collection, plus accrued interest, arising out of Buyer's failure to pay the price in whole or in part when due.

**SECURITY FOR PAYMENT:** Notwithstanding delivery of, or passing of title in, any goods from Seller to Buyer, Seller shall have a continuing first priority lien, or the



highest available lien right, and purchase money security interest in the goods and the proceeds thereof as security for payment in full of the purchase price, interest and reasonable attorney fees under this Contract and Seller shall be entitled to repossess the goods upon demand in the event of failure by Buyer to pay the price in full on time. Without prejudice to the generality of the foregoing, Buyer consents to Seller preparing and filing such Financing Statements, UCC-1 forms and other forms, agreements and notices as Seller may deem appropriate to evidence such first, or highest available, priority lien and purchase money security interest in the goods and the proceeds thereof in such court, governmental office or other location as Seller may deem appropriate.

**CANCELLATION BY SELLER:** Seller reserves the right to cancel all or any part of the Contract at any time if Buyer fails to pay any amount when due under or otherwise breaches the Contract or if in Seller's sole judgment the financial condition of the Buyer warrants such action. Buyer agrees to authorize its creditors to disclose to Seller information concerning Buyer's credit worthiness, upon the Seller's request.

**DELIVERIES:** Delivery dates are approximations and time shall not be of the essence for deliveries with respect to the Contract between Buyer and Seller. Without limiting the generality of the foregoing, if any delivery is delayed, such delivery dates shall be reviewed by Seller, and if, in Seller's sole judgment, delivery is delayed for an unreasonable period of time the Seller may cancel the Contract by written notice to Buyer. In no event shall Seller be liable for consequential, indirect, incidental or punitive damages, loss of use, or for any other damages caused by delays in delivery or cancellation.

**TITLE AND RISK:** Title, risk and possession of the goods which are the subject of this Contract pass to Buyer on delivery EXW (Incoterms 2010) Spirol shipping location, or as otherwise specified in writing by Seller, subject to Seller's continuing first priority lien and purchase money security interest in the goods as security for payment in full of the purchase price, interest, reasonable attorney fees and costs of collection under this Contract. If Buyer does not indicate routing, Seller has the right to specify the routing of all shipments.

**LIMITED WARRANTY:** Seller warrants that all goods sold by Seller to Buyer pursuant to the Contract shall be free from defects in workmanship and materials for the following period of time from the date of shipment: one (1) year for goods other than equipment; one hundred eighty (180) days for goods that are equipment used by Buyer in one eight hour shift; and ninety (90) days for goods that are equipment used by Buyer in more than one eight hour shift. This warranty does not apply unless Buyer gives written notice of any defects within ten (10) days of discovery of the defect. Buyer acknowledges and agrees that its sole and exclusive remedy for any breach of the foregoing warranty shall be the repair by Seller (or replacement, at Seller's sole option) of any material or parts, EXW (Incoterms 2010) Spirol shipping location, without obligation of Seller for installation of the repaired or replacement parts. EXCEPT AS



STATED IN THIS PARAGRAPH, SELLER MAKES NO WARRANTIES WITH RESPECT TO THE GOODS. THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PARTICULAR PURPOSE ARE HEREBY EXCLUDED. Buyer acknowledges that any application assistance provided by Spirol are subject to approval based on Buyer's testing and final approval and that such assistance shall not in any manner affect or expand this limited warranty. Seller may, from time to time, provide recommendations as to the best practices in the testing and usage of Seller's goods. Buyer further acknowledges and agrees that such recommendations shall not in any manner affect or expand this limited warranty.

**LIMITATION OF DAMAGES AND LIMITATION OF LIABILITY.** (a) IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES INCURRED BY BUYER AS THE RESULT OF ANY ACT, BREACH OR OMISSION BY SELLER, EVEN THOUGH SELLER MAY HAVE BEEN ON NOTICE THAT BUYER WOULD INCUR SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, SELLER WILL NOT BE LIABLE FOR BUYER'S LOST PROFITS, LOSS OF USE, DAMAGE TO EQUIPMENT OR PROPERTY, REDUCTION IN MANUFACTURING OUTPUT, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY OR REPUTATION, OR ANY DAMAGES ARISING FROM ANY BREACH OF THE CONTRACT BY SELLER. (b) Further, in no event shall Seller's liability to Buyer exceed the lesser of (i) \$15,000 or (ii) the amount actually paid for the defective goods or services. The limitations of subsections (a) and (b), above, shall remain in full force and effect regardless whether Buyer's sole and exclusive remedy fails of its essential purpose and regardless of the nature of Buyer's claims, be they based in contract, warranty, tort, product liability or otherwise, and expressly applies to any negligent acts or omissions of Seller.

**FORCE MAJEURE:** Seller will not be liable for any delays or losses resulting, directly or indirectly, from Acts of God, severe weather conditions, labor disputes, governmental actions, war, inability to obtain permits, licenses, raw materials or shipments of product, shortages and any other causes or circumstances beyond Seller's control.

**CLAIMS AND ADJUSTMENTS:** Specially manufactured and/ or customized goods are not returnable. No shortage claim or error in shipment will be adjusted unless reported in writing to Seller within ten (10) days of Buyer's receipt of goods. Returns, regardless of reason, will not be accepted without prior written authorization by Seller.

**TIME LIMITATION FOR ACTIONS AND CLAIMS:** Any claim or cause of action with respect to this Contract must be commenced within one (1) year after the claim or cause of action accrues.

**ARBITRATION:** Any controversy or claim arising out of or relating to this Contract, or the goods or services which are the subject hereof, shall be settled by arbitration by one (1) arbitrator in accordance with the Commercial Arbitration Rules of the American



Arbitration Association, in Hartford, Connecticut. The losing party in the arbitration shall pay the arbitrator's fees and costs of arbitration and shall pay the prevailing party's reasonable attorney's fees. The decision of the arbitrator shall be final and binding on the parties and may be entered as a judgment in any court of competent jurisdiction. The arbitration clause includes the right and powers for the arbitrator to decide if a dispute is subject to arbitration.

**VENUE AND GOVERNING LAW:** The parties irrevocably submit to the jurisdiction of Connecticut and waive all objections and defenses to such jurisdiction. The Contract shall be governed by and construed in accordance with the laws of the State of Connecticut without regard to the choice of law provisions of Connecticut state law. In no event shall the United Nations Convention on Contracts for the International Sale of Goods apply to this Contract.

**SOLE AGREEMENT:** This Contract and Seller's Order Acknowledgement, in the form sent to Buyer, constitute the final expression of the parties' agreement, and it is the complete and exclusive statement of the terms and conditions of the Contract. No other oral or written terms are part of this Contract. This Contract may only be modified by a writing signed by both parties.

(Revised March 19, 2013)