



## GENERAL TERMS AND CONDITIONS FOR THE SALE OF GOODS

*Last Revised: June 10, 2020*

### APPLICABILITY

- a. These terms and conditions of sale (these "Terms") govern all Sales of Goods by Metroflor Corporation ("Seller") to a Buyer. Seller and Buyer are identified collectively as the Parties. By placing an order for Goods with Seller, Buyer hereby accepts and agrees to these terms. If the Parties have a written contract between them which covers the sale of the Goods covered by these Terms, the terms and conditions of the contract would prevail in the event that they are inconsistent with these Terms. Seller may amend these terms at any time by posting updated terms on its website.
- b. These Terms prevail over any of Buyer's general terms and conditions of purchase in all cases. Fulfillment of Buyer's order for Goods does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.

### DELIVERY OF GOODS; QUANTITIES

- a. Acceptance of Buyer's purchase order is subject to availability of the Goods. Seller shall not be liable for any delays or failures in shipment or delivery. In the event that ordered Goods are not delivered, Buyer's sole and exclusive remedy is to request replacement Goods from Seller.
- b. Seller may, in its sole discretion and without liability or penalty, make partial shipments of 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.
- c. The quantity of any shipment of 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 to the contrary.
- d. If Seller delivers to Buyer a quantity of Goods of up to ten percent (10%) more or less than the quantity set forth in a 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 on a pro rata basis.
- e. Seller shall deliver the Goods to Buyer as specified on the purchase order or invoice (the "Delivery Point") using Seller's standard methods for packaging and shipping such Goods. Buyer shall take delivery of the Goods upon Seller's or third party freight company's written notice that the Goods have been delivered to the Delivery Point ("Delivery Acceptance Deadline"). Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Goods at the Delivery Point and will promptly unload and release all transportation equipment so that Seller incurs no demurrage or other expense.
- f. On the earlier of the Delivery Acceptance Deadline or Buyer's actual receipt of the delivered Goods: (i) Risk of loss of the Goods shall pass to Buyer; (ii) the Goods shall be deemed to have been delivered to Buyer; and (iii) Buyer shall become liable for all costs of storage and insurance related to the Goods.

### TITLE AND RISK OF LOSS.

Title and risk of loss shall pass 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 which Seller may perfect pursuant to the applicable Uniform Commercial Code.

### BUYER'S ACTS OR OMISSIONS

If Seller's performance related to Sales of Goods is prevented or delayed by any act or omission of Buyer or its agents, subcontractors, consultants, or employees, Seller shall not be deemed in breach of its obligations or otherwise liable for any costs, charges, or losses sustained or incurred by Buyer, in each case, to the extent arising directly or indirectly from such prevention or delay.

### INSPECTION AND REJECTION OF NONCONFORMING GOODS.

- a. Buyer shall inspect the Goods promptly following delivery. Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any Nonconforming Goods or transit losses no later than seven (7) days following delivery and furnishes such written evidence or other documentation as required by Seller. "Nonconforming Goods" means only the following: (i) product shipped is different than as specified in Buyer's purchase order; or (ii) product's 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. With Buyer's cooperation, Seller shall arrange for the return or disposal of the Nonconforming Goods. If Seller exercises its option to replace Nonconforming Goods, Seller shall, after receiving Buyer's shipment of Nonconforming Goods, ship to Buyer the replacement Goods in accordance with these terms. Buyer acknowledges and agrees that the remedies set forth in this Section 5(b) are Buyer's exclusive remedies for the delivery of Nonconforming Goods. Except as otherwise provided in this section, all sales of Goods to Buyer are made on a one-way basis and Buyer has no right to return to Seller any Goods purchased from Seller.

### PAYMENT TERMS.

- a. Unless otherwise mutually agreed in writing, Buyer shall pay all invoiced amounts due to Seller based upon the parties agreed standard payment terms following receipt of Seller's invoice. Buyer shall make all payments hereunder by check, ACH or wire transfer and in U.S. Dollars.
- b. Buyer shall pay interest on all late payments at the lesser of the rate of 1.5% 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 or unpaid amounts, including, without limitation, reasonable attorneys' fees. In addition to all other remedies available under these terms or at law, Seller shall be entitled to suspend the delivery of any Goods and stop Goods in transit if Buyer fails to pay any amounts when due hereunder and such failure continues for five (5) days following written notice thereof.
- c. Buyer shall not withhold or setoff 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 alleged breach, bankruptcy or otherwise.

### LIMITED WARRANTY

- a. (Except as specified in section 10(b), the only warranty applicable to Seller's products purchased by Buyer is specified in Seller's warranty policy in effect at the time of sale, which may be found at the following link: [www.metroflorusa.com](http://www.metroflorusa.com). ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, ARE DISCLAIMED AND NOT APPLICABLE TO THE SALE OF GOODS CONTEMPLATED BY THESE TERMS.
- b. Products manufactured or supplied by a third party ("Third-Party Products") may be sold together with the Goods. Third-Party Products are not covered by Seller's warranty referred to in Section 11(a). For the avoidance of doubt, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY THIRD-PARTY PRODUCT, INCLUDING ANY (i) WARRANTY OF MERCHANTABILITY; (ii) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; (iii) WARRANTY OF TITLE; OR (iv) 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.



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### **LIMITATION OF LIABILITY**

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.

### **INDEMNIFICATION**

Buyer shall reimburse, indemnify, defend and save Seller and its assignees, successors, permitted assigns and affiliates, and each of its and their respective officers, directors, equity holders and managers (each, an "Indemnified Party") harmless from and against any damages, suits, claims, liabilities, costs, expenses, including reasonable attorneys' fees, fines, penalties and/or sanctions arising, including from third parties, directly or indirectly out of (i) any breach of Buyer's covenants, representations, warranties, undertakings or obligations hereunder, (ii) any additional or modified warranty, representation or agreement made by Buyer that does not comply with the published Goods warranties and (iii) any contamination of or damage to the quality, condition or packaging of the Goods caused by Buyer, except to the extent attributable to gross negligence, willful misconduct or bad faith of any Indemnified Party. Seller shall not settle or otherwise compromise any claims of a third party against any Indemnified Party without such Indemnified Party's prior written consent.

### **COMPLIANCE WITH LAW**

Buyer shall comply with all applicable laws, regulations, and ordinances, including licensing and permitting. Buyer shall comply with all export and import laws of all countries involved in the Sale of the Goods or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate or cancel any open orders for Goods in the event that any governmental authority imposes antidumping or countervailing duties or any other duties or penalties on the Goods.

### **TERMINATION**

In addition to any remedies that may be provided under these Terms, Seller may terminate any open orders for Goods with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due; (b) has not otherwise performed or complied with any of these Terms, in whole or in part; or (c) 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. Buyer may not terminate any orders once placed with Seller absent an agreement by Seller in Seller's sole discretion.

### **WAIVER**

No waiver by Seller of any of the provisions of these terms 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 under these terms or at law operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

### **CONFIDENTIALITY**

The Parties agree to keep these terms confidential and take reasonable care not to distribute each other's confidential or proprietary information.

### **FORCE MAJEURE**

The Seller shall not be liable or responsible to Buyer, nor be deemed to have defaulted or breached its obligations, for any failure or delay in fulfilling or performing any term 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, pandemic, public health emergency, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), delays caused by exercise of governmental or civil authority, 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.

### **ASSIGNMENT**

Buyer shall not assign any of its rights or delegate any of its obligations with regard to Sales of Goods without the prior written consent of Seller. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation would relieve Buyer of any of its obligations to Seller.

### **RELATIONSHIP OF THE PARTIES.**

The relationship between the parties is that of independent contractors. Nothing contained in these terms 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.

### **NO FRANCHISE**

The relationship created by Sales of Goods covered by these terms are not, and have not at any time been intended by the parties to constitute the granting of a franchise to Dealer by Agfa. No federal or state franchise statute, law, regulation or rule is intended by the parties to apply to such relationship; nor shall any such franchise statute, law, regulation or rule be deemed as construed to apply to the formation, operation, administration or termination of the relationship between the Parties.

### **GOVERNING LAW AND DISPUTE RESOLUTION**

This Sales of Goods as well as any disputes between the Parties will be governed by Delaware law without regard to its rules regarding conflicts of laws. In the event of any disputes and claims that the Parties cannot amicably resolve, the Parties hereby agree to first attempt to settle the dispute in good faith via mediation, before resorting to litigation. The mediation will be held in Fairfield County, Connecticut and will be conducted by a mediator of Seller's choice. The Parties waive any rights to a trial by jury in any dispute arising out of or related to the transactions contemplated by these terms. The Parties irrevocably and unconditionally agree that they will not commence any action, litigation, or proceeding of any kind whatsoever against any other Party in any way arising from or relating to the Sales of Goods in any forum other than the federal and state courts of the State of Connecticut, Fairfield County. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of in Connecticut. Each Party agrees that a final judgment in any such action, litigation, or proceeding is conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

### **SEVERABILITY**

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