

SGL GROUP – US COMPANIES (“SELLER”) - TERMS AND CONDITIONS OF SALE

NOTICE: THIS SALES TRANSACTION, INCLUDING, BUT NOT LIMITED TO, ANY OFFER, QUOTATION, ORDER CONFIRMATION, ORDER ACCEPTANCE, OR INVOICE FOR THE SALE OF ANY PRODUCTS THEREIN (“PRODUCTS”) (COLLECTIVELY, “ORDER”) IS SUBJECT TO AND CONDITIONED UPON ACCEPTANCE OF THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY A PURCHASER OF PRODUCTS (“PURCHASER”), ARE OBJECTED TO BY, AND WILL NOT BE BINDING UPON, SELLER. THESE TERMS AND CONDITIONS OF SALE ARE INCORPORATED INTO THIS ORDER AND SHALL APPLY TO THIS ORDER WHETHER OR NOT THEY APPLIED TO A PRIOR PURCHASE BY PURCHASER, UNLESS EXPLICITLY OBJECTED TO IN WRITING BY PURCHASER, WHICH WRITING MUST BE RECEIVED BY SELLER WITHIN FIVE (5) DAYS AFTER THE DATE OF THIS DOCUMENT AND MUST BE SUBSEQUENTLY AGREED TO IN WRITING BY SELLER TO APPLY TO THIS ORDER. SELLER’S SILENCE OR FAILURE TO RESPOND TO ANY SUCH TERMS OR CONDITIONS PROPOSED BY PURCHASER SHALL NOT BE DEEMED AN ACCEPTANCE OR APPROVAL OF SUCH ADDITIONAL TERMS OR CONDITIONS THEREOF.

- 1. Acceptance.** All Orders received by SELLER are subject to final acceptance or confirmation by SELLER and no terms or Orders are binding upon SELLER until so accepted in writing by SELLER. Neither the conduct of the SELLER nor any prior course of dealing between the SELLER and PURCHASER shall be deemed acceptance of an Order.
- 2. Deliveries.** Unless otherwise specified by SELLER in writing, all deliveries are CPT PURCHASER’S facility designated on the face of this Order (Incoterms® 2010) Freight Prepaid and Invoiced. All deliveries shall be via common carrier or some other reasonable means chosen by SELLER. All risk of loss to PRODUCTS shall pass to PURCHASER by SELLER upon delivery of such PRODUCTS to a common carrier. Delivery is conditional on PURCHASER’S compliance with these terms and on the timely receipt by SELLER of documents necessary for the completion of an Order and of any down payment. Partial deliveries of PRODUCTS are permissible. SELLER will not be liable for any delay in the performance of Orders, or in the delivery or shipment of PRODUCTS, or for any damages suffered by PURCHASER by reason of such delay. Delivery is subject to PURCHASER maintaining credit satisfactory to SELLER. SELLER may suspend or delay performance or delivery at any time pending receipt by SELLER of assurances from PURCHASER of the ability of PURCHASER to pay, including the payment to SELLER of the purchase price of PRODUCTS, in full or in part, or the payment to SELLER of any outstanding amounts owed to SELLER. Failure of PURCHASER to provide such assurances to SELLER shall entitle SELLER to delay delivery and/or cancel this Order or any other Order without further liability or obligation to PURCHASER.
- 3. Prices.** Unless otherwise specified by SELLER in writing, prices and quantities are quoted CPT PURCHASER’S facility (Incoterms® 2010) excluding freight costs. Prices are subject to change by SELLER without notice to PURCHASER. Prices are for custom, made-to-order PRODUCTS and PURCHASER shall be responsible for the total price of all PRODUCTS once an Order is accepted by SELLER. Unless otherwise specified, prices do not include any packing or handling charges, any sales, use, excise, privilege, or similar tax, or any export or import tax or duty levied by any government; and PURCHASER shall pay any such applicable charges, taxes, and duties. Upon the request of SELLER, PURCHASER shall provide SELLER with a tax exemption certificate acceptable to the appropriate taxing authorities.
- 4. Terms of Payment.** Unless otherwise specified by SELLER in writing, the purchase price shall be due in full by PURCHASER upon tender of delivery of PRODUCTS. Extension of credit, if any, may be changed or withdrawn by SELLER at any time. Invoices not paid within thirty (30) days after their due date will be subject to carrying charges. Carrying charges shall accrue and be added to the unpaid balance at the rate of one and one-half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever rate is less. PURCHASER shall reimburse SELLER for the costs of collection, including, without limitation, reasonable attorneys’ fees, of any overdue amount owed by PURCHASER to SELLER, and such collection costs shall also be subject to carrying charges. PURCHASER may not retain or set-off any amounts owed to SELLER in satisfaction of any claims asserted by PURCHASER against SELLER.
- 5. Claims and Return of PRODUCTS.** Within ten (10) days after PURCHASER’S receipt of PRODUCTS, PURCHASER must give written notice to SELLER of any claim by PURCHASER based upon the condition, grade, or quantity of PRODUCTS; such notice must indicate the basis of the claim in detail. PURCHASER’S failure to comply with this paragraph shall constitute irrevocable acceptance by PURCHASER of PRODUCTS as delivered and shall bind PURCHASER to pay to SELLER the full price of such PRODUCTS. PRODUCTS shall not be returned to SELLER without SELLER’S prior written consent; and transportation charges for any authorized returns of PRODUCTS shall be pre-paid by PURCHASER.
- 6. Cancellation/Changes.** PURCHASER may not cancel or change an Order once placed with and accepted by SELLER except with the prior written consent of SELLER and upon terms that will indemnify SELLER against any loss. SELLER may correct mathematical or clerical errors. SELLER may make any technical changes to PRODUCTS as SELLER may deem necessary.
- 7. Excusable Delays.** SELLER shall not be liable for delays or failure to perform due, directly or indirectly, to causes beyond SELLER’S control, including the inability of SELLER’S suppliers to deliver goods, services, or raw materials necessary for SELLER to perform an Order, acts (including failure to act) of any governmental authority, wars (declared or undeclared), strikes or other labor disputes, fires, and natural calamities (such as floods, earthquakes, storms, and epidemics). In the event any such circumstance affects only a part of SELLER’S capacity to produce and/or deliver PRODUCTS, SELLER will allocate production and/or deliveries among the requirements of its customers and SELLER’S own requirements in such manner as SELLER shall deem to be fair and equitable.
- 8. Selection and Application.** PURCHASER is solely responsible for proper selection and application of PRODUCTS. PURCHASER agrees that it will use and apply PRODUCTS only for their intended uses and according to specifications and limitations established by SELLER from time to time. PURCHASER shall indemnify and hold SELLER harmless from and against any and all damages, claims, or expenses (including reasonable attorneys’ fees) arising out of or relating to improper selection, application, or abuse of PRODUCTS, or use or application of PRODUCTS other than according to specifications and limitations established by SELLER from time to time.
- 9. EXCLUSION OF WARRANTIES, NO EXPRESS WARRANTY AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR OTHERWISE, SHALL APPLY TO PRODUCTS.**
- 10. LIMITATION AND EXCLUSION OF DAMAGES. IN NO EVENT SHALL SELLER’S LIABILITY TO PURCHASER EVER EXCEED THE PURCHASE PRICE PAID BY PURCHASER TO SELLER FOR PRODUCTS. SELLER SHALL NOT BE LIABLE TO PURCHASER FOR INJURIES, LOSSES, OR DAMAGES RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF PURCHASER, NOR SHALL SELLER BE LIABLE TO PURCHASER, IN ANY EVENT, FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN PRODUCTS, AND ANY USE OF PRODUCTS, OR FROM PURCHASER’S INABILITY TO USE PRODUCTS, OR OTHERWISE.**
- 11. Proprietary Information.** SELLER retains ownership of all intellectual property rights, including, without limitation, patents, trademarks, trade names, trade secrets, and copyrights, and of all drawings, illustrations, dimensions, specifications, copyrights, and performance projections, designs, plans, price lists, customer lists, computations, and descriptions prepared by SELLER in connection with or relating to PRODUCTS (“Proprietary Information”). PURCHASER shall not copy or disclose to any other persons or use for any purpose whatsoever any or all of the Proprietary Information without SELLER’S prior written consent. PURCHASER shall not analyze the chemical composition or the microstructure of the PRODUCTS.
- 12. Patents, Trade Secrets, and Copyright Indemnity.** PURCHASER shall hold SELLER harmless against any claim, and at PURCHASER’S expense defend any suit or proceeding, brought against SELLER based on an allegation that any of the designs, drawings, specifications provided by PURCHASER to SELLER, or any PRODUCTS resulting therefrom, or any part thereof, or the application or use of PRODUCTS for the intended purpose, constitute an infringement of any patent or copyright or misappropriation or misuse of any trade secret.
- 13. Security Agreement.** PURCHASER hereby grants to SELLER a purchase money security interest in PRODUCTS and to the proceeds thereof. PURCHASER shall execute and deliver any financing statements and other documents that SELLER may reasonably require for the protection of the security interest hereby granted to SELLER by PURCHASER, and PURCHASER hereby authorizes SELLER to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of such security interest. PURCHASER shall maintain adequate insurance against casualty, loss, fire, or theft of PRODUCTS for so long as the security interest is in effect.
- 14. Assignment.** PURCHASER may not assign its rights or obligations hereunder without the prior written consent of SELLER and any purported assignment by PURCHASER without the consent of SELLER shall be of no effect. SELLER may assign this Order to (i) any subsidiary company controlled by SELLER or (ii) the successor of all or substantially all of SELLER’S business or the business division to which this Order relates, without prior written consent of the PURCHASER. This Order shall inure to the benefit of and be binding upon each of the parties hereto and its successors and assignees.
- 15. Limitations.** Any action by PURCHASER under this Order or relating to PRODUCTS must be commenced within one (1) year after acceptance by SELLER of the respective Order at issue.
- 16. Choice of Law.** This Agreement and any dispute or claim relating to it shall in all respects be governed by and construed according to the laws of the State of North Carolina, excluding its conflict of law principles.
- 17. Choice of Forum, Venue, and Consent to Jurisdiction.** Except with respect to an action instituted by SELLER for equitable relief, including, without limitation, an action for temporary or permanent injunctive relief, PURCHASER and SELLER agree that the General Courts of Justice of the State of North Carolina and the United States District Courts situated in Charlotte, North Carolina, shall constitute the exclusive forum(s) for the adjudication of any and all disputes or controversies arising out of or relating to this Order or to PRODUCTS. PURCHASER and SELLER consent to the exercise of jurisdiction over them by such courts with respect to any dispute or controversy, and PURCHASER and SELLER waive any objection to the assertion or exercise by such court of such jurisdiction.
- 18. Construction of Agreement.** The provisions contained in this Order are incorporated into these terms and conditions of sale by reference, and in the event any provisions of this Order conflict with any provisions of these terms and conditions, the provisions of this Order shall control (with the other provisions of these terms and conditions continuing to apply to this Order). These terms and

conditions of sale may not be amended, modified, or supplemented except by written agreement executed by PURCHASER and SELLER. The provisions of this Order are hereby deemed by the parties to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision. PURCHASER and SELLER acknowledge that these terms and conditions of sale, together with the Order, constitute the entire Agreement between PURCHASER and SELLER with regard to the sale or transfer of PRODUCTS, and supersede all prior oral or written statements of any kind made by the parties or their representatives.