

PGP INTERNATIONAL INC.'S TERMS AND CONDITIONS OF SALE

1. **Terms to Govern.** These Terms and Conditions of Sale ("Terms and Conditions") shall constitute the sole terms and conditions of sale of PGP International Inc.'s ("PGPI") products ("Products") to Buyer. No terms or conditions, other than those stated herein, whether contained in Buyer's purchase order or elsewhere, shall be binding on PGPI unless agreed to in a writing signed by PGPI and specifying that such other terms and conditions supersede these Terms and Conditions. Buyer's acceptance of delivery of Products constitutes (without prejudice to any other manner of acceptance) Buyer's unqualified acceptance of these Terms and Conditions.

2. **Title.** Title and risk of loss shall pass to Buyer upon delivery of the Products to the Buyer or its carrier at the designated shipping point.

3. **Purchases Orders/Non-cancelable Orders.** For each purchase of Products, Buyer shall issue a purchase order with a delivery date within the lead time requirement established by PGPI for each Product. Unless otherwise expressly permitted by PGPI in writing, a purchase order becomes firm, non-cancelable and not changeable when PGPI commences production of the Products identified on an applicable purchase order for Buyer ("Non-cancelable Order"). PGPI will invoice Buyer for the Products produced under Non-cancelable Orders on the date the Products are available for delivery to the applicable, designated shipping point. Buyer acknowledges and agrees that prices for Product may fluctuate for reasons beyond PGPI's control, including but not limited to the imposition of trade tariffs, Buyer agrees that PGPI will pass along any upcharges to Buyer and Buyer shall pay the same. Buyer shall pay when invoiced by PGPI any and all storage, demurrage or other similar costs and expenses assessed by PGPI, including without limitation, a \$10 per pallet per occurrence staging fee and a \$15 per pallet per week storage fee due to Buyer's failure to take delivery of some or all of the Products purchased by Buyer under a Non-cancelable Order on the date of delivery of such Products to the applicable, designated shipping point.

4. **Delivery.** Any shipping schedule provided by PGPI to Buyer is PGPI's then current estimate of delivery dates. PGPI will use reasonable efforts to deliver the Products in accordance with that schedule, but does not warrant or guarantee any particular delivery date. If (a) Buyer requests a delivery date earlier than PGPI's lead time for the requested Product and/or (b) Buyer requires a delivery that is less than PGPI's minimum load requirement and/or (c) Buyer requires delivery of Product on a date and time other than a date and time for Buyer's location on PGPI's standard delivery schedule, Buyer agrees to pay the incremental transportation and handling costs, including applicable fuel surcharges, if any, related to such delivery.

5. **Payment Terms/Late Charges/Disputed Invoices.** Buyer shall pay PGPI the amounts set forth on each correct and undisputed invoice within thirty (30) days of the date of the invoice. Timely payment is of the essence. If Buyer fails to make any payment in accordance with this Section 5, PGPI may assess and collect a late charge on past due amounts, from the due date until the date paid, equal to the lesser of (a) one percent (1%) per month or (b) the highest rate of interest allowed by law. Any invoice disputes must be presented to PGPI within thirty (30) days of the invoice date. If Buyer disputes in good faith the validity of part or all of an invoice, Buyer shall remit to PGPI payment of the undisputed portion when due. The parties agree to negotiate a reasonable settlement for any invoice disputes promptly and in good faith; provided, that this provision shall not be deemed a waiver by PGPI of the right to seek full payment of the invoiced amount. Late charges will not apply to any balances contested in good faith; provided Buyer does not unreasonably withhold or delay negotiations regarding settlement of the dispute. All payments will be made in full without deduction or setoff of any kind. Restrictive endorsements or other statements on checks will not apply to PGPI.

6. **Breach/Termination.** If Buyer fails to make any undisputed payment when due, Buyer acknowledges and agrees that PGPI may, but is not obligated to, take any and/or all of the following actions: (a) place Buyer's account on an order-by-order credit review process (order fulfillment will be delayed and PGPI shall not be deemed responsible for such delay); (b) assess the permitted late charges; (c) suspend shipments until all past due amounts are paid; (d) revoke or limit credit privileges or otherwise revise credit terms; (e) require cash in advance of shipment; (f) retake the goods; and/or (g) pursue any other actions and remedies available to PGPI at law or in equity. PGPI's exercise of any of the foregoing actions shall not preclude PGPI from taking any other action and/or availing itself of any other remedy at law or in equity at a later date. Buyer agrees to pay all of PGPI's reasonable costs and expenses incurred in collecting delinquent amounts, including but not limited to, reasonable attorney's fees, collection agency fees and court costs.

7. **Limited Warranties/Disclaimer of Warranties.** PGPI represents and warrants that each Product will, at the time of shipment, be in conformity with (a) PGPI's then current specifications for the Product; (b) current U.S. Good Manufacturing Practices promulgated by the FDA under the United States Food Drug and Cosmetic Act, 21 C.F.R. §§ 110 et seq., as amended, and the rules and regulations promulgated pursuant thereto (the "Act"); and (c) all other applicable federal, state, provincial and local laws, rules and regulations, as the same may be amended from time to time. Should any Product fail to conform to the express warranties set forth in this Section 7, Buyer shall notify PGPI in a writing sufficiently describing such non-conformity within thirty (30) days after delivery of the affected Product. All warranty claims not received by PGPI when and as specified in the preceding sentence shall be deemed waived. Upon receipt of Buyer's notification of non-conforming Product, PGPI may (but is not obligated to) inspect, analyze and test the Product, and Buyer shall cooperate fully with PGPI's reasonable requests. If PGPI agrees that the Product does not conform to one or more of the warranties set forth in this Section 7 and that such non-conformity occurred prior to shipment to Buyer, PGPI will, at its option, either replace the nonconforming Product or refund the applicable portion of the purchase price paid by Buyer for the nonconforming Product (exclusive of freight, insurance and other charges). Except for PGPI's obligations under Section 9 (Product Recall), this Section 7 sets forth Buyer's sole and exclusive remedy for breach of any warranties related to the Product. **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 7, PGPI MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE PRODUCTS, AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, PGPI SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.** These warranty disclaimers survive the termination of these Terms and Conditions.

8. **Limitations of Liability.** Buyer shall only be entitled to claim damages or compensation of costs incurred, regardless of legal theory, (a) to the extent caused by PGPI's gross negligence or willful misconduct, or (b) in the event of PGPI's ordinary negligence, to the extent caused by a breach by PGPI of a material obligation set forth herein. **EXCEPT AS EXPRESSLY PROVIDED BELOW AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL PGPI BE LIABLE TO BUYER, IN CONTRACT, TORT OR OTHERWISE (INCLUDING BUT NOT LIMITED TO NEGLIGENCE, WARRANTY AND STRICT LIABILITY) FOR ANY LOSS OF BUSINESS, REVENUE, PROFITS, GOODWILL, USE, DATA, ELECTRONICALLY TRANSMITTED ORDERS, OTHER ECONOMIC ADVANTAGE OR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR INCIDENTAL DAMAGES OF ANY KIND WHATSOEVER EVEN IF PGPI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PGPI SHALL NOT BE LIABLE FOR ANY DAMAGES IN CONNECTION WITH THE DELIVERY OR NON-DELIVERY OF ANY PRODUCT, INCLUDING BUT NOT LIMITED TO DAMAGES INCURRED DURING SHIPMENT OR CAUSED BY A DELAY IN DELIVERY. BUYER'S ACCEPTANCE OF DELIVERY OF ANY PRODUCT CONSTITUTES A WAIVER OF ANY CLAIM FOR DELAY. IN NO EVENT WILL PGPI'S AGGREGATE LIABILITY TO BUYER EXCEED THE PURCHASE PRICE FOR THE PRODUCTS THAT GAVE RISE TO THE DAMAGES. THE LIMITATIONS, EXCLUSIONS AND**

DISCLAIMERS SET FORTH HEREIN SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS ITS ESSENTIAL PURPOSE. THIS SECTION 8 SHALL SURVIVE THE TERMINATION OF THESE TERMS AND CONDITIONS. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS OF LIABILITY SET FORTH IN THIS SECTION 8 DO NOT APPLY TO A PARTY'S DUTIES AND OBLIGATIONS UNDER SECTION 9 (PRODUCT RECALL) OF THESE TERMS AND CONDITIONS.

9. **Product Recall.** PGPI shall have the right at any time to order the recall, withdrawal or stock recovery of any of the Product(s) for Good Cause, as defined below. Buyer shall have the right at any time to order and direct the recall, withdrawal or stock recovery of any of its products in which the Product(s) is/are an ingredient at any time. Buyer shall only be entitled to the relief provided in this Section 9 to the extent such recall, withdrawal or stock recovery arises from a Good Cause relating to the Product(s) ("Qualified Buyer Products"). The parties also acknowledge that the Product(s) and/or Qualified Buyer Products may be subject to seizure by a governmental or regulatory authority for Good Cause relating to the Product(s). Each party agrees to notify the other party promptly if it decides to recall, withdraw or conduct a stock recovery of a Product or Qualified Buyer Product for Good Cause or if a governmental agency takes or threatens to take adverse action against a Product or Qualified Buyer Product. Each party agrees to cooperate fully with the other party and any governmental or regulatory authority in implementing any such recall, withdrawal or seizure of any Product or Qualified Buyer Product. "Good Cause" means that PGPI's Product is (a) found by any federal, state or local governmental authority to be in violation of the Act or other applicable state laws due to PGPI's negligent or unlawful acts or omissions or willful misconduct and/or (b) harmful to the health of the general public due to PGPI's negligent or unlawful acts or omissions or willful misconduct (each a "Good Cause"). The reasonable out-of-pocket costs and expenses associated with any recall, withdrawal or seizure of the Product(s) or Qualified Buyer Product(s) for Good Cause (including, all reasonable transportation, storage, testing and inspection costs and attorneys' fees and costs) shall be shared in proportion to each party's relative fault with respect to the recall, withdrawal, stock recovery or seizure.

10. **Export Compliance.** Buyer shall, at all times, be solely and exclusively responsible for obtaining and retaining all information and documentation that is necessary to comply with applicable customs and export and import requirements of each country from which the Product will be exported and each country and state or province into which the Product will be delivered. Under no circumstances shall PGPI be identified as or deemed the importer of record.

11. **Force Majeure Events.** PGPI shall not be considered in default of its obligations to the extent that the performance of its obligations is prevented or delayed by an event or cause beyond its reasonable control, including without limitation, fires, floods, hurricanes, ice or snow, or other acts of God, strikes, lockouts, acts of civil or military disturbances, insurrections, wars (declared and undeclared), terrorist acts, embargoes, trade tariffs and other governmental actions, raw materials shortages, container or transportation shortages or other similar causes which prevent or delay PGPI's ability to secure products, materials, fuel, supplies or power at reasonable prices or in sufficient amounts through usual sources of supply (collectively "Force Majeure Events"). In the event that PGPI is unable to deliver Product hereunder because of any Force Majeure Event, PGPI shall give priority to and allocate its available supply equitably among its contract buyers, including its affiliates. Quantities adversely affected by the Force Majeure Event may be eliminated from the order.

12. **Waiver of Jury Trial.** EACH PARTY TO THE EXTENT PERMITTED BY LAW KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY ACTION OR LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THESE TERMS AND CONDITIONS AND THE TRANSACTIONS IT CONTEMPLATES. THIS WAIVER APPLIES TO ANY ACTION OR LEGAL PROCEEDING, WHETHER SOUNDING IN CONTRACT, TORT STRICT LIABILITY OR OTHERWISE.

13. **No Waiver.** It is agreed that either party may waive any default only by written notice to the other party but such waiver shall not limit or affect a party's rights upon any other default; such waiver(s) shall not establish a course of dealing or constitute a waiver of any other term or condition or of performance on any other occasion.

14. **Severability.** If any provision of these Terms and Conditions is deemed invalid or unenforceable, it shall be deemed modified to the extent necessary to eliminate its invalidity or unenforceability, and the parties shall substitute for the invalid or unenforceable provision a valid, enforceable provision that closely approximates the intent and economic effect of the invalid or unenforceable provision.

15. **Assignment.** Buyer may not assign these Terms and Conditions to any third party without the prior written consent of PGPI, which shall not be unreasonably withheld, conditioned or delayed; provided, that Buyer may assign these Terms and Conditions to its parent or an affiliate without PGPI's prior written consent. These Terms and Conditions shall be binding on and shall inure to the benefit of the parties and their successors and permitted assigns.

16. **Notices.** Notices to PGPI shall be sent to: 351 Hanson Way, Woodland, CA 95776. Attention: CEO and a copy of such notices shall be sent to ABF North America Corp., One Parkview Plaza, Suite 500, Oakbrook Terrace, Illinois 60181, Attention: PGPI Legal Counsel. Notices to Buyer shall be sent to:

_____ . A notice shall be deemed to have been properly given (a) when delivered personally; (b) upon the date of delivery shown on a reputable overnight courier's electronic tracking records; (c) three business days after having been mailed postage prepaid, certified mail, return receipt requested; or (d) when sent by confirmed facsimile transmittal with a confirmation sent promptly by one of the other permitted means of delivering notices or (e) by email, assuming no error in delivery message is received. Any party may change its recipient or address for receipt of notices by submitting promptly the change in writing to the other party.

17. **Amendments.** These Terms and Conditions may be modified or amended only by a written addendum signed by authorized representatives of both parties and delivered in accordance with Section 16. No oral or verbal agreement or email communication, text message or other similar electronic or digital communication attempting or purporting to amend any provision of these Terms and Conditions will have any force or effect.

18. **Governing Law; Forum Selection; Limitation on Actions.** These Terms and Conditions, their construction, all rights and obligations between the parties hereunder and any and all disputes arising out of or relating to the subject matter herein (including all tort claims) will be governed by the substantive laws of the United States of America and to the extent applicable the laws of the State of California without regard to the conflicts of laws principles thereof. The parties agree that the United Nations Convention on Contracts for the Sale of Goods and the Incoterms 2010 shall not apply to these Terms and Conditions or to the rights and obligations between the parties hereunder. Excluding claims to collect amounts due and owing to a party from the other party, any litigation or other legal proceeding of any kind based upon or in any way related to these Terms and Conditions must be brought within two (2) years after the date on which the claim accrued.

19. **Entire Agreement.** These Terms and Conditions constitutes the entire understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements and understandings.