

LOPAREX LLC
TERMS AND CONDITIONS OF SALE

NOTICE: THE OFFER, ORDER CONFIRMATION, ORDER ACCEPTANCE, OR SALE OF THE PRODUCTS DESCRIBED IN THE PURCHASE ORDER(S) AND/OR INVOICE(S) (THE "DOCUMENTS") IS SUBJECT TO AND CONDITIONED UPON ACCEPTANCE BY PURCHASER OF THE TERMS CONTAINED IN THE DOCUMENT(S). ANY ADDITIONAL – OR DIFFERENT TERMS PROPOSED BY PURCHASER ARE OBJECTED TO BY AND WILL NOT BE BINDING UPON LOPAREX LLC ("LOPAREX") UNLESS SPECIFICALLY ASSENTED TO IN WRITING BY LOPAREX. UNLESS EXPLICITLY OBJECTED TO BY PURCHASER IN A WRITING RECEIVED BY LOPAREX NOT LATER THAN FIVE (5) DAYS AFTER THE DATE OF THE DOCUMENT(S), THESE TERMS AND CONDITIONS OF SALE SHALL APPLY TO THE DOCUMENT(S) WHETHER OR NOT THEY APPLIED TO A PRIOR PURCHASE BY PURCHASER.

1. **Acceptance.** LOPAREX shall confirm its acceptance of the Order via written acknowledgement, and any subsequent changes in the Order permissible under these Terms and Conditions shall be confirmed through revised acknowledgements. Purchaser must notify LOPAREX immediately upon review of said acknowledgements of any inaccuracies, otherwise, the Order will be filled in accordance with the final acknowledgement and will be considered as having been approved by Purchaser. All quotations are made and all Orders are accepted subject to applicable regulations and Orders of governmental agencies and are subject to final acceptance or confirmation by LOPAREX and no terms of Orders are binding upon LOPAREX until so accepted.

2. **Deliveries.** Unless otherwise specified by LOPAREX in writing, all deliveries shall be F.O.B. LOPAREX's place of business (UCC Terms). All deliveries shall be made via common carrier or some other reasonable means chosen by LOPAREX. All risk of loss to Products sold shall pass to Purchaser upon delivery by LOPAREX of such Products to a common carrier. Delivery schedules represent LOPAREX's estimates only, and partial deliveries are permissible. LOPAREX shall not be liable for any delay in the performance of Orders or contracts, 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 LOPAREX. LOPAREX may suspend or delay performance of delivery at any time pending receipt of assurances adequate to LOPAREX in LOPAREX's sole discretion, of Purchaser's ability to pay, including, without limitation, full or partial prepayment or payment of any outstanding amounts owed. Failure to provide such assurances shall entitle LOPAREX to cancel this contract without further liability or obligation to Purchaser.

LOPAREX shall not be liable for delays or defaults in delivery as a result of a force majeure circumstance. Force Majeure means any event or condition, not existing as of the date of execution of this Agreement and not reasonably within the control of LOPAREX, which prevents in whole or in material part the performance by LOPAREX of its obligations hereunder, or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following may constitute acts or events of a Force Majeure; acts of state or governmental action, orders,

legislation, regulations, restrictions, priorities or rationing riots, disturbance, war (declared or undeclared), strikes, lockouts, shutdowns, prolonged shortage of energy supplies, interruption, embargo, inability to procure or shortage of supply of materials, equipment or production facilities, prohibition of import or export of goods and services covered by this Agreement, epidemics, fire, flood, hurricane, typhoon, earthquake, lightning and explosion. LOPAREX shall promptly notify the Purchaser of any Force Majeure problems, and shall use best efforts to restore performance as soon as possible, keeping the Purchaser apprised of such efforts; provided, however, that this shall not apply to Purchaser's payment obligations as set forth herein.

3. **Prices.** Unless otherwise specified by LOPAREX in the Documents, prices are quoted F.O.B. LOPAREX's place of business (UCC Terms). Prices are subject to adjustment up to the date of final shipment to Purchaser as may be deemed necessary by LOPAREX to reflect changes in cost of materials, cost of freight as applicable, and cost of manufacturing. Prices do not include sales, use, excise, privilege, import duties, or any similar tax levied by government, and Purchaser shall pay any such applicable tax.

Orders for non-standard or special Products manufactured to Purchaser's specifications may be cancelled only prior to the commencement of manufacture and to the extent that LOPAREX is able to effect cancellation of materials Ordered for the manufacture of such Products.

4. **Terms of Payment.** Unless otherwise specified by LOPAREX on the front side of this document, the purchase price for Products shall be due in full by Purchaser on tender of delivery of Products. Extension of credit, if any, may be changed or withdrawn by LOPAREX at any time in LOPAREX's sole discretion. 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 in the amount of one and one half percent (1 – ½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever is less. Purchaser shall reimburse LOPAREX including, without limitation, reasonable attorneys fees, of any overdue amount owed by Purchaser to LOPAREX. Purchaser may not hold back or set-off any amounts owed to LOPAREX in satisfaction of any claims asserted by Purchaser against LOPAREX.

If Purchaser fails to fulfill the terms of payment of any Order placed with LOPAREX, LOPAREX may defer further manufacture or shipment of Orders until such payment is made or at its option, cancel this Order.

5. **Returned Products and Claims.** Within five (5) days after Purchaser's receipt of Products, Purchaser must give written notice to LOPAREX of any claim by Purchaser based on the condition, quantity, or grade of Products or of any claimed nonconformity with Purchaser's specifications. Purchaser's failure to comply with this Section 5 shall constitute irrevocable acceptance by Purchaser of such Products and shall bind Purchaser to pay to LOPAREX the full price of such Products. Accepted Products shall not be returned without LOPAREX's prior written consent.

6. **Cancellation/Changes.** Purchaser may not cancel or change an Order once placed with and accepted by LOPAREX except with the prior written consent of LOPAREX and upon terms that will indemnify LOPAREX against any loss.

7. **Limited Warranty.** LOPAREX warrants the Products to be free from defects in material and workmanship for a period of six (6) months from the date of sale by LOPAREX. Except for this warranty and the warranty against patent and trademark infringement provided in Section 9 hereof, there are no other warranties which extend beyond the description on the face hereof, and LOPAREX MAKES NO WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR OTHERWISE WITH RESPECT TO THE PRODUCTS, whether used singly or in combination with other substances or in any process, except that the Products sold hereunder shall conform to LOPAREX'S standard specifications. LOPAREX shall not be liable to Purchaser or anyone claiming through Purchaser for any special, indirect, incidental or consequential damages of any kind whatsoever, whether such damages arise out of the use, failure of, defects in, delay in delivery of or nondelivery of the Products or otherwise. LOPAREX's liability for defective workmanship shall in no event exceed the lesser of (i) the contract price of defective Products delivered or (ii) in situations where reworking of the Products will, in LOPAREX's sole discretion, correct the defect, the cost of direct labor, materials and transportation charges involved in such reworking. LOPAREX assumes no liability with respect to any recommendations, technical advice or assistance furnished by LOPAREX covering the use of the Products.

8. **Patent.** Purchaser shall, at its expense, indemnify and hold LOPAREX harmless from and against any claim, liability, expense (including reasonable attorneys fees) or loss resulting from any infringement of any patent, trademark, copyright, or other property interest of a third party arising out of LOPAREX's compliance with any of Purchaser's designs, specifications, or instructions. If LOPAREX requests, Purchaser shall defend LOPAREX at Purchaser's sole expense, in any suit brought against LOPAREX alleging such infringement, provided that LOPAREX gives Purchaser prompt notice of such suit, and LOPAREX gives reasonable assistance, at Purchaser's sole expenses, to Purchaser with such suit.

9. **Ownership of Drawings, Patents and Other Property.** All trade secrets, drawings, illustrations, negatives, litho positive, rotogravure cylinders, flexographic plates, embossing and leaf stamping dies, dimensions, specifications, performance projections, designs, plans, computations, and descriptions prepared by LOPAREX in connection with any work, quotation, or contract, whether of Products or general engineering or other arrangements are LOPAREX's property and must not be copied or disclosed to any other persons or used for any purpose whatsoever without LOPAREX's prior written consent. Any patent or registered designs developed or otherwise acquired by LOPAREX shall be the property of LOPAREX. Artwork, composition, photography and comprehensives which are billed to and paid for by Purchaser shall be released to Purchaser on request; however, LOPAREX will not be responsible for any such materials left in its possession and not used for more than two years. LOPAREX warrants that any Products sold pursuant to this contract, except as the same are made specifically for Purchaser according to Purchaser's specifications do not infringe any valid U.S. patent or trademark. This warranty is given upon condition that Purchaser promptly notify LOPAREX of any claim or suit involving Purchaser in which such infringement is alleged, that Purchaser

permit LOPAREX to control completely the defense or compromise of any such allegation or infringement and that Purchaser provide LOPAREX such reasonable assistance in response and prosecution of any defense as LOPAREX may request, at LOPAREX's expense. LOPAREX reserves the right to discontinue shipments of any Products the manufacture, sale or use of which in LOPAREX's opinion would involve patent or trade-mark infringement.

10. **Overruns.** LOPAREX reserves the right to deliver an overrun or underrun not to exceed the range specified in the Document(s).

11. **Storage.** If the Products are not shipped within 15 days of Purchaser's original requested shipment date, or after notification to the Purchaser that they are ready for shipping, for any reason beyond LOPAREX's reasonable control, including but not limited to Purchaser's failure to give shipping instructions, LOPAREX may store Products at the Purchaser's risk in a warehouse or yard or upon LOPAREX's premises, and the Purchaser shall pay all handling, transportation and storage charges at the prevailing commercial rates upon submission of invoices therefor.

12. **Designs.** All Product designs shall be approved by Purchaser prior to manufacture. Any errors in Product design, where the samples have been approved by Purchaser, shall be Purchaser's responsibility.

13. **Assignment.** Purchaser may not assign its rights or obligations hereunder without the prior written consent of LOPAREX and any purported assignment without such consent shall be of no effect.

14. **Choice of Law.** This document and any dispute or claim relating to it shall in all respects be governed by and construed in accordance with the laws of the State of North Carolina without regard to any conflicts of law provisions or issues. Unless LOPAREX elects to arbitrate pursuant to paragraph 16, all disputes arising under this document shall be brought in the state courts of Wake County, North Carolina, or in the United States District Court for the Eastern District of North Carolina.

15. **Jury Waiver.** Purchaser agrees at LOPAREX's option to waive trial by jury in any action between them arising out of this document.

16. **Arbitration.** At LOPAREX's option, any controversy or claim arising out of or relating to this document shall be settled by arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. The arbitrators shall have no right to award punitive or exemplary damages.

17. **Entire Agreement.** The provisions contained in the Document(s) are incorporated into these terms and conditions of sale by reference. Purchaser and LOPAREX acknowledge that these Terms and Conditions of Sale, together with LOPAREX's Document(s), constitute the entire agreement between the Purchaser and LOPAREX 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. These Terms and Conditions of Sale may not be amended, modified or

supplemented except by written agreement executed by the Purchaser and LOPAREX. The Terms and Conditions of Sale 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.