



General Terms and Conditions of Sale and Delivery

valid from January 1, 2009

1. Acceptance.

1.1 Sales by Folien Fischer USA, Inc. (the "Vendor") of any products (the "Products") are made on the following terms and conditions (the "General Terms and Conditions").

1.2 These General Terms and Conditions shall take precedence over any terms and conditions of Buyer, and Vendor shall not be bound by Buyer's terms and conditions unless expressly agreed to in writing, and any and all pre-printed or standard Buyer's terms that are inconsistent with or additional to these General Terms and Conditions terms are hereby rejected.

1.3 No orders submitted by Buyer are binding on Vendor unless accepted by Vendor in a written order confirmation (the "Order Confirmation"). Buyer's acceptance of a quotation or issuance of a purchase order, shipping order or similar request for delivery of Products will constitute acceptance of these General Terms and Conditions by Buyer.

2. Delivery; Risk of Loss; Title.

2.1 Vendor shall deliver Products in accordance with the schedule set forth on the Order Confirmation; provided, however, Vendor shall not be liable for any loss or expense, whether by way of contract or tort, consequential or otherwise, incurred by Buyer if Vendor fails to meet the specified delivery schedule because of production or other delays outside of Vendor's reasonable control. Buyer may not cancel any order for Products that are not delivered by the applicable delivery date set forth in the Order Confirmation without providing Vendor with written notice of its intent to cancel such order and providing Vendor with fourteen (14) business days to cure such delayed delivery.

2.2 Vendor may deliver the Products in installments. Delivery delay or default of any installments shall not relieve Buyer of its obligation to accept and pay for remaining deliveries.

2.3 Unless otherwise specified in the Order Confirmation, all Products shall be delivered Ex Works Vendor's warehouse (*Incoterms 2000*), and title and liability for loss or damage thereto shall pass to Buyer upon Vendor's delivery of the Products to a carrier for shipment, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination.

2.4 Notwithstanding anything to the contrary in these General Terms and Conditions, Vendor (i) will retain a security interest and right of possession in the Products until Buyer makes full payment for such Products, and (ii) may terminate this agreement immediately, in whole or in part, if bankruptcy proceedings are initiated by or against Buyer.

2.5 Acceptance shall be presumed conclusively to have occurred upon the first to occur of (i) use of the Products by Buyer, (ii) written acceptance of the Products by Buyer, or (iii) thirty (30) days following delivery of the Products to Buyer.

3. Packaging.

3.1 Products will be prepared for shipment in accordance with industry standards adequate to ensure safe arrival. Pricing for Products determined by gross weight will include the weight of any packaging consisting of paper, envelopes or similar shipping materials.

3.2 Non-standard packaging will be specified in the applicable Order Confirmation, will be at Buyer's expense and will be invoiced separately.

3.3 Unless otherwise specified in the Order Confirmation, Vendor has separately provided Buyer with written specifications for the Products to be delivered under this agreement, including the applicable tolerances on weight, dimensions and quantity.

4. Buyer's Responsibilities.

4.1 With respect to any customized Products created in accordance with the Buyer's specifications, the Buyer shall have full responsibility for ensuring that no intellectual property or other rights of third parties are infringed and Buyer shall indemnify, defend and hold harmless Vendor and its affiliates from any claims of infringement arising out of or in connection with such Products.

4.2 Buyer shall indemnify, defend and hold harmless Vendor and its affiliates from any claims of infringement arising out of or in connection with any claims arising out of or in connection with the further processing or use of Products by Buyer or its direct or indirect customers, including claims arising from improper use or processing of the Products.

5. Intellectual Property.

5.1 Vendor's trademarks, trade names, service marks, logos, symbols, designs, patents, copyrights, proprietary information (including, but not limited to designs, drawings, blocks, films, printing cylinders and plates) and other intellectual property are, and will remain, the sole and exclusive property of Vendor ("Vendor's Intellectual Property"). Buyer has not acquired, and will not acquire (by operation of law, this agreement, or otherwise), any right, title, or interest in any of Vendor's Intellectual Property. Buyer recognizes the value of the goodwill associated with Vendor's Intellectual Property and acknowledges that all rights therein belong exclusively to Vendor. Buyer will not, during or after the term of this Agreement, do anything that could in any way conflict with Vendor's use or ownership of Vendor's Intellectual Property and will not attack, dispute, or challenge Vendor's right, title, and interest in and to Vendor's Intellectual Property or assist others in so doing.

6. Limited Warranty.

6.1 Vendor warrants that the Products shall, at the time of shipment, be free from material defects in materials and workmanship. The Products will conform in all material respects to the specifications set forth in the Order Confirmation.

6.2 Before any commercial use of the Products, Buyer shall test thoroughly the Products on the compatibility with Buyer's and his customers processing and the functionality for the specific product applications. Vendor shall however not be responsible for the technical and/or commercial success of the final products manufactured by the Buyer.

6.3 Buyer must promptly provide written notice of non-conformance upon discovery and within the applicable periods noted below. Buyer's sole and exclusive remedy and Vendor's sole and exclusive obligation for nonconforming Products shall be, at Vendor's option, refund, repair or replacement. This warranty shall not apply to Products that Vendor determines have been, by Buyer or otherwise, the subject of mishandling, misuse, neglect, improper testing, repair, alteration, damage, assembly or processing that alters physical properties of the Products.

6.4 The foregoing warranties shall be in effect for a period of six (6) months from the date of delivery to Buyer pursuant to Article 2 above.

6.5 In addition, Vendor separately warrants the durability of Products supplied and processed to create other products for three (3) months from the date of delivery of such end products by Buyer to Buyer's end customer; provided, that such warranty shall automatically expire nine (9) months after the original date of delivery to Buyer of the Products that were used to create such end products; provided, further, this warranty shall apply only if the Products and such end products are handled and used by Buyer and its customers in accordance with the requirements hereof.

6.6 EXCEPT AS EXPRESSLY SET FORTH IN THIS ARTICLE 6, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, VENDOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES AND CONDITIONS REGARDING THE DELIVERABLES, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING BUT NOT LIMITED TO ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. BUYER UNDERSTANDS AND AGREES THAT THE DISCLAIMER OF WARRANTIES IN THIS AGREEMENT IS A FUNDAMENTAL PART OF THIS AGREEMENT AND THAT VENDOR WOULD NOT AGREE TO ENTER THIS AGREEMENT WITHOUT SUCH DISCLAIMERS.

7. Payment Terms.

7.1 Unless otherwise provided in the Order Confirmation, payment terms are net thirty (30) days from the date of invoice. Late payments shall accrue interest at the rate of 1% per month from the due date of such payment until paid in full.

7.2 Vendor may change, modify or withdraw the amount of credit or terms of payment at any time upon written notice to Buyer. Payment shall be made to a bank or other institution designated by Vendor, but shall not constitute final settlement of Buyer's account until accepted as such by Vendor, even if Buyer's check, draft or money order provides otherwise.

7.3 If Buyer fails to make timely payments or if, in Vendor's opinion, either the financial condition of Buyer or Buyer's affiliates or other grounds for insecurity warrant such action, Vendor may, without limiting its other remedies, (i) suspend further shipments pending receipt of payment in advance or other security satisfactory to Vendor or (ii) terminate this agreement, in which event all unpaid invoices shall become immediately due and payable.

7.4 Buyer shall reimburse Vendor's reasonable costs of collection, including, but not limited to, reasonable attorneys' fees.

8. Limitation of Liability.

8.1 IN NO EVENT SHALL VENDOR BE LIABLE TO BUYER, OR TO ANY PARTY CLAIMING THROUGH OR UNDER BUYER, FOR ANY LOST PROFITS, LOSS OF GOODWILL, OR FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF VENDOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, ARISING OUT OF OR RELATED TO THE SALE OF PRODUCTS TO OR USE OF PRODUCTS BY BUYER OR ITS CUSTOMERS. VENDOR'S TOTAL CUMULATIVE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID BY BUYER TO VENDOR FOR THE SPECIFIC PRODUCTS GIVING RISE TO SUCH LIABILITY. Buyer acknowledges that the foregoing limitations are an essential element of the agreement between the parties and that in the absence of such limitations, the pricing and other terms set forth in this agreement would be substantially different.

9. General.

9.1 Force Majeure. Vendor shall not be liable for failure or delay in performance under this agreement due in whole or in part to causes such as an act of God, strike, lockout or other labor dispute, civil commotion, terrorism, sabotage, fire, flood, explosion, acts of any government, unforeseen shortages or unavailability of fuel, power, transportation, raw materials or supplies, inability to obtain or delay in obtaining necessary equipment or governmental approvals, permits, licenses or allocations, and any other causes which are not within the reasonable control of Vendor, whether or not of the kind specifically enumerated above. Under any such circumstances, Vendor shall have the additional time needed to complete this agreement and the right to allocate its available supply, in a fair and reasonable manner, to itself and among any or all customers, including, but not limited to, its subsidiaries and affiliates.

9.2 No Assignment. This agreement may not be assigned, in whole or in part, by Buyer without the express written consent of Vendor, which consent may be withheld or delayed at Vendor's sole discretion. This agreement shall be binding upon any successors and assigns.

9.3 Choice of Law; Jurisdiction; Venue. This agreement will be construed and interpreted according to the laws of the State of Delaware without regard to conflicts of laws principles. The state and federal courts located in Wilmington, DE will have jurisdiction over any disputes arising hereunder and the parties hereby submit to the personal jurisdiction of such courts.

9.4 Amendment; Waiver; Severability. These General Terms and Conditions may not be modified or amended except upon mutual written agreement of the parties. No waiver of any other breach of any provision of these General Terms and Conditions shall constitute a waiver of any other breach or provision. If any term of these General Terms and Conditions is held by a court of competent jurisdiction to be invalid or unenforceable, then these General Terms and Conditions, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

9.5 Headings. The headings of these General Terms and Conditions are for convenience only and shall not affect its interpretation or construction.

Dated January 1, 2009
