

UNIVERSAL PLASTICS, INC.  
2650 E. 40<sup>th</sup> Avenue  
Denver, CO 80205

STANDARD TERMS OF SALE

These Standard Terms of Sale (these “**Terms**”) apply to and are part of the agreement for the purchase and sale of goods by Universal Plastics, Inc., a Colorado corporation (“**Universal**”) to the person identified below as the customer (“**Customer**”). All goods sold by Universal to Customer will be described on a Quotation issued by Universal to Customer which makes reference to these Terms (a “**Quote**”).

**1. The Parties’ Agreement:** The parties’ agreement for each order described in a Quote shall consist of: these Terms; the Quote; either a written Acknowledgment issued by Universal (the “**Acknowledgment**”) or, if signed by Universal and Customer, a Purchase Agreement Form; and unless credit terms are provided for in any Purchase Agreement Form, any written Credit Terms separately agreed to between Universal and Customer (“**Credit Terms**”) (collectively the “**Agreement**”).

**2. Purchase Orders:** Universal does not accept the terms of customers’ purchase orders or any other terms that accompany an order (any of which is referred to as a “purchase order”), including not the terms of Customer’s purchase orders. The parties agree that:

(a) only the terms of the Agreement apply to the sale of goods by Universal to Customer,

(b) all offers made by Universal’s presentation of a Quote to Customer (an “offer”) expressly limits acceptance of the offer to the terms of the offer,

(c) all Quotes incorporate these Terms whether or not expressly referenced in the Quote, and

(d) if Customer submits a purchase order in conjunction with its acceptance of a Quote, the only effect of such purchase order is to acknowledge acceptance of the offer made by a Quote presented by Universal to customer, even if the terms of Customer’s purchaser order states either that: (i) Customer’s acceptance of Universal’s offer is conditioned on Universal’s assent to the terms of the purchase order or (ii) delivery of goods by Universal operates as Universal’s assent to the terms of the purchase order.

CUSTOMER’S SIGNATURE TO THESE TERMS EVIDENCE CUSTOMER’S AGREEMENT THAT CUSTOMER’S PURCHASE ORDERS DO NOT, AND UNDER NO CIRCUMSTANCES SHALL, FORM A PART OF THE PARTIES’ AGREEMENT.

**3. Order of Terms:** The order of priority for the documents comprising the parties’ Agreement is these Terms; Universal’s final, written Quote; either the Acknowledgment or the Purchase Agreement Form; and any Credit Terms. In the event of any conflict between or among the foregoing documents, the document with the earlier priority shall control and take precedence over any document(s) with a later priority.

**4. Price, Payment, Taxes, Invoices, and Delivery:**

**4.1 Price and Payment.** Customer will pay for the goods sold under the parties’ Agreement in accordance with the price stated in Universal’s Quote and the payment terms set forth in any Purchase Agreement Form and, if none, as provided for in the Credit Terms. Customer is responsible for all sales, use, and excise tax associated with the sale and use of the goods sold under the parties’ Agreement and for all related shipping and handling charges. Universal will issue invoices to Customer for all amounts due. Customer shall pay all invoices in accordance with the payment terms provided for by this subsection 4.1.

**4.2 Delivery; Acceptance.** All goods sold under the parties’ Agreement are shipped F.O.B. Universal’s dock at 2650 E. 40<sup>th</sup> Avenue, Denver, Colorado 80205. Customer’s use of any goods at any time other than to test their conformance to the parties’ Agreement or its failure to reject any goods by written notice to Universal within twenty (20) days of delivery shall be deemed Customer’s acceptance of them so that Customer’s sole remedy thereafter with respect to such goods shall be its remedies under Sections 6 and 9 of these Terms. If Customer determines that defective or non-conforming goods have been delivered, Customer shall so notify Universal in writing within twenty (20) days of delivery of the goods, indicating the basis for Customer’s rejection.

**4.3 Cure.** Universal shall have a reasonable period of time following receipt of Customer’s notice of defect or non-conformance within which to cure any defect or non-conforming aspect of such goods. Customer shall have twenty (20) days following Universal’s re-delivery of goods following its cure to accept such cured goods and Customer’s use of such goods at any time other than to test their conformance to the parties’ Agreement or its failure to reject any such goods by written notice to Universal within twenty (20) days of re-delivery shall be deemed Customer’s acceptance of them so that Customer’s sole remedy thereafter with respect to such goods shall be its remedies under Sections 6 and 9 of these Terms.

**5. Specifications; Custom Products.** The specifications for goods sold under the parties’ Agreement shall be as expressly stated or expressly incorporated into Universal’s Quote for such goods (the “**specifications**”). If Universal has assisted Customer in developing a product that meets Customer’s stated needs, such as identifying chemical compounds that have particular characteristics, Customer is solely responsible for reviewing and accepting the safety data sheets for and satisfying itself with regard to all characteristics of the chemical compounds and other materials incorporated into Customer’s product. As more particularly described in Section 6 of these Terms, Universal’s only warranty with respect to goods sold to Customer under the parties’ Agreement, whether or not Universal assisted in the development of or specifications for the goods, is that such goods will conform to the express specifications set forth in or incorporated into Universal’s Quote for such goods. Universal is not providing, and has no expertise to provide, chemical engineering services and does not warrant or promise and expressly disclaims any warranty or promise that either the goods provided by Universal or the specifications themselves to which goods are

manufactured will meet Customer's needs, expectations, or requirements, or, unless expressly made a part of any applicable specifications, that such goods will comply with any standards, regulations, laws or other governmental, industry, or trade group standards that might be applicable to Customer or its business operations, even if Customer has advised Universal of its intended use of or geographical market for such goods.

## 6. Limited Product Warranty:

6.1 **The Warranty.** Subject to all of the terms and conditions of these Terms, the goods sold by Universal to Customer are warranted by Universal to be free of manufacturing defects for the 90 day period following Customer's acceptance of such goods and to conform to the express specifications for such goods as set forth or incorporated into the Quote given by Universal with respect to such goods (the "**Limited Product Warranty**"). Universal's sole obligation and Customer's sole remedy under the Limited Product Warranty is for Universal, at its sole election and cost, to repair, replace, or refund the purchase price paid for any defective product which is returned to and received by Universal within one hundred (100) days from the date following Customer's acceptance of such goods. Universal will have no obligation under its Limited Product Warranty for any product that has been subjected to abnormal operating conditions; accident; abuse; misuse; unauthorized modification, alteration, or repair; or replacement of parts other than replacements made or authorized by Universal. Except for Universal's Limited Product Warranty and indemnification obligation under subsection 9.1 of these Terms, Customer assumes all other risk, if any, including the risk of injury, loss, or damage, direct or consequential, arising out of the use, misuse, or inability to use any goods sold under these Terms. Nothing in this subsection 6.1 limits Universal's indemnification obligation under subsection 9.1 of these Terms.

6.2 **Return Procedures.** Customer shall contact Universal in advance of returning any product covered by Universal's Limited Product Warranty to obtain a return material authorization (**RMA**) number and for any special instructions by calling Universal's Service Department at 1-866-742-7148 or 1-800-833-7958; Customer will be asked to reference Universal's Quote under which such goods were sold and to provide a date of sale. Customer bears the cost and risk of loss of any item returned to Universal. Customer's return shipment to Universal must have the assigned RMA number clearly marked on the outside of the package. Proof of date of sale is required for processing Limited Product Warranty requests. Universal will return repaired or replaced items at its own cost and risk.

7. **Customer's Covenants.** Customer covenants and agrees with Universal that with respect to all goods sold or provided by Universal under the parties' Agreement ("**goods**") which are sold or placed in commerce or incorporated into products sold or placed in commerce by Customer or Customer's distributors and resellers, Customer will: (a) provide or cause any of its distributors and resellers to provide all necessary warnings, labels, and safety instruction to make all such goods or products sold or placed in commerce by Customer or its distributors and resellers to be safe and non-defective under all applicable laws, rules and, regulations, including those related to product liability and consumer health and safety and (b) will otherwise comply with and cause its distributors and resells to comply with all applicable laws, rules, or regulations, including those related to labeling and warnings for consumer products, related to Customer's and its distributors' and resellers' sale or use in commerce of such goods and products. In performing under this paragraph, Customer shall be permitted to rely on all goods conforming to the specifications for such goods provided under the parties' Agreement..

8. **Disclaimer of Warranties:** EXCEPT FOR THE LIMITED PRODUCT WARRANTY, UNIVERSAL: (A) MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY CONCERNING ANY GOODS SOLD OR PROVIDED TO CUSTOMER, INCLUDING, BUT NOT LIMITED TO, NO REPRESENTATION, WARRANTY, OR GUARANTY CONCERNING RELIABILITY, QUALITY, SUITABILITY, OR MERCHANTABILITY; (B) MAKES NO REPRESENTATION OR WARRANTY AND DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT GOODS, WILL MEET CUSTOMER'S REQUIREMENTS OR EXPECTATIONS; AND (C) DISCLAIMS TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW ALL REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.

## 9. Indemnification.

9.1 **By Universal.** Subject to the provisions of subsection 9.3 of these Terms, Universal hereby agrees to and shall defend, indemnify, reimburse, and hold harmless Customer and its parents, subsidiaries, affiliates, officers, directors, shareholders, members, managers, employees, partners, and agents (each, including Customer, a "**Customer indemnified party**") from and against, and shall reimburse Customer indemnified parties for, each and every any loss, damage, injury, harm, detriment, liability, exposure, claim, demand, suit, action, settlement, judgment, award, fee, charge, cost or expense (including costs of attempting to avoid or in opposing the imposition thereof, interest, penalties, costs of preparation and investigation, and the fees for, and disbursements and expenses of, attorneys, accountants and other professional advisors and experts) (any of the foregoing a "**Loss**") brought or claimed by any third party against any Customer indemnified party or owed or incurred by any Customer indemnified party to a third party (any of the foregoing, a "**third party claim**") to the extent any such third party claim arises out of, results from, or relates to any breach of Universal's Limited Product warranty, except to the extent any such third party claim has been caused, aggravated, or increased by or is the result of: (i) a breach of any warranty, representation, covenant, or agreement made by Customer under the parties' Agreement, (ii) the negligence or willful misconduct of any Customer indemnified party, or (iii) any Customer indemnified party's misuse or alterations of the goods or the labels, warnings, or instructions associated with the goods provided by Universal (collectively, "**Universal's indemnification obligation**"). Each Customer indemnified party seeking indemnification shall give Universal prompt, written notice of any third party claim which implicates Universal's indemnification obligation and shall reasonably cooperate with Universal's defense and resolution of such third party claim. Notwithstanding the foregoing, IN NO EVENT SHALL UNIVERSAL'S INDEMNIFICATION OBLIGATION INCLUDE AN OBLIGATION TO INDEMNIFY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND, EXCEPT TO THE EXTENT UNIVERSAL IS ITSELF DIRECTLY LIABLE FOR SUCH DAMAGES AND NO CUSTOMER INDEMNIFIED PARTY CONTRIBUTED TO SUCH DAMAGES.

9.2. **By Customer.** Subject to the provisions of subsection 9.3 of these Terms, Customer hereby agrees to and shall defend, indemnify, reimburse, and hold harmless Universal and its parents, subsidiaries, affiliates, officers, directors, shareholders, members, managers, employees, partners, and agents (each, including Universal, a “**Universal indemnified party**”) from and against, and shall reimburse any Universal indemnified party for, any Losses brought or claimed by a third party against any Universal indemnified party or owed or incurred by any Universal indemnified party with respect to a third party claim to the extent any such third party claim arises out of, results from, or relates to: (i) Customer’s breach of any warranty, representation, covenant, or agreement made by Customer under the parties’ Agreement, or (ii) goods which are sold or placed in commerce or incorporated into products sold or placed in commerce by Customer or Customer’s distributors and resellers, except to the extent any such goods did not conform to Universal’s Limited Product Warranty (“**Customer’s indemnification obligation**”). Each Universal indemnified party seeking indemnification shall give Customer prompt, written notice of any third party claim which implicates Customer’s indemnification obligation and shall reasonably cooperate with Customer’s defense and resolution of such third party claim.

9.3 **Limitations.** No indemnification shall be owed by Universal pursuant to subsection 9.1 or by Customer pursuant to subsection 9.2 to any party, unless the Loss or series of related Losses suffered by such a Customer or Universal indemnified party, respectively (“**Indemnified Losses**”) exceeds \$5,000 (the “**Threshold Amount**”). Once Indemnified Losses of a party entitled to indemnification exceeds the Threshold Amount, then Universal or Customer, as applicable, shall be liable for the full amount of all such Losses from the first dollar without regard to the Threshold Amount. Notwithstanding any other provision of this Section 9, so long as a party carries product liability insurance with limits of liability of at least \$2,000,000 per occurrence and a \$2,000,000 annual aggregate limit (the “**minimum liability insurance**”), that party’s indemnification obligation under this Section 9 shall be limited to the coverage available under that party’s minimum liability insurance.

**10. Limitation of Liability: Exclusive Remedies:** This section 10 relates to Universal’s liability to Customer for damages Customer may incur for any reason or from any source other than from third party claims. Universal’s liability to Customer for any third party claims incurred by Customer is set forth in Section 9 of these Terms. Nothing in this Section 10 limits Universal’s or Customer’s indemnification obligation under Section 9 of these Terms. ACCORDINGLY, EXCEPT FOR UNIVERSAL’S INDEMNIFICATION OBLIGATION, IN NO EVENT SHALL UNIVERSAL’S AGGREGATE LIABILITY TO CUSTOMER UNDER THE PARTIES’ AGREEMENT OR ARISING OUT OF THE CONDITION, USE, PERFORMANCE, OR FAILURE OR DEFECTIVE PERFORMANCE OF ANY GOODS SOLD TO CUSTOMER, (WHETHER UNIVERSAL’S LIABILITY IS IN CONTRACT, TORT, STATUTORY, OR OTHERWISE) EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER AS THE PURCHASE PRICE FOR THE GOODS GIVING RISE TO THE LIABILITY OR CLAIM. IN NO EVENT SHALL UNIVERSAL OR CUSTOMER BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL, OR OTHER INDIRECT DAMAGES OF ANY TYPE OR KIND (INCLUDING, WITHOUT LIMITATION, LOSS OF MATERIALS OR GOODS, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PARTIES’ AGREEMENT, INCLUDING, WITHOUT LIMITATION, ANY GOODS SOLD TO CUSTOMER INCLUDING, BUT NOT LIMITED TO, CUSTOMER’S USE OR INABILITY TO USE THE GOODS SOLD BY UNIVERSAL. NO CONSEQUENTIAL OR INCIDENTAL DAMAGES SHALL BE DUE EVEN IF THE PARTY AGAINST WHOM SUCH DAMAGES ARE SOUGHT HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. AS USED IN THIS SECTION, EACH OF UNIVERSAL AND CUSTOMER INCLUDES ANY OF ITS OWNERS AND AFFILIATES AND ANY OF ITS OR ITS OWNERS’ OR AFFILIATES’ OFFICERS, DIRECTORS MANAGERS, EMPLOYEES, PARTNERS, JOINT VENTURERS, CONTRACTORS, AGENTS, INSURERS, SUPPLIERS, DISTRIBUTORS, AND RESELLERS. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages, so the exclusions and limitations set forth in this Agreement may not apply to Customer. THE LIMITED PRODUCT WARRANTY AND UNIVERSAL’S INDEMNIFICATION OBLIGATION ARE CUSTOMER’S EXCLUSIVE REMEDIES WITH RESPECT TO ANY GOODS PROVIDED BY UNIVERSAL BEING DEFECTIVE OR VIOLATING ANY THIRD PARTY’S RIGHTS IN ANY MANNER.

**11. Arbitration:** All disputes, claims, or controversies concerning this Agreement, including disputes concerning the formation, meaning, or interpretation of or performance under the parties’ Agreement (whether in contract, tort, statutory, or otherwise); all disputes, claims, counterclaims, cross-claims, or controversies (whether in contract, tort, statutory, or otherwise) concerning the condition, use, performance, or failed or defective performance of any goods sold or provided under the parties’ Agreement; and any dispute concerning an obligation to provide indemnification or to arbitrate or the scope of such indemnification or arbitration shall be submitted to binding arbitration before one arbitrator. The arbitration shall be held in Denver, Colorado, and in all cases the arbitration shall be administered and conducted by JAMS pursuant to the law applicable under paragraph 13 of these Terms and JAMS’ Comprehensive Arbitration Rules and Procedures.

**12. Costs and Expenses:** Notwithstanding any limitation on damages, in the event of any arbitral process or litigation between Customer and Universal, the arbitral authority or court, as applicable, shall award reasonable costs and attorney’s fees to the party the arbitral authority or court determines is the prevailing party.

**13. Governing Law:** This Agreement shall be governed by the substantive law of the state of Colorado without regard to the choice or conflict of law provisions of any jurisdiction.

**14. Venue and Jurisdiction:** Any litigation concerning the parties’ Agreement or in connection with the goods sold or provided to Customer, including, but not limited to, any litigation to enforce arbitration or to enter an arbitration award, shall be brought and maintained only in the federal and state courts located in Denver, Colorado, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. Nothing in this paragraph shall limit the right of any party to enforce a judgment entered on an arbitration award in any court of competent jurisdiction.

**15. Waiver of Jury Right.** EACH PARTY HEREBY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY MATTER ARISING UNDER OR WITH RESPECT TO THE PARTIES’ AGREEMENT, INCLUDING, WITHOUT LIMITATION, ITS FORMATION, MEANING, AND ENFORCEMENT, AND ACKNOWLEDGES THAT ALL DISPUTES ARISING UNDER THE PARTIES’ AGREEMENT WILL BE DECIDED BY ARBITRATION AND, TO THE EXTENT ANY COURT PROCEEDING IS PROVIDED FOR OR CONSISTENT WITH THE PARTIES’ AGREEMENT, BY A JUDGE AND NOT BY A JURY.

**16. General:** As used in this Agreement, “**the parties**” means Universal and Customer. The parties’ Agreement may only be modified in writing, executed by the party against whom the modification is sought to be enforced. The failure by a party to exercise or enforce any right or remedy under the parties’ Agreement in a particular instance shall not be construed or deemed a waiver of the right to exercise or enforce any right or remedy in the future. Section and other headings contained in the parties’ Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the parties’ Agreement; references in these Terms to sections are references to the sections of these Terms unless a different reference is expressly provided. The word “including” shall mean “including, but not limited to,” unless expressly provided otherwise in the context in which it is used. Should any court of competent jurisdiction declare invalid any provision of the parties’ Agreement, the provision or provisions so affected shall be conformed to the law to the extent possible and otherwise all terms and provisions of the parties’ Agreement shall remain in full force and effect. Any reference to currency in the parties’ Agreement is a reference to United States of America dollars unless expressly stated otherwise. The parties’ Agreement (as defined in Section 1 of these Terms), including the terms of any credit extended for goods purchased, is the entire agreement between Customer and Universal and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter of the parties’ Agreement.

**17. Export Control:** Universal is a United States manufacturer and is subject to the United States Export Administration Rules and Regulations and the U.S. International Traffic in Arms Regulations. Universal has no license to export any goods sold under the parties’ Agreement, and makes no representation that any goods sold by it may be lawfully exported outside of the United States of America. Customer is solely responsible for compliance with and shall comply with all applicable laws, including export and import regulations of the United States of America, and the laws of all other countries if it exports, re-exports or uses any goods sold under the parties’ Agreement outside of the United States of America.

**18. Counterparts; Facsimile Signatures:** These Terms may be executed in counterparts, each of which shall constitute an original, and all of which, when taken together, shall constitute one and the same instrument. These Terms may be executed by facsimile signature which shall signify, to the same extent as any other execution of these Terms, the intent of the party executing by facsimile to be bound to and by these Terms.

SIGNED on the dates indicated below each signatory’s signature to be immediately binding and effective.

Customer:

\_\_\_\_\_  
a \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_