

**OMYA INC.**

**PURCHASE ORDER TERMS AND CONDITIONS (DISTRIBUTION)**

- 1. General** - References hereon to documents or other information from Seller are for identification only and form no part of this Order ("Order"). No modification, waiver, assignment, termination or rescission, of the present Order shall be binding on Buyer unless in writing and executed by a duly authorized representative of Buyer. This Order, together with any of Buyer's information or documents incorporated herein by reference, shall be deemed to contain the entire agreement ("Agreement") between Buyer and Seller and to constitute the complete and exclusive expression of the terms of the Agreement, all prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter hereof being merged herein. Notwithstanding anything in the foregoing to the contrary, if Seller has heretofore made Buyer an offer with respect to any materials or goods to be provided hereunder ("Items"), this Order shall not operate as an acceptance of Seller's offer, but shall be deemed to be a counteroffer. Terms on the front side hereof or under separate cover from Buyer attached supersede any conflicting provisions on this side hereof.
- 2. Shipping** - Unless otherwise agreed to by the parties, the INCOTERMS, latest edition, apply. No additional charge shall be made for packaging, marking or storage. In the event Buyer agrees in writing to pay for shipment of any Items, Seller shall route all Items to ensure the lowest tariff rate or as otherwise directed. If shipment is made by higher rated route, excess charges will be paid by Seller. Time is of the essence of this Agreement, and Buyer reserves the right, without liability or waiver of any other remedies available to Buyer, to either approve a new delivery schedule or to cancel, in whole or in part, this Order if Seller is in default. Seller will be in default under this Order if Seller fails to make delivery as scheduled or otherwise to perform hereunder. In the event of default, in addition to its other available remedies, Buyer may procure the Items from other sources and Seller shall be responsible for any cost incurred in excess of the amounts to be paid under this Order. Seller shall promptly notify Buyer of any delay or of any anticipated delay in delivery of the Items. Delivery of non-conforming materials shall be considered non-delivery. If Seller's overall production of the Items is curtailed for any reason, Seller will ship Buyer a percentage of its orders for the Items at least equal to that shipped for similar products to any other customer. If Seller fails to ship an equal percentage, Buyer may treat it as default, immediately entitling Buyer to terminate this Agreement. Any provisions for delivery of Items by installments shall not be construed as making the obligations of Seller severable. With respect to Product that is imported, unless otherwise agreed by the parties in writing, Buyer shall be the importer of record and shall be solely responsible for all duties, taxes, fees, and other importation expenses with respect to such Product. Buyer shall be solely responsible for all costs, actual and contingent, incidental to the international transportation and customs clearance of the imported Product.
- 3. Prices and Payment** - Prices shown on this Order shall apply to all Items provided by Seller. If any price is omitted, the price for the Items will be the lowest price at which goods or services the same as or substantially similar to the Items are currently offered or sold by Seller to any customer, under similar circumstances and in quantities similar to those being purchased hereunder. If Seller sells items covered by the Order to other customers at prices less than those set forth herein, the price of any unshipped items shall be adjusted to such lower prices. Unless otherwise specified on the front hereof, all bills will be paid on a net sixty (60) day basis. If payment is made within thirty (30) days after receiving the invoice a 3% discount shall apply or within 45 days a 1.5% discount shall apply. Cash discounts will be calculated from the time the invoice or Items are received by Buyer, whichever is later. If other conditions to payment have not been met by Seller, the discount period shall not commence until all conditions have been met. Payment is considered made when Buyer's check is mailed.
- 4. Taxes** - Buyer shall pay sales or use tax, if any is due, of the state in which the Order originates. Seller agrees to pay and bear all other applicable federal, state and local taxes, or foreign taxes or other government charges upon the production, transportation or sales of Items supplied under this Order.
- 5. Changes** - Buyer may make changes to this Order, including to any specification, drawing, quantity, instruction, destination or delivery schedule relating to any Items, and Seller shall comply with any such change. If any such change affects the price of the Items or the time required for Seller's performance under this Order, a corresponding adjustment in the price or delivery schedule or both may be made. All claims for adjustments in Seller's favor shall be made by Seller to Buyer in writing within thirty (30) days after the change to which the adjustment relates is made, or Seller forgoes any such adjustment, and no such adjustment shall be binding upon Buyer unless Buyer has agreed in writing to the same.
- 6. Inspection and Risk of Loss** - Buyer may inspect all Items during their manufacture, construction or preparation and all Items shall be received subject to Buyer's inspection and rejection. Acceptance shall not remove Seller's responsibility for any defect or breach of warranty discovered by subsequent inspection, use or otherwise. Notwithstanding previous inspection by Buyer, if any defect or breach of warranty for which Seller is responsible under the terms of this Order is subsequently discovered, Buyer may reject, or revoke its acceptance

of, any affected Items within a reasonable time after any such defect or breach is discovered. Payment, if any, made for any Items rejected hereunder shall be promptly refunded by Seller. Any Item which is defective or not in accordance with any of Seller's warranties, may, at Buyer's sole discretion, be held on behalf of Seller, and at Seller's risk and expense, and, if Seller so directs, will be returned at Seller's expense. Title and risk of loss with respect to the Items shall remain in Seller until the Items have been delivered to and accepted by Buyer, or an agent or consignee duly designated by Buyer, at the location specified on the front hereof.

**7. Compliance with Laws** - Seller shall indemnify and hold Buyer harmless against all losses, claims, suits, penalties, liabilities, damages, judgments, costs and expenses, including attorneys' fees, as incurred, arising out of Seller's failure to comply with any applicable U.S. or foreign federal, state or local, ordinance, regulation, statute, rule or order. Notwithstanding anything to the contrary heretofore or hereafter represented by either party to the other, Seller warrants that each and every Item transferred by Seller to Buyer, that may be regulated by the environmental laws, regulations, statutes or ordinances ("Regulations") of any U.S. or foreign federal, state or local government, comports with all such Regulations. Seller shall be required to obtain and pay for any license, permit, inspection or listing by any public body or certification organization required in connection with the manufacture, performance, completion or delivery of any Items.

**8. Cancellation** - Buyer may cancel this Order upon Seller's failure to comply with any of its obligations hereunder or Seller's insolvency or actions indicating insolvency such as the filing of a petition by or against Seller under any bankruptcy law, the appointment of a receiver for Seller, Seller's attempt to make a general assignment for the benefit of creditors or Seller's ceasing to function as a going concern. Should Buyer cancel this Order as hereinabove provided, Buyer may, at its option and without prejudice to any other rights or remedies it may have, take possession of the Items in whatever stage of completion they may be, with or without seeking a writ of replevin or pursuing any other judicial process or remedy, and Buyer shall pay for such documented Items in an amount equal to that portion of the total purchase price for all Items represented by such documented Items.

**9. Warranty** - Seller warrants that all Items will strictly conform to all specifications, drawings, samples, instructions and other descriptions furnished by or provided to Buyer, attached hereto or otherwise delivered to Seller, be of good, workmanlike and merchantable quality, be free from defects in material and workmanship and be fit for the particular purpose intended by Buyer. Seller is responsible for all costs of field repair and return freight incurred by Buyer or Seller in connection with the warranty provided hereunder. All warranties of Seller which are set forth in this Section 9 or in any other part of this Order or which are implied by law shall survive any inspection, delivery, acceptance or payment by Buyer.

**10. Indemnity** - Seller shall indemnify and hold Buyer, and all of its subsidiaries or affiliates, officers, directors and any agent or employee of any of them harmless and, upon request, shall defend each of them, and all persons claiming through any of them from and against (i) any or all claims, demands, litigation or proceedings of whatever kind, whether based upon negligence, breach of express or implied warranty, strict liability or any other theory, and from and against all direct, indirect, special, exemplary, incidental or consequential damages of every kind whatsoever, arising out of, by reason of, or in any way connected with, accidents, occurrences or injuries to, or losses to or of any third party or any property of any third party, which may occur before or after acceptance of the Items by Buyer, or (ii) any and all losses incurred by, or damage to the property of, Buyer or any of its subsidiaries or affiliates, or any agent or employee of any of them, including property occupied or used by or in the care of Seller, which may occur before or after acceptance of the Items by Buyer, provided that any such claim, demand, litigation, proceeding, loss or damage is in any way due to or has resulted from, or is alleged to be due to or have resulted from, in whole or in part, any Items, the design, manner of preparation, manufacture, construction, completion, delivery or non-delivery of any Items by Seller, any breach by Seller of any of its obligations under this Order or any other act, omission or negligence of Seller or any of Seller's employees, workers, servants, agents, subcontractors or suppliers. Seller shall, upon request, pay or reimburse Buyer or any other party entitled to indemnification hereunder for all costs and expenses, including attorneys' fees, as incurred by Buyer or such other party in connection with any such claim, demand, litigation, proceeding, loss or damage.

**11. Force Majeure** - Buyer shall have the option to terminate this Order or to delay the delivery or completion of all or part of the Items if causes beyond the reasonable control of Buyer make it unreasonable for Buyer to accept delivery hereunder. Such causes include, but are not limited to, fire, strikes, war, acts of God, acts of the government, breakdown of machinery or equipment, unusually severe weather, inability to obtain or delay in obtaining material, labor, equipment or transportation, lack of demand for Buyer's products or the failure of any party to perform any contract with Buyer that adversely affects Buyer's need for the Items.

**12. Confidentiality** - (a) Seller shall not, without Buyer's prior written consent, disclose any information concerning Buyer, including the existence of this Order or any terms hereof, to any party other than those employees of Seller who require the same for the performance of their duties in connection with this Order or use any such information in any other way. If Buyer gives written consent, Seller will strictly comply with the terms and conditions of any consent and, even after such consent, will not use Buyer's name or any of its trademarks, service

marks, trade names or logos except with the express prior written consent of Buyer to the specific use. Notwithstanding the foregoing, Seller will be required to provide such information to third party contractors of Buyer as provided in Section 13. (b) Any specification, drawings, schematics, technical information, data, tools, dies, patterns, masks, gauges, test equipment and other materials furnished or paid for by Buyer shall (i) be kept confidential; (ii) remain/and or become Buyer's property; (iii) be used by Seller exclusively for Buyer's orders; (iv) be clearly marked as Buyer's property and segregated when not in use; (v) be kept in good working condition at Seller's expense; and (vi) be shipped promptly to Buyer on demand.

**13. Continuation of Rights** - Upon any termination of this Order for any reason, Buyer will, in addition to any other rights which survive this Order by its terms have the following rights: (i) the right to obtain all information and documentation including computer files necessary to enable Buyer or a third party to make the Items, and/or sell the Items to Buyer, as applicable; and (ii) the right to continue to receive warranty repair or replacement as set forth in Section 9 and any technical assistance or other services agreed upon by the parties under this Order.

**14. Miscellaneous** - Any provision of this Order which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or diminishing rights under the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. This Order may not be amended, altered, waived, discharged or terminated, except by formal agreement in writing signed by duly authorized representatives of both parties. A waiver on any one occasion shall not be construed as a waiver on a future occasion. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS ORDER WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES, IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH. Seller will not, without the prior written consent of Buyer, assign, subcontract, transfer or encumber its rights or obligations hereunder and any attempted assignment, transfer or encumbering by Seller shall be null and void. All of the covenants, conditions and obligations contained in this Order shall be binding upon and shall inure to the benefit of the respective successors and assignees of Buyer and (subject to the restrictions of this Section 14) Seller. This Order shall in all respects be governed by, and construed in accordance with, the substantive (and not conflicts) laws of the State of Ohio including all matters of construction, validity and performance. Any cause of action arising hereunder or related in any way hereto shall be brought only in the federal and state courts of Hamilton County, Ohio and Seller hereby submits to the exclusive jurisdiction of such courts. The rights and obligations of the parties shall not be governed by the provisions of the 1980 United Nation Convention on Contracts for the International Sale of Goods. An action by Seller arising out of or related to this Order shall be commenced within one (1) year from the date the right, claim, demand or cause of action shall first occur, or be barred forever. The provisions of Sections 7-10, 12, 13 and 14 shall survive the expiration or termination hereof for any reason. Seller acknowledges that any breach of the terms, conditions or covenants set forth in Sections 7-10, 12, 13 and 14 would be competitively unfair and may cause irreparable damage to Buyer and that a recovery of damages at law would not be an adequate remedy. Accordingly, for any breach by Seller of the terms, covenants or conditions of Sections 7-10, 12, 13 or 14, Seller hereby consents to a restraining order and/or injunction against Seller, without the posting of bond, in addition to any other legal or equitable rights or remedies Buyer may have. Section headings shall have no force or effect in the interpretation of this Order. The official version of this agreement is in English and it shall be construed and interpreted solely in English.