



PLEASE NOTE: By placing an order with OYC Americas, Inc. you are deemed to have received a copy of these Terms and Conditions and shall be bound thereby in accordance with its terms. Any proposal made by you for additional or different terms and conditions or any attempts by you to vary in any degree any of the terms and conditions of this order acknowledgement are hereby rejected.

OYC TERMS AND CONDITIONS OF SALE

These Terms and Conditions (“**Terms and Conditions**”) are hereby incorporated by reference into any and all purchase order(s) or other contract(s), arrangement(s), or agreement(s) between OYC AMERICAS, INC. and its affiliates (“**OYC**”) and its customers (each a “**Customer**”). OYC and Customer are sometimes referred to herein as a “**Party**” and collectively as the “**Parties**”).

1. **General.** OYC agrees to provide the Product to Customer only on these Terms and Conditions, notwithstanding any language in Customer’s purchase order, if one exists, or other writing or oral representation previously, simultaneously or hereafter received by OYC purporting to amend, modify or replace these terms, covenants and conditions with any different or additional terms, covenants or conditions or reciting that any action or inaction by OYC constitutes agreement or consent by OYC to such amendment, modification or replacement. **In the event of a conflict between anything stated in these Terms and Conditions and the terms and conditions on Customer’s purchase order(s), these Terms and Conditions shall control.** OYC’S AGREEMENT TO PROVIDE THE PRODUCT IS EXPRESSLY CONDITIONED ON CUSTOMER’S ASSENT TO ALL OF THE TERMS AND CONDITIONS SET FORTH HEREIN.

2. **Customer’s Acceptance.** Customer shall be deemed to have made an unqualified and irrevocable acceptance of these Terms and Conditions and it will become the agreement between the parties on the earliest of the following to occur: (i) OYC’s receipt of Customer’s purchase order number or Customer’s receipt and acknowledgment of OYC’s Invoice; (ii) Customer’s receipt of these Terms and Conditions and failure to timely notify OYC in writing (in no event later than seven (7) business days after the receipt of OYC’s order acknowledgments (and these Terms and Conditions) of Customer’s refusal to be bound by such Terms and Conditions (iii) Customer’s payment of any amounts due to OYC; (iv) Customer’s delivery to OYC of any material to be furnished by Customer; (v) Customer’s receipt of the Product; or (vi) any other conduct of Customer or event constituting acceptance under applicable law.

3. **Cancellation or Modification.** Orders for standard Product may be cancelled prior to their manufacturing date, subject to a 25% fee. Special, custom, or modified Product cannot be cancelled after Supplier has purchased the raw material for same. In the event of such cancellation or modification, Customer shall compensate OYC for all resultant costs and damages incurred by OYC, including without limitation costs and fees due to third parties. All orders for undelivered

Product may be cancelled by OYC, without incurring any liability to Customer, if production becomes impracticable.

4. Quotations and Orders. Written quotations are void unless accepted within thirty (30) days from date of issue. Unless otherwise specified on the estimates or quotations, the pricing in written quotations will be guaranteed for thirty (30) days from OYC's receipt of Customer's acceptance. Customer's blanket order commitments must clearly state quantity commitment from Customer and must meet the minimum release outlined in the written quotations. OYC agrees to a +/- ten percent (10%) quantity allowance. Future blanket orders will be subject to requote based on market fluctuations in the price of raw materials. OYC reserves the right to accept or reject Customer's purchase orders in its sole discretion. Any accepted purchase orders shall be governed by these Terms and Conditions and no additional or different terms in any such purchase order shall be part of the Parties' agreement.

5. Delivery. Unless otherwise agreed, all shipments will be charged to Customer's preferred courier account. Product requiring storage at -20°C and 4°C will be shipped next day delivery. All ambient Product will ship 2-3 day delivery. Any Product shipment requiring Dry Ice will incur a \$75.00/box handling fee. Customer may select the mode of transportation, routing and carrier for delivered orders at Customer's own expenses. If Customer does not provide OYC with shipping instructions, then OYC will select the mode of transportation for delivered orders. OYC will use its reasonable business efforts to meet the scheduled dates but does not guarantee to meet such dates. Time for delivery will not be of the essence. Failure by OYC to make any shipments by scheduled dates does not constitute a cause for cancellation and/or for damages of any character. In the event of delay in delivery requested by Customer or caused by Customer, OYC will store all Product at Customer's risk and expense.

6. Storage. If a supply contract is signed or a blanket purchase order is provided by the Customer, OYC will make every attempt to maintain inventory and store it at its warehouse. However, in no event will Product be warehoused for more than ninety (90) days. Upon expiration of ninety (90) days, OYC will invoice Customer the outstanding balance for stored Product and any attendant fees. Presuming Customer has paid for such, the Product will be released to Customer. Should Customer decline release of the Product, or in the event that Customer is in arrears on amounts owed to OYC, OYC may elect to dispose of the Product and assess the additional cost to Customer.

7. Risk of Loss; Title; Inspection. OYC will deliver the Product to the Delivery Point. Unless otherwise stated in OYC's Invoice, sales to Customers, the "**Delivery Point**" shall be EXW Vista, CA or F.O.B. OYC's Japan facility, as applicable. Regardless of any freight payment by OYC on Customer's behalf (for which Customer shall reimburse OYC), all risk of loss or damage in transit shall pass to Customer upon delivery to the Delivery Point. OYC is not responsible for any loss, damage, or delay which may occur after OYC delivers the Product to the Delivery Point. Any claims for damage in transit shall be filed by Customer directly with the carrier. Customer shall inspect the Product upon receipt and any claims for shortages or other errors must be noted at the time of delivery on all carrier documents and supported by signed documentation. Claims for shortages or other errors and/or Customer's rejection upon inspection of shipped Order must be made via written notice to OYC by no later than seven (7) days after OYC's delivery of the Product to the Delivery Point. Failure to give such notice shall constitute unqualified acceptance

and a waiver of all such claims by Customer. No Product may be returned to OYC for any reason without OYC's prior written authorization. Partial shipments will be permitted. Shipments may contain underruns or overruns not exceeding ten percent (10%).

8. Insurance. Upon OYC's request, Customer shall provide and maintain adequate insurance for Product, covering such from the Delivery Point until OYC has received payment in full for all Product naming OYC as an additional insured, and shall annually provide to OYC a certificate of insurance evidencing compliance with this requirement. Such insurance shall be reasonably satisfactory to OYC and shall provide that it may not be cancelled or modified without prior written notice to OYC.

9. Prices. All prices, discounts and transportation charges are in U.S. Dollars and are subject to change without notice. If no price is stated on OYC's Invoice, prices shall be OYC's current prices in effect on the date of acceptance of orders by OYC (or, in OYC's sole discretion, on the date of shipment) as set forth on price lists issued or modified by OYC from time to time. All general or special taxes, duties, fees, freight and insurance costs and any other charges of any nature whatsoever, imposed on, in connection with or measured by any transaction between OYC and the Customer shall be paid by the Customer in addition to the prices quoted or invoiced.

10. Payment. All payment terms set forth in these Terms are subject to OYC's approval of Customer's credit, at OYC's discretion. If there is no credit established prior to receipt of order, or such approval is withheld, payment will be due in advance by check, wire or credit card. Unless otherwise stated in an Invoice issued from OYC to Customer, payment terms are 100% of the order amount due within thirty (30) days from OYC's delivery of the Product to the Delivery Point. Terms of payment on all orders are subject to the written approval of OYC's credit department. New accounts, until credit approval, will be required to prepay order by check, wire or credit card. If Customer does not pay OYC any amount when such amount is due, or if Customer defaults in the performance of these Terms and Conditions or any Invoice issued from OYC to Customer, OYC may, without incurring liability and without prejudice to OYC's other lawful remedies and at OYC's sole option: (i) terminate OYC's obligations under these Terms and Conditions and any Invoice issued from OYC to Customer; (ii) declare immediately due and payable all of Customer's obligations to OYC; (iii) change credit terms with respect to any further work; (iv) suspend or discontinue any further work until Customer pays all overdue amounts; and/or (v) repossess the Product. Customer shall reimburse OYC for all costs incurred by OYC in collecting any sums owed by Customer to OYC, including without limitation, attorneys' fees and costs of proceedings. Customer may, at OYC's discretion, be required to pay a late payment fee of up to one and one-half percent (1.5%) per month on all amounts not paid in full when due. OYC reserves the right to require payment in advance or other secured form of payment from time to time.

11. Security Interest. As partial consideration for OYC's sale of the Product to Customer, Customer hereby grants to OYC and OYC hereby retains a security interest in all Product sold to Customer now or hereafter in the possession of or under the control of Customer, title to which might at any time be determined to have passed to Customer, including, without limitation, all Product and materials thereof or any other Product bearing any trademark of OYC, returns or repossessions and the proceeds of all of the foregoing, to secure all of Customer's obligations to OYC under these Terms and Conditions and any Invoice issued from OYC to Customer and all other obligations of Customer to OYC. Customer shall execute such financing

statements, continuation statements and other documents and to take such actions as may be required by OYC to evidence or perfect the security interest granted herein and the interest of OYC as the owner of the Product. If Customer fails to perform any of its duties set forth in these Terms and Conditions or any Invoice issued from OYC to Customer, OYC is authorized in Customer's name or otherwise to take such actions including, without limitation, signing Customer's name, and Customer hereby appoints OYC as its attorney-in-fact for such purpose.

12. Limited Warranty. OYC warrants to Customer that its Product will be free from material defects in workmanship and materials under normal use and service at the time of delivery to the Delivery Point. There is NO WARRANTY in cases of damage in transit, negligence, abuse, abnormal usage, misuse, accidents, altered Product, failure to follow OYC's instructions or improper storage. OYC'S SOLE AND EXCLUSIVE OBLIGATION (AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY) UNDER THIS WARRANTY SHALL BE, UPON PROMPT WRITTEN NOTICE OF ANY BREACH RECEIVED BY OYC, TO EITHER, AT OYC'S OPTION, REPAIR, CORRECT OR REPLACE WITHOUT CHARGE ANY DEFECTIVE PRODUCT EXPRESSLY WARRANTED HEREIN BY OYC AGAINST DEFECTS AND FOUND BY OYC IN ITS SOLE DISCRETION TO BE DEFECTIVE AND COVERED BY THIS WARRANTY, OR CREDIT CUSTOMER FOR THE PURCHASE PRICE PAID FOR SUCH PRODUCT. OYC WILL NOT BE LIABLE TO CUSTOMER, OR TO ANYONE CLAIMING UNDER CUSTOMER, FOR ANY OTHER OBLIGATIONS OR LIABILITIES, INCLUDING, BUT NOT LIMITED TO, OBLIGATIONS OR LIABILITIES ARISING OUT OF BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE OR TORT OR ANY THEORY OF STRICT LIABILITY, WITH RESPECT TO THE PRODUCT OR OYC'S ACTS OR OMISSIONS OR OTHERWISE. This warranty covers only replacement, correction or repair of defective Product and does not include the cost of inspection, removal, delivery or field service travel and living.

13. Limited Liability. THE PRODUCT IS MADE FOR RESEARCH AND LABORATORY USE ONLY – NOT FOR HUMAN CONSUMPTION. OYC (OR THE PRODUCT MANUFACTURER, AS THE CASE MAY BE) WILL NOT BE LIABLE FOR ANY INJURY CAUSED BY THE UNINTENDED USE OF THE PRODUCT. PRIOR TO USING PRODUCT, CUSTOMER OR USER SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR THE INTENDED USE AND CUSTOMER SHALL ASSUME ALL RISK AND LIABILITY WHATSOEVER IN CONNECTION THEREWITH. IN NO EVENT WILL OYC BE LIABLE FOR INCIDENTAL, INDIRECT, COMPENSATORY, PUNITIVE, CONSEQUENTIAL, SPECIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS. OYC'S AGGREGATE LIABILITY WITH RESPECT TO THE PRODUCT AND THESE TERMS AND CONDITIONS AND ANY INVOICE ISSUED FROM OYC TO CUSTOMER SHALL BE LIMITED TO THE MONIES PAID BY CUSTOMER TO OYC. THE REMEDY DESCRIBED IN THIS SECTION IS CUSTOMER'S EXCLUSIVE REMEDY AND IS IN LIEU OF ANY OTHER REMEDY OTHERWISE AVAILABLE AT LAW OR IN EQUITY.

14. Disclaimer of Warranties. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LIMITED WARRANTY IN SECTION 12 IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES WITH RESPECT TO THE PRODUCT FURNISHED BY OYC HEREUNDER. OYC HEREBY DISCLAIMS AND EXCLUDES ALL OTHER EXPRESS OR

IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL WARRANTIES. Any oral or written description of the Product is for the sole purpose of identifying the Product and may not be construed as a warranty.

15. Other Manufacturers' Warranties. On Product furnished by OYC, but produced or manufactured by others, the written warranty of the product manufacturer, if any, will be assigned to Customer if assignment is permitted and reasonably practicable. However, OYC does not adopt or guarantee or represent that the manufacturer will comply with any of the terms of the warranty of such manufacturer.

16. OYC IP. Except for data or information provided by Customer, all data and design information used in the completion of Customer's order and all of OYC's copyrights, trademarks, patents and other intellectual property are and shall remain OYC's property ("**OYC IP**"). Customer is hereby granted a limited license to sell or re-sell Product produced by OYC pursuant to these Terms and Conditions, provided, however, Customer may not under any circumstances reverse engineer or create any version of such Product, nor manufacture any Product produced by OYC, either on its own or through a third party. Customer may not use, copy, reproduce, distribute, publish or communicate to any third party data, information, or any other item relating to OYC IP, without OYC's prior written permission.

17. Indemnification. Customer hereby releases and shall indemnify, defend and hold harmless OYC, its shareholders, directors, officers, partners, members, contractors, employees, affiliates, agents, successors and assigns (collectively, "**OYC's Indemnified Parties**") from and against any and all direct and indirect claims, demands, actions, liabilities, judgments, damages, losses, fines, penalties, forfeitures, costs and expenses, including, without limitation, reasonable attorneys' fees and costs of proceedings (collectively, "**Damages**"), arising out of, in connection with, resulting from or relating to: (i) breach of these Terms and Conditions, any Invoice issued from OYC to Customer, or any law by Customer or any of Customer's shareholders, directors, officers, partners, members, contractors, employees, representatives, agents, successors or assigns ("**Customer's Parties**"); (ii) any damage to or destruction of property, or injury to or death of persons caused, or alleged to have been caused, in whole or in part, by any intentional, reckless, negligent or other act (or failure to act) of Customer or any of Customer's Parties; (iii) losses, damages or injuries caused by, arising out of or relating to the Product or the handling or use of the Product; and/or (iv) any infringements of any patent, trademark, copyright or other intellectual property rights of any other party by the Product either alone or in combination with other product.

18. Customer's Custom Specifications. Orders manufactured to specifications provided by or on behalf of Customer are executed only with the understanding that Customer releases and shall indemnify, defend and hold harmless OYC and each of OYC's Indemnified Parties from and against any and all Damages sustained by or against any of them, resulting from, in connection with or relating to any action or threatened action concerning: (i) infringement of the patents, trademarks, copyrights or other intellectual property or proprietary rights of any other person or entity; or (ii) injury to person or property, including death, relating to the designs or specifications provided by or on behalf of Customer.

19. Force Majeure. OYC will endeavor to fill all accepted orders as soon as it is practical and consistent with production schedules. OYC will not be responsible for delay in delivery or failure to fill orders or other default or damage where such has been caused by an act of God, war, major disaster, terrorism, insurrection, riot, flood, earthquake, fire, strike, lockout or other labor disturbance, delay by carriers, shortage of fuel, power, materials or supplies, operation of statutes, laws, rules or rulings of any court or government, demand for goods exceeding OYC's available supply, or any other cause beyond OYC's control affecting production or delivery, including, without limitation, compliance with federal, state or local public health directives and orders. In the event of any delay in shipment or nonperformance caused by any of the foregoing, OYC may, at its option and without liability, cancel all or any portion of its obligations to Customer and/or extend any date upon which performance is due.

20. Governing Law. These Terms and Conditions and any Invoice issued from OYC to Customer shall be governed and construed according to the internal laws of the State of California, including, without limitation, the Uniform Commercial Code as adopted in California, without regard to conflict of laws principles; for the avoidance of doubt, the Parties expressly acknowledge and agree that the rights and obligations of the Parties will not be governed by the provisions of the United Nations Convention on Contracts for the International Sale of Goods, 1980. Any cause of action, claim, suit or demand by Customer allegedly arising from or related to these Terms and Conditions, any Invoice issued from OYC to Customer, or the relationship of the parties shall be brought exclusively in a court situated in the State of California, County of San Diego Both parties hereby irrevocably submit to the exclusive jurisdiction of said court and consent to venue therein. **ANY ACTION BROUGHT BY CUSTOMER MUST BE COMMENCED WITHIN ONE YEAR AFTER THE DELIVERY OF THE PRODUCT OR THE COMPLETION OF SERVICES NOTWITHSTANDING ANY STATUTORY PERIOD OF LIMITATION TO THE CONTRARY.**

21. Dispute Resolution. Any dispute between the Parties arising out of or related to these Terms and Conditions or breach thereof shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration shall be conducted by one (1) neutral arbitrator who shall sit in San Diego, California. Any award made by such arbitrators shall be binding and conclusive for all purposes; may include injunctive relief, as well as orders for specific performance; and may be entered as a final judgment in any court of competent jurisdiction. No arbitration arising out of or relating to these Terms and Conditions will include, by consolidation or joinder or in any other manner, parties other than OYC or Customer and other persons substantially involved in common question(s) of fact or law whose presence is required if complete relief is to be afforded in arbitration. The costs and expenses of such arbitration shall be borne in accordance with the determination of the arbitrators and may include reasonable attorneys' fees. Each party hereby further agrees that service of process may be made upon it by registered or certified mail or personal service in accordance with the address for Notice designated for such Party in Section 23.a. below.

22. Attorneys' Fees. The prevailing party in any suit, action, appeal or arbitration proceeding instituted in connection with these Terms and Conditions shall be entitled to recover, in addition to other costs, reasonable attorneys' fees. The determination of who is the prevailing party and the amount of reasonable attorneys' fees to be paid to the prevailing party shall be decided by the arbitrator or arbitrators (with respect to attorneys' fees incurred before and during

the arbitration proceedings) and by the court or courts, including any appellate courts, in which the matter is tried, heard, or decided, including the court that hears any exceptions made to an arbitration award submitted to it for confirmation as a judgment (with respect to attorneys' fees incurred in the confirmation proceedings).

23. Miscellaneous.

- a. Notices. Notices or other communications must be in writing and shall be deemed to have been given if delivered personally, sent by electronic mail, mailed by certified mail, or delivered by an overnight delivery service (with confirmation). Any notice or other communication shall be deemed to be given (1) on the date of personal delivery or transmission by electronic mail, except that transmission by electronic mail after 5:00 p.m. Pacific Time shall be deemed to be given the following business day, or (2) upon deposit in the United States mail. Notice to Customer shall be sent to the to the address set forth on Customer's purchase order, or at such other address as Customer may designate hereafter by like notice to OYC. Notice to OYC shall be sent to the following address: **OYC Americas, Inc. 2780 La Mirada Dr # B, Vista, CA 92081.**
- b. Severability; No Waiver; Amendment; Survival. The invalidity or unenforceability of any provision or clause of these Terms and Conditions or any Invoice issued from OYC to Customer will not affect the validity or enforceability of any other provision or clause. OYC reserves the right to correct clerical or similar errors relating to price or any other term shown in these Terms and Conditions or any Invoice issued from OYC to Customer. Failure of either Party to insist, in any one or more instances, upon performance of any term, covenant or condition of these Terms and Conditions or any Invoice issued from OYC to Customer will not be construed as a waiver or relinquishment of any right granted hereunder or of the future performance of such term, covenant or condition. OYC reserves the right to amend these Terms and Conditions from time to time. OYC's sales representatives are without authority to change, modify, or alter these Terms and Conditions. The terms of OYC's Order Acknowledgment may not be amended orally or by tacit assent but only by written document signed by an authorized representative of OYC. These Terms and Conditions shall survive the termination or cancelation of any Invoice issued from OYC to Customer.
- c. Successors and Assigns. These Terms and Conditions and any Invoice issued from OYC to Customer are binding upon and will inure to the benefit of Customer and OYC and their respective successors and assigns. Notwithstanding the foregoing, Customer may not assign these Terms and Conditions or any Invoice issued from OYC to Customer, or any part thereof, without OYC's prior written consent. Any such attempted assignment is void unless with OYC's prior written consent.
- d. Non-Exclusivity. The engagement between Customer and OYC is non-exclusive such that OYC may prepare and manufacture the Product using OYC IP, even if such Product is competitive with Customer's product, at all times during the term of these Terms and Conditions.

- e. Entire Agreement. These Terms and Conditions and any Invoice issued from OYC to Customer (if any), constitute the final written expression of the terms between OYC and Customer regarding the Product and, together, are a complete and exclusive statement of those terms. Any negotiations or understandings between OYC and Customer, which are not contained in these Terms and Conditions or any Invoice issued from OYC to Customer, will have no force or effect. In the event of a conflict among the provisions of these Terms and Conditions and any Invoice issued from OYC to Customer, the order of priority shall be: (i) these Terms and Conditions; (ii) the quotation; (iii) the order acknowledgment; and (iv) the invoice.