

# NOVARIA GROUP

## TERMS AND CONDITIONS OF SALE

The following terms and conditions of sale (the “Terms and Conditions”) shall govern any sale of goods (“Goods”) or services (“Services”) by Novaria Group, including its affiliates and subsidiaries (“Seller”) to a customer (“Buyer”). These Terms and Conditions are hereby incorporated into and made a part of any and all purchase orders and amendments thereto placed by Buyer to Seller in relation to Goods or Services (each a “Purchase Order”). Any such Purchase Order together with these Terms and Conditions shall be the complete and final agreement (the “Agreement”) between Seller and Buyer with respect to the purchase and sale of the Goods or Services identified in the Purchase Order; provided that no preprinted or form language appearing in Buyer’s Purchase Order shall become a part of the Agreement and Buyer’s standard terms and conditions of purchase are expressly excluded from the Agreement. Seller’s acceptance of any Buyer’s Purchase Order is expressly made conditional upon Buyer’s acceptance of these Terms and Conditions, and Seller objects to any additional or different terms and conditions, whether contained in Buyer’s Purchase Order or otherwise. Seller will not be deemed to have waived these Terms and Conditions if Seller fails to object to provisions contained in Buyer’s Purchase Order, other forms or otherwise.

- 1. Delivery; Title and Risk of Loss:** All sales of Goods shall be (i) Ex-Works (EXW Incoterms 2010) Seller’s manufacturing facility when destinations are U.S., Canada or Mexico or (ii) FCA (FCA Incoterms 2010) Seller’s manufacturing facility when destinations are outside of the U.S., Canada or Mexico. Goods shall be invoiced to and become the property of Buyer upon tender of delivery to the carrier at Seller’s manufacturing facility (the “Delivery Location”). Buyer has the right to specify the method of transportation and the common carrier to be used. Absent such specification, the Seller shall ship the Goods by a common carrier of its own selection and invoice Buyer for all applicable charges associated with such shipment. Title and risk of loss or damage to Goods will pass to Buyer upon tender of delivery to carrier at the Delivery Location. Until payment in full is received by Seller, Seller shall retain a first priority security interest and right of possession to all delivered Goods, regardless of mode of attachment to realty or other property. Buyer agrees to do all acts necessary to perfect and maintain the priority of such security interest and rights of Seller, and Buyer agrees to adequately insure Goods against all loss or damage, with Seller being named as an additional insured under all such insurance policies.
- 2. Assignment:** The Purchase Order and any right or interest thereunder may not be assigned by Buyer without Seller’s prior written consent.
- 3. Delays:** Lead times and delivery dates do not include transportation time. All shipping dates are estimates only. Seller will use commercially reasonable efforts to fill the Purchase Order in accordance with the estimated shipping date, but Seller will not be responsible for any delays in filling the Purchase Order nor liable for any losses or damages resulting from such delays, and the Purchase Order will not be subject to cancellation for any such delays.
- 4. Force Majeure:** Seller will not be liable for delays in filling the Purchase Order or failure in the performance of any of its obligations under the Agreement caused by accidents, labor disputes or disruptions, strikes, shortages of labor, materials, fuel or power, fires,

floods or other acts of God, acts of terrorism or war, acts or omissions of Buyer, delays in transportation or lack of transportation facilities, priorities required, requested or granted for the benefit of the government, restrictions imposed by law or any rules or regulations thereunder, or any cause, whether similar to or dissimilar from those set forth above, beyond Seller's reasonable control.

- 5. Modifications:** Any changes requested by Buyer to a Purchase Order will be subject to the consent of Seller, in its sole discretion, and will be subject to an equitable price adjustment and/or delivery adjustment, as determined by Seller. No such changes will be binding on Seller unless approved in writing and signed by Seller. In no event will course of conduct be deemed to modify or waive the terms of the Agreement.
- 6. Expedite Fees / Additional Charges:** From time to time, a fee may be assessed for accelerated or expedited delivery. If the accelerated deliveries are not met, a mutually agreed reduction in such fees may apply, pro-rated in accordance with the number of days of delay between normal lead time and the accelerated date. In some instances, opening fees for production during non-operating hours or weekend coverage may apply.
- 7. Payment and Prices:** Seller will invoice Buyer at the prices and charges provided in the Purchase Order, subject to any applicable written agreement between the parties, such as any economic price adjustment clauses or other material re-pricing or surcharges. All payments due to Seller shall be made in full in U.S. dollars, without set-off, counterclaim, deduction or withholding of any kind. Buyer will ensure that the sums received by Seller shall be equal to the full amounts expressed to be due to Seller in the invoice, without deduction or withholding on account of and free from any and all taxes, levies, imposts, dues or charges of whatever nature. If Buyer is compelled by law to make any such deduction or withholding, Buyer shall pay such additional amounts as may be necessary in order that the net amount received by Seller after such deduction or withholding shall be equal to the amounts which would have been received in the absence of such deduction or withholding and pay to the relevant taxation or other authorities within the period for payment permitted by applicable law, the full amount of the deduction or withholding. All prices include packaging in accordance with Seller's standard procedures. Charges for special packaging, crating or packing are the responsibility of Buyer. Unless otherwise agreed to in writing by Seller, payment terms are net 30 days from the date of invoice. Seller retains all rights and remedies available at law pertaining to the collection of unpaid amounts owed by Buyer under the Agreement. All past due accounts will be subject to a one and one-half percent (1-1/2%) finance charge per month on the unpaid balance, which is an annual percentage rate of eighteen percent (18%). In the event Buyer defaults in its obligations hereunder, Buyer shall be liable for Seller's costs of collection, including attorneys' fees. Where reasonable grounds for insecurity exist with respect to due payment by Buyer, Seller may demand different terms of payment and may demand assurance of due payment. Seller may, upon the making of such demand, stop production and suspend shipment hereunder. If, within the period stated in such demand, Buyer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of due payment, Seller may, at its option, treat such failure or refusal as a repudiation of the portion of the Purchase Order which has not been fully performed, or may resume production and may make shipment and may demand payment against tender of documents of title.
- 8. Quantity:** If quantities shown on packaging are based on weight counts, Seller will use commercially reasonable efforts to ensure that its weight counts are accurate. The

parties agree that if the quantity of Goods, as determined by actual weight, is within two percent of the quantity shown on the packaging, Buyer shall be deemed to have received the quantity shown on the packaging, and Buyer shall pay for such amount. Any Purchase Order filled by Seller that is less than the quantity ordered by Buyer, but not less than ninety percent (90%) of the quantity ordered will be deemed to be fully filled. In such event, Buyer shall be entitled only to the quantity of Goods provided by Seller, and shall be required to pay only for the amount actually delivered by Seller.

- 9. Inspection; Acceptance or Rejection:** Buyer will make adequate inspection of the Goods promptly after their receipt, and in any event within thirty (30) days of receipt and will give Seller prompt written notice of any non-conformity or defect. Any rejection of Goods by Buyer must be received in writing by Seller within sixty (60) days from date of shipment. After this date and even in the absence of a formal acceptance document, the Goods will be deemed definitively accepted by Buyer, and Buyer's failure to inspect the Goods or to notify Seller of any non-conformity or defect will constitute a waiver of such non-conformity or defect. Buyer must keep lot traceability records for the Goods to ensure that lots manufactured by Seller can be traced through Buyer's manufacturing and/or sales processes.
- 10. Warranty:** Subject to the limitations and conditions hereinafter provided, Seller warrants that the Goods sold to Buyer, at the time of shipment, will meet Seller's specifications and be free from defects in material and workmanship. Such warranty is limited to twelve (12) months from the date of shipment of the Goods to Buyer. Seller's sole obligation and liability in the event of breach of warranty and Buyer's sole remedy, as determined by Seller, will be Seller's repayment of the amount paid for any non-conforming Goods, or repair or replacement of non-conforming Goods free of charge at Buyer's delivery point. Such repair, replacement or repayment will be made only upon return of the non-conforming Goods, which may be returned at Seller's cost only after inspection by Seller (which may be by Buyer returning a sample to Seller at Seller's request) and Buyer's receipt from Seller of definite shipping instructions and an RMA number. Non-conforming Goods shall be returned within 30 days of RMA issuance. This warranty is in lieu of all other warranties or obligations, express or implied. No person is authorized to provide any other warranties on behalf of Seller.
- 11. Limitation of Liability and Damages:** Seller's liability under this Agreement shall be limited to repayment of the amount paid, or repair or replacement of non-conforming Goods only, and Seller shall not be liable for the cost of procurement of substitute products. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER AND REMEDIES OF BUYER SET FORTH IN THESE TERMS AND CONDITIONS ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND BUYER HEREBY WAIVES, RELEASES AND RENOUNCES ALL OTHER WARRANTIES, OBLIGATIONS AND LIABILITIES OF SELLER AND RIGHTS, CLAIMS AND REMEDIES OF BUYER AGAINST SELLER, EXPRESS OR IMPLIED HOWSOEVER, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY GOODS OR SERVICES DELIVERED UNDER THESE TERMS AND CONDITIONS INCLUDING BUT NOT LIMITED TO : (A) ANY WARRANTY AGAINST HIDDEN DEFECTS ; (B) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS ; (C) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE ; (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY, WHETHER CONTRACTUAL OR TORT AND WHETHER OR NOT ARISING FROM SELLER'S NEGLIGENCE, ACTUAL OR IMPUTED ; AND (E) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM OR REMEDY FOR LOSS OF OR DAMAGE TO ANY GOODS. SELLER

SHALL HAVE NO OBLIGATION OR LIABILITY, HOWSOEVER ARISING, FOR LOSS OF USE, REVENUE OR PROFIT OR FOR ANY OTHER DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES WITH RESPECT TO ANY GOODS DELIVERED UNDER THESE TERMS AND CONDITIONS.

- 12. Shipping Claims:** For the avoidance of doubt, Claims for Goods damaged during shipment are not covered under the warranty set forth in paragraph 10 above. All Goods damaged during shipment and all claims relating thereto must be made with the freight carrier in accordance with such carrier's policies and procedures.
- 13. Termination:** In the event Buyer breaches any of its obligations or fails to make payments in a timely manner as required by the terms of the Purchase Order, and Buyer does not provide security for future payments to the satisfaction of Seller, or in the event of a change of control of Buyer, or if Buyer is subject to bankruptcy or similar action or becomes insolvent, Seller may terminate any and all of its obligations under the Purchase Order without liability to Seller, and Seller shall be entitled to exercise any or all remedies available under applicable law. Buyer may not terminate any Purchase Order without the prior written consent of Seller. If Seller consents to such termination, reasonable termination charges computed by Seller may be assessed in connection with such termination.
- 14. Confidentiality and Intellectual Property:** All proprietary information contained in the Goods and Services and their respective documentation, including but not limited to patent, copyright, drawings, formulae, data, model, descriptions studies, codes and/or other information relating to the design, assembly, composition, manufacture, performance, application, or operation of the Goods and Services, and/or any information marked as "Proprietary", "Confidential" or with some other similar marking or denomination or all information that Buyer knows or should reasonably know is confidential, including without limitation any agreement relating to the Goods and Services (collectively the "Confidential Information") are and will remain the exclusive property of Seller. Acceptance of Buyer's Purchase Order does not obligate Seller to license or assign any patent, copyright or other intellectual property rights to Buyer. All tools, jigs, dies, manufacturing drawings, processes and other facilities of Seller used in the performance of the Purchase Order shall remain the property of Seller. Unless otherwise agreed to in writing by Seller, Seller will not be bound by any obligations of confidentiality or non-disclosure.
- 15. Governing Law; Jurisdiction:** The Agreement will be governed by and interpreted in accordance with the laws of the State of Delaware without regard to conflict of law principals that could result in the application of the laws of any other jurisdiction. The parties agree that any dispute arising hereunder shall be submitted to the exclusive jurisdiction of any Texas state court or federal court of the United States of America sitting in Tarrant County, Texas and the parties hereby submit themselves to the jurisdiction thereof. The United Nations Convention on Agreements for the International Sales of Goods will not apply to this Agreement.
- 16. Severability:** Any provision of these Terms and Conditions prohibited by or unlawful or unenforceable under any applicable mandatory law actually applied by any court of competent jurisdiction shall, to the extent required by such law, be severed from these Terms and Conditions and rendered ineffective so far as is possible without modifying the remaining provisions. Any such prohibited, unlawful or unenforceable provision shall

be replaced, so far as practicable, with another provision having substantially the same effect (in its legal and commercial content) as the invalid provision, but which is not prohibited, unlawful or unenforceable. The invalidity in whole or in part of any provisions of the Terms and Conditions shall not void or affect the validity of any other provision.

**17. Entire Agreement; No Waiver:** These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof. No amendments or supplements are permitted, and no provisions may be modified or waived, except by an instrument in writing signed by both parties. No waiver of or failure to enforce any provisions of these Terms and Conditions by either party shall be deemed a waiver of any other provisions by such party, nor shall any such waiver or failure to enforce be deemed a continuing waiver of any provision by such party.