

TERMS AND CONDITIONS
Applicable to Sales by API Americas, Inc. ("API")

- 1. AGREEMENT:** These terms and conditions ("Agreement") apply to all orders of products ("Goods") on the face of this Agreement ("Order") sold by API to the Buyer identified on the face of this Order ("Buyer") to the exclusion of all other terms and conditions, including any terms or conditions which Buyer purports to apply under any purchase order, confirmation of order or similar document, or which are implied by trade, custom, practice or course of dealing. For the avoidance of doubt, this Agreement, in its applicable version at the relevant time, shall apply to each future order without API having to issue a copy for each order. API will notify Buyer about any changes to this Agreement. API shall have no obligation to Buyer to provide any Goods under the Order unless API in its sole discretion shall have provided notice to Buyer of its acceptance of this Order. API's shipment and delivery of the Goods identified in this Order without delivery of its acceptance notice shall nonetheless constitute a contract binding Buyer to this Agreement if Buyer does not reject such Goods upon their delivery. API is providing the Goods identified on this Order to Buyer pursuant to the provisions of this Agreement and no other terms. API cannot change any provision of this Agreement without the written agreement of an authorized representative of API.
- 2. ORDER FULFILLMENT; CANCELLATION:** API and Buyer agree the quantity of Goods delivered hereunder may vary by plus or minus ten per cent (10%) the quantity of Goods ordered. After API has accepted an Order, Buyer shall not alter or cancel the Order without (a) API's written approval and (b) Buyer's payment of "cancellation charges" applicable to the cancellation or alteration of the Order. API will assess and Buyer will pay cancellation charges for any order cancelled in whole or in part after API's acceptance of the Order. Buyer's cancellation of any specially manufactured Goods will require the Buyer to pay API all reasonable costs incurred up to the date of termination of the Order.
- 3. PRICES:** Prices quoted for Goods are subject to change without prior notice to Buyer. Prices for Goods shall be the prices in effect at the date of delivery to Buyer. Goods will be delivered when available. Price does not include shipping, insurance or applicable sales or use tax.
- 4. BLANKET ORDERS:** API may accept "blanket orders" when they are accompanied with purchase orders and specific release dates.
- 5. DELIVERY; RISK OF LOSS:** Delivery of the Goods shall be EXW (Incoterms 2010 as amended from time to time) as specified by API. Risk of loss for all Goods delivered to the EXW point shall pass to Buyer upon delivery to the EXW point.
- 6. ACCEPTANCE BY BUYER:** Buyer shall inspect or cause the Goods to be inspected immediately upon delivery to the EXW point. Buyer's use, sale or other disposition of the Goods or Buyer's failure to notify API of any material deviation from API's published or agreed specifications for such Goods within thirty (30) days after the date of delivery where the defect should be apparent on reasonable inspection or within thirty (30) days of the same coming to the knowledge of Buyer where the defect is not one which should be apparent on reasonable inspection and in any event no later than three (3) months from the date of delivery, constitutes Buyer's unconditional acceptance of the Goods.
- 7. RETURN OF GOODS:** (a) Buyer may not return any Goods (or any portion of the Goods) which do not materially deviate from their published or agreed specifications; and (b) In the event that any Goods (or any portion of the Goods) materially deviate from their published or agreed specifications, the Buyer will be entitled to return such Goods (or any such portion of the Goods) provided that (i) Buyer has notified API within the timescale stipulated in **Section 6** and (ii) API has verified that the Goods (or any portion of the Goods) materially deviate from their published specifications and has subsequently authorized their return in writing. For the avoidance of doubt, until such Goods are received by API, Buyer shall continue to have all risk of loss and other liabilities in respect to such Goods (or any portion of such Goods). On receipt of the returned Goods API will, free of charge, replace, or at its option, refund the price of such Goods.
- 8. LIMIT ON LIABILITY; NO CONSEQUENTIAL OR INDIRECT DAMAGES:** Buyer's exclusive remedy, and API's exclusive and maximum liability, to Buyer for any and all claims, losses, damages or injuries resulting from any Non-Conforming Goods (including their use, handling, delivery or non-delivery), whether or not such liability is based on contract, tort, negligence, strict liability or otherwise shall be, at API's option, the replacement of the Non-Conforming Goods with conforming Goods following their authorized return or a refund or credit to Buyer of the purchase price of that portion of the Goods which is the basis of any claim. For purposes of this Agreement, "Non-conforming Goods" means any goods received by Buyer from API pursuant to an Order that: (i) do not conform to the make/model number listed in the applicable Order or (ii) do not significantly conform to the parties' agreed-to specifications. The warranties under this Section do not apply where the Goods have: (x) been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by API; (y) been reconstructed, repaired or altered by persons other than API; or (z) been used with any third-party product, hardware or product that has not been previously approved in writing by API. Unless Buyer fully complies with the provisions of **Sections 6 and 7** above, Buyer shall have waived any right to assert any claim under any theory or law or equity against API. Regardless of API's knowledge or lack thereof of any special damages that Buyer could suffer, **API'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO AN INDIVIDUAL TRANSACTION, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, SHALL NOT EXCEED THE TOTAL OF THE AMOUNTS PAID BY BUYER TO API PURSUANT TO THE CORRESPONDING INDIVIDUAL TRANSACTION. FOR PURPOSES OF AGREEMENT, "INDIVIDUAL TRANSACTION" MEANS ANY ORDER THAT HAS BEEN ACCEPTED BY API. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR ENHANCED DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THIS AGREEMENT BETWEEN API AND SELLER, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY THE OTHER PARTY OR COULD HAVE BEEN REASONABLY FORESEEN, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BUYER ASSUMES ALL RISK AND LIABILITY FOR THE RESULTS OBTAINED BY THE USE OF ANY GOODS IN THE PRACTICE OF ANY PROCESS, WHETHER IN TERMS OF OPERATING COSTS, GENERAL EFFECTIVENESS, SUCCESS OR FAILURE, AND REGARDLESS OF ANY ORAL OR WRITTEN STATEMENTS MADE BY API, BY WAY OF TECHNICAL ADVICE OR OTHERWISE, RELATED TO THE USE OF THE GOODS.**
- 9. LIMITED WARRANTY; DISCLAIMER:** API warrants to Buyer that: (a) no Goods will be Non-conforming Goods at the time of delivery; (b) for a period of three (3) months from the date of shipment of the Goods (the "Warranty Period"), that such Goods will materially conform to the specifications agreed to in writing by the parties as of the date of shipment and will be free from significant defects in material and workmanship; and Buyer will receive good and valid title to the Goods, free and clear of all encumbrances and liens of any kind. API does not warrant that Goods or Buyer's use of Goods will achieve a particular result. Goods are sold with the understanding that a Buyer will independently determine the suitability of Goods for the purposes for which they are purchased. It is Buyer's responsibility to test the compliance of Goods with the applicable specifications before any third party applications to Goods. Buyer assumes all risk and liability resulting from use of Goods, whether used singly or in combination with other products. API warrants that all Goods are produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. **EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 9, API MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE. BUYER ACKNOWLEDGES THAT IT HAS NOT RELIED UPON ANY OTHER REPRESENTATION OR WARRANTY MADE BY API, OR ANY OTHER PERSON ON API'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT.**
- 10. BUYER'S ASSUMPTION OF RISKS:** Buyer acknowledges that API's warranty with respect to the Goods is limited and API does not guarantee or promise that the Goods will be fit for the purpose intended by Buyer or as used or applied by Buyer. Buyer knowingly assumes all risks and liability arising from the use of the Goods whether singly or in combination with other products, including without limitation, all risks and liability for the application of the Goods and the end result of use of the Goods.
- 11. PAYMENT; LATE PAYMENT, ENFORCEMENT:** Unless otherwise stated on the face of this Order, Buyer shall pay for the Goods ordered under this

Agreement within thirty (30) days of the invoice date. If Buyer fails to pay the entire amount when due under this Order, Buyer shall pay, in addition to such overdue amount and API shall be entitled to: (a) collect a service charge as permitted by law that reflects API's additional administrative and interest expenses in managing an overdue account; (b) collect interest on the overdue amount at a rate of the lesser of one and half per cent. (1.5%) per month or the maximum amount permitted by applicable law; and (c) exercise such other rights and remedies available at law or equity, including without limitation, accelerate and declare due and owing all amounts owed under any other agreement or order between Buyer and API and repossess the Goods. If Buyer does not pay all amounts required by this **Section 11**, API shall be entitled to bring a collection action against Buyer and collect the amounts owed under this Order and any other order, the fees of attorneys, accountants, experts and other costs incurred by API in the collection of amounts owed by Buyer. API's remedies under this Agreement are cumulative.

12. TITLE: Title to the Goods shall pass on payment in full for the Goods. Until ownership of the Goods has passed to the Buyer, the Buyer must hold the Goods on a fiduciary basis as API's bailee, store the Goods (at no cost to API) separately from all other Goods of the Buyer or any third party in such a way that they remain readily identifiable as API's property, not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and maintain the Goods in satisfactory condition insured on API's behalf for their full price against all risks to the reasonable satisfaction of API, and will whenever requested by API produce a copy of the policy of insurance. Buyer may not export the Goods from one country to another unless the Goods have been paid for in full and title has passed to the Buyer; API may, however, in its sole discretion waive this requirement upon request from Buyer and permit Buyer to export the Goods subject to all terms and conditions imposed by API related to such export and subject to **Section 15.C**.

13. INTELLECTUAL PROPERTY: No right or licence is granted hereby to Buyer, expressly or by implication, in respect of any intellectual property rights (IPR) of API, except the right to use, or re-sell the Goods in the Buyers' ordinary course of business. Where any IPR arise from or are generated through the provision of Goods by API, such IPR will vest in API absolutely.

14. CONFIDENTIALITY: Each Party will keep confidential any and all confidential information that it may acquire from the other Party. Each Party will not use the confidential information of the other Party for any purpose other than (in the case of the API) to perform its obligations under this Agreement or (in the case of the Buyer) to receive and use the Goods. Each Party will ensure that its officers and employees comply with the provisions of this **Section 14**. The obligations on each Party set out in **Section 14** will not apply to any information which is publicly available or if that Party is required to disclose by order of a court of competent jurisdiction or due to any law or regulation (to the extent of such required disclosure).

15. OBLIGATIONS OF BUYER: Among Buyer's other obligations, API notes that Buyer may have the additional responsibilities as listed below. This is not intended to be an exhaustive list and does not constitute API's provision of legal advice. Buyer should obtain its own legal advice for information about Buyer's compliance obligations

A. TPRA: Pursuant to the Toxic Packaging Reduction Act ("TPRA") effective in the United States, a seller of certain packaging products provides a certification that those of its Goods intended for use in a "Package" or as a "Packaging Component" (as defined in ASTM D 99-95) do not contain certain prohibited substances. API believes that Buyer has the sole responsibility and liability under applicable law to inform API of the intended use of the Goods. To assist Buyer in complying with TPRA and obtain the required certifications, API must receive from Buyer at the time of an Order a written notice from an authorized representative of Buyer (i) stating that Buyer intends to use the Goods in a Package or Packaging Component and (ii) requesting a certification from API. After such written request, API will provide to Buyer a TPRA certification with the delivered Goods. Buyer's failure to so specify that the Goods are to be used in a Package or a Packaging Component may violate federal, state or international statutes, rules and regulations and may subject Buyer to penalties. Buyer may also have obligations with respect to disposal of Goods. API shall have no responsibility or liability for Buyer's failure to comply with its legal and regulatory obligations under any circumstances, and Buyer shall defend in the first instance, indemnify and keep indemnified and hold API harmless from any and all liabilities, damages, claims, losses, fees (including the fees of attorneys and other professionals) and expenses. API can make available Material Safety Data Sheets for Goods.

B. EU Obligations. Buyers who intend to utilize Goods in the European Community have the responsibility to inform API of the intended use of the Goods and to ensure that the Goods will not be in violation of the European Parliament and Council Directive 94/62/EC of December 20, 1994 on packaging and packaging waste and any up-date or amendment thereto on packaging and packaging waste in the European Community. API shall have no responsibility or liability for Buyer's failure to comply with its legal and regulatory obligations under any circumstances and Buyer shall defend in the first instance, indemnify and keep indemnified and hold API harmless from any and all liabilities, damages, claims, losses, fees (including the fees of attorneys) and expenses.

C. Trade Controls Compliance. Buyer acknowledges that no direct or indirect (through a third country) transactions, including the exportation or importation of products, technologies, services or financial transfers will take place between U.S. persons and any country or nationals, wherever they may be, of Cuba, Iran, North Korea, Sudan or Syria or any other country or national entity or individual sanctioned by the U.S. Government without the appropriate U.S. Government licence. If Buyer exports the Goods, Buyer shall be responsible for compliance with all applicable export and trade controls laws and regulations, including the Export Administration Regulations, the Foreign Trade Regulations, and the economic sanctions laws and regulations administered by the Office of Foreign Assets Control; the export and import laws of any other jurisdiction, as applicable; and all customs/import laws that apply. The Buyer shall provide API with all information API requires related to compliance with these laws and regulations, including information regarding the end use, end user, and destination of the Goods. Buyer warrants that it will not divert Goods to destinations other than the destination indicated in an Order and shall include these trade sanction provisions in any subsequent contracts under which Goods are resold. API shall have no responsibility or liability for Buyer's failure to comply with its legal and regulatory obligations under any circumstances, and Buyer shall defend in the first instance, indemnify and keep indemnified and hold API harmless from any and all liabilities, damages, claims, losses, fees (including the fees of attorneys) and expenses as a result of any violation of such obligations and this **Section 15.C** by Buyer.

16. GOVERNING LAW; CONSENT TO VENUE; WAIVER OF JURY TRIAL: This Agreement and its performance shall be governed by and construed according to the internal laws of the State of Kansas. Buyer and API agree that any dispute between them shall be brought in any federal or state court sitting in Kansas City, Kansas and each consents to the personal jurisdiction of such court and waives any right to claim forum *non conveniens*. **Each of Buyer and API knowingly and voluntarily waive, to the extent legally permissible, the right to a trial by jury in any dispute between them.**

17. FINAL AGREEMENT; ASSIGNMENT: This Agreement, including the Order is the final and entire agreement of the parties and merges and supersedes all prior and contemporaneous oral or written agreements and understandings. API does not accept any terms or conditions contained in Buyer's form of order, acknowledgment or acceptance that are contrary to this Agreement. This Agreement can be modified only in writing signed by API (pursuant to paragraph 1) and Buyer. Buyer shall not assign this Agreement without the prior written consent of API, which consent shall not be unreasonably withheld. API may assign this Agreement to any of its affiliates.

18. INVALIDITY: If any provision contained in this Agreement is found to be invalid or otherwise prohibited by any law, regulation or ordinance, the remaining provisions of this Agreement shall nonetheless remain in full force and effect.

19. NOTICES: Each Party shall give any notices or other communications required or permitted under this Agreement in writing, to be delivered to the addresses identified in the Order by first class U.S. mail or recognized overnight carrier. Each party shall be entitled to specify a different address by giving prior written notice to the other.

20. FORCE MAJEURE: Neither Party hereto shall be liable to the other for default or delay in performing its obligations hereunder if caused by fire, strike, riot, war, act of God, delay of carriers, governmental order or regulation, complete or partial shutdown of plant by reason of inability to obtain sufficient raw materials or power, and/or any other similar or different occurrence beyond the reasonable control of the Party so defaulting or delaying. The Party whose performance is prevented by any such occurrence shall notify the other Party thereof in writing as soon as is reasonably possible after the commencement of such occurrence, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the other Party of the cessation of such occurrence. No payment shall be made by Buyer to API for any expenses incurred by API by reason of such default or delay. If a force majeure event extends for more than sixty (60) days, the purchase order may be terminated upon written notice

by the Party not declaring force majeure without any liability on its part. In the event of a force majeure event resulting in a partial inability of API to supply the product to its customers, including supplying the Goods to Buyer, API shall allocate supplies of the Goods to its customers in its sole discretion. This Section shall not relieve either Party of its obligation to pay the other money due.