

ACCEPTANCE

These terms and conditions of sale (“**Terms**”) apply to all sales, samples, color matches and services (“**Products**”) provided by Badger Color Concentrates Inc. (“**Seller**”) to the purchaser (“**Buyer**”) pursuant to an order for such Products (each, a “**Purchase Order**”). The Seller does not accept and expressly rejects all terms and conditions contained in any other document which pertain to the Products sold or offered between the Seller and the Buyer which are inconsistent with these Terms. If additional terms and conditions become part of the relationship between the Seller and the Buyer in any request for quotation, Purchase Order, purchase acknowledgment (“**Order Acknowledgment**”), or any other documents, services or communications (written and oral) received from the Buyer, such additional terms must be expressly agreed by the Seller in writing by an authorized agent of the Seller. If any conflict arises between these Terms and any other document, these Terms shall supersede all other documentation.

PURCHASE ORDERS

Due to the customizations of Purchase Orders, the Buyer cannot change or cancel a Purchase Order without written consent from the Seller. All Purchase Orders are subject to acceptance by the Seller. The Seller will accept a Purchase Order in writing by means of an Order Acknowledgment. Due to the customization of Products, the Seller reserves the right to reject or charge additional fees to a Purchase Order change dependent on where the order is at in the manufacturing process. Purchase Order changes will be subject to a change fee in addition to the increase cost incurred related to such change. Any partial or full cancellation of a Purchase Order shall result in a cancellation charge as well as charges related to the cost of the portion or full order cancelled, including raw material costs, freight, and associated labor.

A blanket order is an order that contains multiple delivery dates for the same part number (each a “**Blanket Order**”). Blanket Orders are agreed by the parties upon receipt by the Buyer of an Order Acknowledgment from the Seller. The Seller reserves the right to charge the Buyer for any costs incurred upon cancelling all or any portion of a Blanket Order as set forth above.

The Seller will accept increases to Purchase Orders in process, but such increases shall be considered a new line item subject to additional cost and delivery charges. Volume discounts will not be negotiated for increases on Purchase Orders in process.

PACKAGING

Unless otherwise agreed to in writing prior to the shipment, the Products shall be packed by the Seller and will be delivered for shipment in standard commercial packaging. When special or export packaging is requested or, in the opinion of the Seller, is required under the circumstances to minimize risk of loss or damage in transit, at the Seller’s discretion, packaging shall be invoiced separately.

Product containers, whether disposable, returnable or otherwise, are intended only for temporary storage of the Products originally contained therein. Any other use of such containers may be hazardous or unlawful. The Seller accepts no liability with respect to the use of the Product containers or packaging beyond its intended use.

PRICING, SHIPPING AND DELIVERY

The Seller reserves the right to change pricing related to the Products without notice. Price quotes will be valid for thirty (30) days following the date of quotation. The Seller reserves the right to make any adjustments to pricing due to, but not limited to, raw material shortages, supplier price changes, manufacturer price changes, and/or any errors in quotes or advertisements. Unless otherwise specified, all Purchase Orders are considered shipping F.O.B. Seller’s shipping location. The Buyer assumes all risks and liabilities arising out of (i) unloading, discharge, storage, handling and use of the Product or (ii) compliance or non-compliance with federal, state, provincial or local laws and regulations governing or controlling such activity.

Purchase Orders shipping within the continental United States will qualify for freight prepaid if Purchase Order line items are equal to or greater than five hundred (500) pounds and a multiple line item Purchase Order must have the same shipping date/delivery date and delivery location that add up to five hundred (500) pounds or greater.

Customer-generated changes to Purchase Orders that modify the original shipping date or delivery dates on any line item disqualify all line items under five hundred (500) pounds on the Purchase Order for freight prepaid. Individual Purchase Orders will not be combined for freight prepaid. Purchase Orders that are placed for a total of less than five hundred (500) pounds shall be shipped at then-current freight charges unless designated by the buyer. Any Purchase Orders that ship outside the continental United States are automatically shipped at then-current freight charges. Freight charges for any shipments will include additional border fees, handling or taxes, if applicable. In the event a Purchase Order is not to be loaded for shipment within twenty-four (24) hours of the scheduled ship date, the Seller reserves the right to charge a carrying fee to the Buyer.

Delivery dates are approximate and not guaranteed. The Seller will make commercially reasonable efforts to make deliveries, whether full or partial, in accordance with the established delivery date agreed upon. Changes to delivery dates of an accepted Purchase Order are required to be in writing, and subject to the Seller’s acceptance. Acceptance will be in the form of an updated Order Acknowledgment.

EXPEDITED ORDERS, SHIPMENTS AND RETURNS

Seller will make commercially reasonable efforts to expedite shipment per the Buyer’s request. The Buyer is responsible for all costs incurred related thereto, including, but not limited to, additional production costs, handling costs, packaging costs, freight costs and additional fees incurred related to Buyer-initiated expedited shipping requests. Expedited Purchase Orders are subject to a fee plus two percent (2%) of the purchase price.

Overruns or underruns of up to ten percent (10%) of an order size will constitute a completed order. Any claims regarding order sizing shortages need to be in writing and received by the Seller within five (5) business days following the day of delivery. The Seller’s weights and measures will govern, except in cases of proven error. Credits shall be issued to the Buyer at the discretion of the Seller.

The Seller may, in its sole discretion, but shall not be obligated to, accept returns for the convenience of the Buyer. If the Seller authorizes any return for the convenience of the Buyer, (a) the Products shall be returned to the point of shipment, at the Buyer’s expense, properly packaged; and (b) the Seller will issue a credit for the Products received at the Seller’s shipping point in resalable condition, as determined by the Seller in its reasonable discretion, less: (i) twenty percent (20%) of the original purchase price for handling and reconditioning or (ii) if greater, the actual charges incurred by the Seller.

PAYMENT AND CREDIT

Upon and subject to credit approval, the payment terms between the Buyer and the Seller are a “Net 20” days from the shipping date. Any credit will only be established after credit approval and limited by the Seller. If the Buyer’s financial condition does not justify the continuation of credit terms or the credit terms are exceeded by the selling price of the Purchase Orders from the Buyer, the Seller reserves the right to (i) request additional credit approvals, (ii) require advanced cash payments, (iii) require shorter payment terms and (iv) withhold shipments pending payment. All payments to the Seller shall be in U.S. Currency.

Late payments are subject to a monthly charge of one and a half percent (1.5%). The Seller reserves the right to recover amounts incurred by the Seller in an effort to collect payments from the Buyer including, but not limited to, attorney fees, collection agencies, etc.

PRODUCT WARRANTY, LIMITATION OF LIABILITY

Prototypes, Samples and other Development Products are sold “As Is” and without any representation or warranty, express or implied.

The Seller warrants that at the time of delivery the Products shall conform to the specifications set forth in the Product Specification and be free of material defects in workmanship and materials.

The Buyer and the Seller agree that the Buyer’s sole and exclusive remedy for Products which do not conform to the foregoing warranty is one of the following remedies, which the Seller shall provide at its option: (i) replacement of the nonconforming Products including the cost of shipping replacement Products to the Buyer or (ii) refund of the purchase price.

THE SELLER MAKES NO OTHER WARRANTIES AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. THE SELLER ALSO DISCLAIMS ANY WARRANTIES ARISING FROM USAGE OF TRADE, COURSE OF DEALING AND COURSE OF PERFORMANCE. THE SELLER'S WARRANTY IS SOLELY IN FAVOR OF THE BUYER AND THE SELLER DISCLAIMS ANY WARRANTY IN FAVOR OF ANY THIRD PARTY. THE SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, WHETHER RESULTING FROM THE FAILURE OF ANY PRODUCT DELIVERED TO CONFORM TO THE FOREGOING WARRANTY OR FROM THE NONDELIVERY, USE, MISUSE OR INABILITY TO USE THE PRODUCTS, WHETHER SUCH ALLEGED LIABILITY IS BASED UPON CONTRACT, TORT (INCLUDING STRICT LIABILITY OR NEGLIGENCE BY ANY PARTY INCLUDING THE SELLER), WARRANTY, AND/OR ANY OTHER LEGAL THEORY. THE BUYER ACKNOWLEDGES AND AGREES THAT THE SELLER'S AGGREGATE LIABILITY TO THE BUYER FOR DAMAGES OR ANY OTHER RECOVERY OF ANY KIND AS A RESULT OF ANY DEFAULT OR BREACH OF THIS AGREEMENT BY THE SELLER SHALL NEVER EXCEED THE PRODUCT UNIT PRICE AS DETERMINED AT THE TIME OF SUCH DEFAULT OR BREACH MULTIPLIED BY THE NUMBER OF SUCH PRODUCTS THAT HAVE BEEN SOLD TO THE BUYER AND TO WHICH SUCH RECOVERY OR DEFAULT RELATES.

All claims for breach of the Seller's warranty are waived unless: (a) the claim is made in writing within ten (10) days after receipt of the Products by the Buyer; and (b) the Products that are subject to the claim are held by the Buyer for inspection by the Seller and for instructions regarding their disposition.

The Seller will prepare Safety Data Sheets for each Product. The Buyer hereby acknowledges receipt of the Safety Data Sheets for each Product, and is aware of hazards or risks in handling or using such materials. The Buyer will fully inform its employees, agents, contractors and customers who handle, use, buy or are exposed to the Products of any such hazards or risks in accordance with all applicable laws.

CHANGES AND DISCONTINUATION

The Seller may make changes to the Products and any Seller processes without notice to, or approval from, the Buyer so long as the Product Specification related thereto is not impacted by such change.

The Seller may discontinue any Product sold here under at any time. The Seller may terminate this Agreement or any Purchase Order issued hereunder at its sole option upon fourteen (14) calendar days' prior written notice to the Buyer.

CONFIDENTIALITY

For purposes of this Agreement, "**Confidential Information**" means any non-public information or material, whether written, oral, or in any other form, prepared by the Seller, its advisors or otherwise which has been furnished before, on or after the date hereof to the Buyer. Confidential Information includes, but is not limited to, the Terms and conditions of this Agreement, know-how, product prices, marketing surveys and plans, flow charts, technical documentation, formulas, ingredients, weight control concepts, and information concerning the design, specifications and methods for the development, manufacture, packaging, supply, marketing, distribution and sale of products. The confidentiality obligations hereunder shall not apply to Confidential Information which: (i) is already lawfully known by the Buyer at the time of disclosure from the Seller and is not subject to any other confidentiality obligations between the parties; (ii) is or becomes available to the public other than as a result of disclosure by the Buyer in violation of this Agreement; (iii) becomes available to the Buyer on a non-confidential basis from a source other than the Seller pursuant hereto, provided that the source of the information was not known by the Buyer to be bound by a confidentiality agreement; or (iv) is lawfully and independently developed by the Buyer without use of or reference to any Confidential Information.

Buyer agrees to hold in confidence and not to disclose or reveal to any person or entity and Confidential Information of the Seller disclosed hereunder without the clear and express prior written consent of a duly authorized representative of the Seller, except to those persons and entities who (i) are required to have the Confidential Information in order for the party receiving the information hereunder to exercise its rights or perform its obligations under this Agreement or for testing, evaluating or sampling proposed products for inclusion in this Agreement and (ii) are bound by an obligation of

confidentiality no less stringent than that set forth in this Agreement. The Buyer further agrees not to use or disclose any Confidential Information of the Seller for any purpose at any time, other than for the limited purpose(s) referred to in this Agreement. In the event that the Buyer is directed to disclose any portion of any Confidential Information of the Seller or any other materials proprietary to the Seller in conjunction with a judicial proceeding or arbitration, the Buyer shall immediately notify the Seller both orally and in writing and shall provide the Seller with reasonable cooperation and assistance in obtaining a suitable protective order and in taking any other steps to preserve confidentiality.

Upon receipt of written request, the Buyer shall return to the Seller all material and documents containing Confidential Information, including any copies of extracts thereof, and shall erase any copies thereof contained in any electronic or other memory device.

INTELLECTUAL PROPERTY

The Seller shall be and remain the owner of all right, title and interest in and to any and all trademarks (the "**Trademarks**") for the Products throughout the world, and any and all rights in any Trademark occasioned by the use of that mark in connection with the Products or other products supplied or produced by the Seller shall inure solely to the Seller. The Buyer represents, warrants and covenants that: (i) the Trademarks shall only be applied to labels and packaging for Products sold or supplied exclusively to Buyer; (ii) the Buyer shall not apply any Trademark to, or sell, ship, or transfer to any person, anywhere in the world, any Products bearing a Trademark or any colorable imitation thereof; and (iii) the Buyer shall not contest, before any governmental agency or unit, in any court or proceeding, or otherwise, the sole and exclusive ownership of all right, title and interest in and to the Trademarks in the Seller, and/or the validity thereof, and expressly waives any claim to any right, title or interest, anywhere in the world, to the Trademarks.

"**Intellectual Property**" means all documentation, materials and rights with respect to and specifically for Products that have been or are at any time generated or conceived, whether before, on or after the date of this Agreement, in connection with and specifically for the development, manufacture or supply of Products (including without limitation formulas, formulations, recipes, processes, know how, ingredients, specifications, standards, and procedures specifically developed for Products), and any and all patents, copyrights, trademarks, service marks, trade industrial property rights (whether or not reduced to tangible form) included in, pertaining to or associated with the foregoing. The Buyer acknowledges and agrees that the Buyer shall have no, and shall not assert or claim any, legal, equitable or other right or interest, in whole or in part, in or to any of the Intellectual Property, Trademarks or other intellectual or industrial property of the Seller whatsoever. The Buyer shall not develop, formulate, manufacture, supply, distribute or otherwise sell at any time any of the Products, or any product substantially the same as or infringing upon any or all of the Intellectual Property for or to any other person or entity directly or indirectly; provided that the Buyer shall not be prevented from using processes or procedures used in the manufacture and supply of the Products which are not exclusive to the Products.

FORCE MAJEURE

The Seller shall not be liable for any delays in or failure of delivery of Product due to acts of God, acts of The Buyer or of third parties including without limitation to suppliers, acts of military or civil authority, fires, strikes, floods, epidemics, war, riot, terrorist acts, delays in transportation, cyber-attacks, or other causes beyond the Seller's reasonable control.

APPLICABLE LAW

The law of the State of Wisconsin shall apply without regard to the conflict of law principles. Each party consents to the exclusive jurisdiction of the federal and state courts located in the State of Wisconsin, for the resolution of any matters arising out of or relating to this Agreement.

Any dispute between the Buyer and the Seller shall be subject to arbitration by both parties prior to litigation.

SEVERABILITY

In the event of invalidity of a provision of these Terms, the parties shall deem that provision stricken in its entirety and the balance of these Terms shall remain in full force and effect.