

Terms and Conditions

1. General

These terms and conditions govern all sales of goods by BeardowAdams, Inc. ("BA") to the person or other legal entity purchasing such goods (the "Purchaser") regardless of whether Purchaser purchases goods through written purchase orders, electronic orders, verbal or written quotations, or any other writings or communications from BA and/or Purchaser relating to the goods (collectively or individually, an "Order"). "Terms and Conditions" shall refer to these terms and conditions as amended from time to time.

2. Agreement

No Order submitted to BA is binding unless and until accepted by BA and BA's acceptance of any Order is expressly subject to Purchaser's assent to each and all of the terms and conditions set forth in these Terms and Conditions. Purchaser's assent to these terms and conditions shall be conclusively presumed from Purchaser's failure to submit written objection thereto, or from Purchaser's acceptance of all or any part of the goods ordered. No addition to or modification of these terms and conditions shall be binding upon BA unless specifically agreed to by BA in writing. If the Order or other correspondence contains terms or conditions contrary to or in addition to the terms and conditions contained in these Terms and Conditions, BA hereby expressly rejects such contrary or additional terms and conditions, and acceptance of any Order by BA shall not be construed as assent thereto, or constitute a waiver by BA of any of the terms and conditions contained herein. In case of conflict with any other document, these Terms and Conditions shall control. Any reference to the Order or any other documents by BA shall not affect or limit the applicability of the terms and conditions contained herein.

3. Prices

Unless otherwise agreed, (a) the price of the goods shall be the price stated in BA's price list applicable at the date of delivery of the goods or, if earlier, the date of invoice, (b) all prices, quotations, shipments and deliveries by BA are F.O.B. BA's plant; (c) all base prices, together with related extras and deductions, are subject to change without notice; and (d) all transportation and other charges are for the account of Purchaser, including any increase or decrease in such charges prior to shipment. Any quotations given by BA will be valid for the period stated on the quotation.

All prices quoted include the cost of packing the goods in accordance with BA normal practice to protect against damage or deterioration under normal transport conditions.

Any tax (other than income taxes) that BA may be required to pay or collect through assessment or otherwise under any existing or future law upon or with respect to the sale, purchase, delivery, transportation, storage, processing, use or consumption of any goods described herein, including without limitation, taxes upon or measured by receipts from sales, shall be for the account of Purchaser and may be added to the price of such goods. Purchaser shall promptly pay the amount thereof to BA upon demand but may, in lieu of such payment, furnish tax exemption certificates acceptable to the appropriate taxing authorities to BA.

The parties agree that delivered pricing, if made available to Purchaser, shall be done so only as a convenience to Purchaser and in the event actual freight and insurance costs exceed that estimated in delivered pricing, Purchaser remains responsible for all actual freight and insurance costs incurred in shipping the goods to Purchaser, including fuel surcharges.

4. Payment

Payment is to be received not later than 30 days from the invoice date. Failure to meet payment in full by the due date shall entitle BA to charge interest from the due date until the date of actual payment (whether before or after judgment) at a rate of interest equal to the lower of (i) 1.5% per month or (ii) the highest rate of interest permitted under applicable law. All or any credit terms offered by BA to the Purchaser from time to time shall be solely at BA's discretion and BA shall be entitled to withdraw any credit terms at any time without explanation whereupon all unpaid amounts will become immediately due. Without limiting the generality of the foregoing, if Purchaser becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay BA's invoices as they become due, BA reserves the right to: (a) cancel all or any part of an Order; (b) modify the terms of payment prior to shipment; (c) require "Cash in Advance" terms; or (d) delay or cancel any shipment. In no event is Purchaser authorized to deduct any amounts from the amounts owed BA unless specifically authorized in writing by BA.

5. Delivery

Any dates given by BA specifying when the goods will be ready for pick up or will be delivered are approximate only and except as set forth in this Section 5, BA shall have no liability for any loss, injury, damages or expenses of whatever nature suffered or incurred by the Purchaser due to any delay in making goods available for pick up or in delivering the same, or arising due to the failure to deliver the same, whatever the cause.

In the event that BA shall fail to deliver any goods or shall fail to make them available for pick up within 28 days of the date specified by BA as the delivery or pick up date, the Purchaser shall be entitled to cancel such Order by notice in writing to BA provided that this is done prior to the earlier of either BA notifying the Purchaser that such goods are available for pick up or BA delivering the same to the Purchaser (or attempting to do so). In the event that the Purchaser properly exercises such right of cancellation the Purchaser shall be released from the obligation to purchase such goods and BA shall reimburse any part of the purchase price previously paid for such goods.

6. Risk of Loss

Risk of loss, deterioration and damage to the goods shall pass to the Purchaser on the earlier of either (i) when the goods are picked up by the Purchaser (or any person acting on behalf of the Purchaser), or (ii) when they are delivered to the Purchaser.

7. Title to Goods

Notwithstanding delivery, title to the goods shall not pass to the Purchaser until BA has received in cash, or cleared funds, payment in full of the price of the goods and all other goods sold or agreed to be sold by BA to the Purchaser for which payment is then due.

Until such time as title to the goods passes to the Purchaser, the Purchaser shall hold the goods as BA's fiduciary agent and bailee, and shall keep the goods separate from those of the Purchaser and third parties and properly stored, protected and insured and identified as BA's property.

Notwithstanding the above, until such time as the title to the goods passes to the Purchaser, the Purchaser shall be entitled to re-sell or use the goods in the ordinary course of its business, but shall account to BA for the proceeds of sale, whether tangible or intangible (including any insurance proceeds received) and shall keep all such proceeds separate from any monies or property of the Purchaser and third parties, and in the case of tangible proceeds, property stored, protected and insured.

Until such time as title to the goods passes to the Purchaser, BA shall be entitled at any time to require the Purchaser to deliver up the goods to BA and, if the Purchaser fails to do so forthwith, to enter upon any premises of the Purchaser or any third party where the goods are stored and to repossess the goods.

The Purchaser shall not be entitled to pledge, or in any other way encumber by way of security for any indebtedness, any of the goods that remain the property of BA but if the Purchaser does so all monies owing by the Purchaser to BA shall (without prejudice to any other right or remedy of BA) forthwith become due and payable.

8. Purchaser's Facilities

The Purchaser shall accept responsibility for providing safe and sufficient facilities for the acceptance of the goods into storage in accordance with any health and safety guidelines established by BA from time to time, and shall defend, indemnify, and hold harmless BA, and its affiliates and their respective officers, directors, employees, agents, successors and assigns (such parties, the "Indemnified Parties"), from and against all all claims, demands, liabilities, costs, sums, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorneys' fees) that BA may incur or be obligated to pay (collectively "Losses") arising out of a breach of this condition.

9. Health and Safety

The Purchaser shall comply with any duty or obligation imposed on it under applicable health and safety laws and regulations with respect to the goods, including, without limitation, OSHA regulations, and shall defend, indemnify, and hold harmless BA, and the Indemnified Parties from and against all Losses arising out of any failure on the part of the Purchaser to comply with the provisions of this Section 11.

10. Express Limited Warranty and Limitation of Liability

BA guarantees that, on the delivery date, goods delivered under the Order:

- (i) shall comply with the specifications referred to in the most recent version of any technical data sheet that BA may have produced in respect of those goods (copies of which are available upon request); and
- (ii) shall be free from manufacturing defects.

The foregoing warranties are exclusive and in lieu of any other warranties of any kind (whether arising by implication or by operation of law) with respect to the goods. BA hereby disclaims any and all warranties of merchantability, fitness for a particular purpose and all other warranties, express or implied.

If Purchaser discovers that any of the goods fail to meet the warranties provided herein, Purchaser shall promptly notify BA. If BA determines that the goods are in breach of the Express Limited Warranty, then BA will, in its sole discretion, either replace the non-conforming goods at no cost to Purchaser or refund the purchase price of the non-conforming goods to Purchaser. **Such replacement or refund is the sole liability of BA and the exclusive remedy of Purchaser for any breach of the Express Limited Warranty.** In no event shall any goods be returned, reworked or scrapped by Purchaser without the express written authorization of BA.

Goods will not be deemed to be in breach of the Express Limited Warranty if: (a) the goods are not stored or handled appropriately after delivery by BA; (b) the non-conformity of the goods resulted from damages occurring after BA's delivery of the goods; or (c) the non-conformity of the goods has not been reported to BA in writing within the earlier to occur of ten (10) days after the Purchaser has learned of the non-conformity of the goods or forty-five (45) days after delivery of the goods to Purchaser. If Purchaser or any purchaser from Purchaser shall alter or modify the goods without BA's prior written consent, and any claims are asserted against BA by reason of such alteration or modification, Purchaser shall defend, indemnify, and hold harmless BA, and the Indemnified Parties, from and against all Losses in connection therewith or resulting therefrom.

Unless otherwise expressly agreed in writing by BA, BA assumes no obligation or liability for any technical advice provided by BA with respect to the use of goods furnished to Purchaser, or for any results occurring as a result of the application of such advice and Purchaser shall have sole responsibility for selection and specification of the goods appropriate for the end use of such goods.

Any loss or shortage caused by damage in transit will be for account of Purchaser.

Neither BA nor its affiliates shall have any liability for special, incidental, consequential, indirect, punitive or exemplary damages for any reason or under any theory of liability whatsoever, including, without limitation, damages for loss of business, lost profits, business interruption, or other pecuniary loss, even if BA or its affiliates have been apprised of the likelihood of such damages occurring.

Purchaser may not institute any action in any form arising out of any Order or these Terms and Conditions more than twelve (12) months after the cause of action has arisen.

In no event shall BA's liability under any Order exceed the purchase price of the goods giving rise to the claim.

11. Indemnification

To the maximum extent allowed by law, Purchaser shall defend, indemnify, and hold harmless BA, and the Indemnified Parties from and against all Losses arising out of or resulting from: (a) Purchaser's negligence, use, ownership, maintenance, transfer, transportation or disposal of the goods; (b) Purchaser's violation or alleged violation of any Federal, state, county or local laws or regulation, including without limitation, the laws and regulations governing product safety labeling, packaging and labor practices; or (c) Purchaser's breach of an Order or these Terms and Conditions.

12. Termination and Cancellation

If the Purchaser is in breach of any condition contained herein, or if in the opinion of BA the financial stability of the Purchaser becomes impaired or unsatisfactory, BA may, without prejudice to its other rights and remedies, terminate any Order that incorporates these Terms and Conditions or to which these Terms and Conditions apply.

Except as specifically set forth in these Terms and Conditions, Orders cannot be canceled or modified by Purchaser except with the express written consent of BA. If the Purchaser purports to cancel an Order before delivery is made, or refuses to accept delivery of goods, the Purchaser shall be liable for the full purchase price, but credit shall be given for the amount obtained by BA in disposing of such goods.

13. Force Majeure

Neither party shall be liable for any failure to fulfil any term (other than a payment obligation) of these Terms and Conditions if fulfillment is delayed, hindered or prevented by any circumstance whatever that is not within its immediate control, including, but without limiting the generality of the foregoing, strikes, lock-outs, labor disputes of any kind, partial or general stoppages of labor, refusals to perform any kind of work (whether any of the foregoing relate to the party's own workmen or others), war, hostilities or any local or national emergency (or the threat or apprehension of any of the foregoing events), compliance with any order or request of any governmental authority or any person purporting to act for such authority, breakdown of or accident to plant, machinery or facilities or hindrances to transportation or failure of, or shortage in any of BA's existing or contemplated sources of supply of the goods or of raw materials and whether such failure of, or shortage be existing or apprehended by BA. In the event of any of the foregoing circumstances arising, BA shall be at liberty to withhold, reduce or suspend deliveries hereunder to such extent as BA in its absolute discretion may see fit and shall in no case be bound to purchase or arrange for deliveries from any other suppliers.

14. Entire Agreement

These Terms and Conditions, together with the Order, if any, comprise the complete and final agreement between BA and

Purchaser, and supercede all prior negotiations, proposals, representations, commitments, understandings or agreements between BA and Purchaser, either written or oral, on its subject. Any other representations or warranties made by any person, including employees or other agents of BA, that are inconsistent with these Terms and Conditions shall be disregarded by Purchaser and are not binding upon BA.

15. Modifications

No Order nor these Terms and Conditions may be modified or amended except in writing signed by both BA and Purchaser specifically referring to the applicable Order and/or these Terms and Conditions.

16. Waivers

BA's failure to insist on performance of any of the terms or conditions in an Order or these Terms and Conditions or to exercise any right or privilege, or BA's waiver of any breach of an Order or these Terms and Conditions shall not waive any other terms, conditions or privileges, whether of the same or similar type.

17. Severability

The illegality, invalidity or unenforceability of any part, term or provision hereof shall not affect the legality, validity or enforceability of any other provision hereof.

18. Survival

The terms of any Order and of these Terms and Conditions that by their nature are reasonably intended by the parties to survive its expiration or earlier termination, survive such expiration or termination.

19. Assignment

No part of any Order may be assigned by Purchaser without prior written approval of BA. BA will be entitled to cancel any Order upon written notice to Purchaser in the event Purchaser assigns or attempts to assign such Order without BA's prior written consent.

20. Notices

Any notice given under these Terms and Conditions will be deemed delivered only if sent by first class mail (return receipt requested), hand-delivered or sent by documented overnight delivery service to the party to whom the notice is directed, at its address indicated in the applicable Order or such other address indicated by a party to the other party by written notice given in accordance with these Terms and Conditions. A notice shall be deemed to have been received on the third business day after mailing if sent by first class mail and when actually received by the addressee if hand-delivered or sent by documented overnight delivery service.

21. Mediation

If a dispute arises out of or relates to any Order, these Terms and Conditions, or the breach thereof, the parties agree first to attempt in good faith to settle the dispute by mediation before commencing litigation. The parties agree that if a party claimant attempts to litigate the dispute prior to seeking mediation, then the other party shall be entitled to an immediate dismissal of the litigation. Additionally, if one party seeks mediation and the other party effectively refuses to participate, then the party

seeking mediation may immediately seek resolution of the dispute through litigation.

Unless the parties to such dispute agree otherwise, the mediation shall be administered by JAMS, by a mediator chosen pursuant to the parties' mutual agreement. Either party may initiate mediation of such dispute by giving the other party written notice. Within 15 business days after the delivery of such notice, the parties shall confer and attempt to reach agreement on a choice of mediator. If the parties are unable to agree to a mediator, the parties agree to select the mediator through the procedures established by JAMS then in effect. If JAMS does not have any procedures then in place to select a mediator, then the parties agree to select the mediator through the procedures established by the American Arbitration Association then in effect.

Within 30 business days after a mediator has been selected as provided above, the parties and their respective attorneys shall meet with the mediator for one or more mediation sessions of at least four hours cumulatively, unless both parties agree to a lesser amount of time. If the dispute cannot be settled at such mediation sessions or at any mutually agreed-upon continuation thereof, either party may give written notice declaring the mediation process at an end.

All conferences and discussions that occur in connection with the mediation conducted pursuant to the Agreement shall be deemed settlement discussions, and nothing said or disclosed, and no document produced, that is not otherwise independently admissible or discoverable shall be offered or received as evidence or used for impeachment or for any other purpose in any current or future arbitration or litigation.

The provisions of this Section 20 may be enforced by any court of competent jurisdiction, and the party seeking enforcement shall be entitled to all costs and expenses, including reasonable attorneys' fees, to be paid by the party against whom enforcement is ordered. Otherwise, the costs of the mediation shall be borne equally by the parties.

22. Governing Law and Jurisdiction

All Orders and these Terms and Conditions shall for all purposes be governed and construed in accordance with the laws of North Carolina without giving effect to its choice of law provisions, and BA and the Purchaser hereby submit to the exclusive jurisdiction of the federal and state courts located in Charlotte, North Carolina. The parties specifically exclude application of the U.N. Convention on Contracts for the International Sale of Goods.

23. Attorneys Fees

If either party commences an action against the other to interpret or enforce an Order or these Terms and Conditions or as a result of a breach by the other party of an Order, the prevailing party shall be entitled to recover from the nonprevailing party reasonable attorneys' fees, costs and expenses incurred by the prevailing party in connection with such action.