

## TERMS AND CONDITIONS

**1. Acceptance** — EPOXY expressly limits its acknowledgment and acceptance of the Purchase Order to the terms set forth on the face and reverse side of this Invoice Agreement (herein "Terms of Sale") and those terms and conditions contained in the Purchase Order which do not contradict, conflict with and are not inconsistent in any respect whatsoever with the Terms of Sale. All other terms and conditions of the Purchase Order are hereby rejected and superseded by the Terms of Sale. Failure of EPOXY to object to specific provisions of the Purchase Order or other communications from BUYER shall not be deemed an acceptance of such provisions or waiver of the Terms of Sale. EPOXY expressly conditions its acceptance of the Purchase Order on the adoption by BUYER of the Terms of Sale. Failure of BUYER to object to any of the Terms of Sale which are the subject of the Purchase Order (herein "Goods") shall be deemed by EPOXY to be an adoption by BUYER of the Terms of Sale.

**2. Instructions and Directions** — BUYER agrees to read carefully and completely and to follow strictly and to comply with any and all instructions, directions, orders, warnings and recommendations concerning the use, application, storage, handling capabilities, risks, dangers or shipment of the Goods provided by EPOXY to BUYER. BUYER agrees that it will not attempt to use the Goods for any purpose beyond the scope of uses described in the latest specifications published by EPOXY prior to the date of the execution of this Invoice Agreement. In the event that any of EPOXY's instructions, directions, orders, warnings or recommendations are ambiguous, unclear, undefined or incomprehensible to BUYER for any reason, BUYER has an affirmative obligation to seek clarification or explanation from EPOXY. Before using the Goods, BUYER shall determine the suitability of the Goods for its intended use, and BUYER assumes all risk and liability whatsoever in connection therewith.

### 3. Warranties

**a. Limited Express Warranties** — Provided the Goods are used in normal, careful and reasonable manner by BUYER in strict adherence to the instructions, directions, orders, warnings and recommendations given at any time by EPOXY regarding the use, application, storage, handling capabilities, risks, dangers or shipment of the Goods and provided the Goods are not subject to misuse, neglect, accident or abuse then EPOXY expressly warrants that for the applicable periods specified on the data sheets accompanying delivery of the Goods commencing as of the date of shipment of the Goods (i) The Goods will not contain defective material or poor workmanship, and (ii) The physical characteristics and performance capabilities of the Goods will be in conformance with the latest specifications published by EPOXY in the data sheets accompanying delivery of the Goods.

**b. Exclusion and Disclaimer of Implied and Express Warranties** — THE EXPRESS WARRANTIES SPECIFICALLY SET FORTH ABOVE IN PARAGRAPH 3A ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, WITH RESPECT TO THE GOODS AND WITHOUT LIMITATION EPOXY HEREBY DISCLAIMS AND EXCLUDES WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ALL OTHER WARRANTIES OF ANY KIND OR NATURE.

Except for those representations referred to herein, no written or oral statements, warranties, representations, stipulations, conditions or terms made or expressed by any representative of EPOXY shall have any binding effect upon EPOXY or be any part of the contract between EPOXY and BUYER.

### 4. WARNINGS

**CAUTION** Epoxy resins and hardeners can cause irritation or burns, and may be absorbed through the skin.

**PRECAUTIONARY MEASURES** The use of goggles, gloves, coveralls, and protective creams is recommended for persons using epoxy resins and hardeners.

**FIRST AID** If the epoxy resins or hardeners or both make contact with any exposed areas of the body, wash immediately with soap and water.

**5. Compliance with Employment Laws** — BUYER agrees to comply with any and all Federal, State and Municipal statutes, laws, regulations, rules, ruling, ordinances, directives, orders or standards relating to the use, handling, location, storage or shipment of the Goods by the BUYER's employees or agents including without limitation, the implementation and use of employee training programs, printed instructions, warning signs, safety programs, medical surveillance and record keeping. BUYER agrees to maintain and store the Goods only in the original packages, tubes, bottles or other containers in which the Goods were delivered and to avoid and prevent the removal, obliteration or obscuration of the labels, warnings or markings contained on such package, tube, bottle or other container. In the event any label, warning or marking is removed, obliterated or obscured, BUYER, within a reasonable time after such occurrence, shall request that EPOXY provide BUYER with replacements of such labels, warnings or markings. EPOXY, at its sole discretion and without any obligation to do so, may comply with such request and in the event of such compliance, BUYER shall affix the replacement or substitute labels, warnings or markings at the location where the original label, warning or marking had been prior to its removal, obliteration or obscuration. BUYER shall post the warning contained in Paragraph 4 hereof in all areas where the Goods will be stored, used or applied.

EPOXY represents that, with respect to the production of the Goods, it has fully complied with the provisions of the Fair Labor Standards Act of 1936, as amended. EPOXY makes no warranty, express or implied, related to compliance with or liability under The Occupational Safety and Health Act, its interpretations and/or regulations.

**6. Buyer's Exclusive Remedy** — The obligations, liabilities and responsibilities of EPOXY and the remedies of BUYER in the event of a claimed breach of warranty or other claim with respect to quality of the Goods or with respect to injury or damage to persons or property in connection with the Goods shall be exclusively and solely limited to compliance with the following procedures:

**a. (i)** BUYER shall not be entitled to rely upon or assert any alleged breach of warranty of the Goods which could have been detected by a careful, complete and diligent inspection of the Goods immediately upon their arrival at the BUYER's premises (herein "Initial Inspection") unless BUYER makes such an Initial Inspection and notifies EPOXY in writing within three (3) days after the Initial Inspection of any alleged breach of warranty in the Goods which are discovered during such Initial Inspection, and (ii) BUYER shall not be entitled to rely upon or assert any breach of warranty of the Goods which could not have been detected by an Initial Inspection unless notice of any such alleged breach, particularly describing the same and specifying the time of the discovery thereof, is given in a writing sent by certified mail, return receipt requested, addressed to EPOXY, postmarked within three (3) days after which discovery.

**b.** EPOXY shall have the option at its discretion and without obligation of having its representative, with a reasonable time not to exceed ten (10) days after notice of the alleged breach, inspect and test the Goods and their use at either EPOXY's plant or BUYER's plant with the full cooperation and necessary help of the BUYER and its agents and employees, and either confirm or disprove the existence of the breach claimed by the BUYER. If such test cannot be conducted because of a failure or lack of such cooperation or help of BUYER or its agents or employees, then said warranty shall be null and void and EPOXY shall not be bound thereby or by any other warranty, express or implied, arising by contract or by operation of law. If such inspection and test shall show the Goods to be as warranted, then (i) BUYER shall reimburse EPOXY on demand for all expenses and costs incurred by EPOXY in the inspection and testing of the Goods, including travel costs and managerial time at a reasonable per diem rate; and (ii) BUYER shall deliver to EPOXY's representative a written acknowledgment of the conformance of the Goods with the warranty. If BUYER refuses to acknowledge such fact, it may, at its own expense, have an independent testing agency, satisfactory to EPOXY, inspect and test the Goods in accordance with EPOXY's instructions and directions for use.

**c.** If EPOXY elects not to inspect or test the Goods upon receipt of the notice of alleged breach or if the representative from EPOXY or the independent testing agency, as the case may be, concludes that the Goods do not conform to the limited express warranty provided herein in Paragraph 3, and a certified written report to that effect is submitted to EPOXY, then upon (i) written notice by BUYER to EPOXY, and (ii) delivery to EPOXY at BUYER's expense and according to EPOXY's directions and instructions of that portion of The Goods which are nonconforming or defective. EPOXY, at its option and sole discretion, may either (i) replace the nonconforming or defective portion of the Goods or (ii) refund the purchase price paid for that nonconforming or defective portion.

**d.** If EPOXY chooses to replace the nonconforming or defective portion with a new shipment, this shipment shall be hereinafter referred to as "Replacement Batch". Aside from the special provisions contained in this Paragraph for Replacement Batches, the obligations, warranties, rights, and remedies of the parties with respect to the delivery, use, and performance of the Replacement Batch shall be determined by the provisions applicable to Goods contained in this Invoice Agreement. If the BUYER claims a breach of warranty in the Replacement Batch, which is confirmed by either a representative of EPOXY or by an independent testing agency in accordance with the procedures outlined hereinabove in Paragraph 6(c), BUYER, upon the delivery at its expense to EPOXY of the nonconforming or defective portion of the Replacement Batch, shall have the option of receiving (i) another replacement batch or (ii) a refund of its purchase price for that portion of the Replacement Batch which has been proven to be nonconforming or defective. If BUYER chooses to accept another replacement batch, BUYER shall pay to EPOXY the expenses incurred by EPOXY in packing the replacement batch and shipping it to BUYER.

Nothing in this section or remedies shall impose and liability or obligation of any type, nature or description upon EPOXY if EPOXY has not received from BUYER payment in full for the Goods.

Cancellation of the Purchase Order or portions thereof will not be permitted after fabrication of the Goods has been started, except on such terms and conditions as may be determined by EPOXY.

**7. Limitations and Exclusions of Remedies** — EPOXY strictly limits its obligation under the express warranty provided in Paragraph 3 hereof to its obligations set forth in Paragraph 6 hereof, which fully and completely describe BUYER's exclusive, limited and sole remedy for breach of warranty or for negligence by EPOXY. EPOXY SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, RESULTING OR CONSEQUENTIAL DAMAGES, OR FOR LOSS OF OR INJURY OR DAMAGE TO OR EXPENSE INCURRED BY ANY PERSONS, PROPERTY, EQUIPMENT, GOODS, MERCHANDISE, INVENTORY, PROFITS, GOOD WILL OR REPUTATION (WHETHER OR NOT CAUSED BY OR RESULTING FROM EPOXY'S NEGLIGENCE OR BREACH) DIRECTLY OR INDIRECTLY ARISING FROM USE, INCLUDING BUT NOT LIMITED TO, THE ATTENTION OF ANY GOVERNMENT AGENCY. BUYER'S SOLE REMEDY FOR A BREACH OF THE GOODS OR A BREACH BY OR FAILURE OF THE GOODS TO CONFORM, OR FROM ANY OTHER CAUSE WHATSOEVER, EPOXY neither assumes nor authorizes any person to assume for EPOXY any liability or obligation in connection with the sale of the Goods, except as expressly provided hereinabove.

No claim of breach of warranty or negligence committed by EPOXY shall constitute a cause for cancellation or rescission by BUYER of this Invoice Agreement or any part hereof.

**8. Indemnification** — BUYER shall indemnify EPOXY and hold EPOXY harmless of and from any and all liability, loss, damage, expenses, causes of action, suits, claims or judgments arising from injury or damage to person or property which injury or damage is or is claimed to be caused by or results from the Goods or the actual or alleged use, attempted use, failure to use or delay in the delivery or transportation of any or all of the Goods, or by their location or condition, whether or not arising out of defective material, poor workmanship, negligence, breach of warranty or any other cause whatsoever, and BUYER, at EPOXY's request, shall at BUYER's own cost and expense defend any and all claims, suits and actions which may be brought against EPOXY either alone or in conjunction with others, by any person, firm or corporation whose rights to the Goods came from BUYER or any person whose rights were derived from BUYER. BUYER shall forthwith, upon EPOXY's demand, satisfy, pay or otherwise discharge any and all judgments or fines that may be recovered against or imposed upon EPOXY in any such suit or action. EPOXY shall have the option, without any obligation to do so, to participate in any litigation arising in connection with the Goods, through its own or its insurer's attorneys, at its or its insurer's own expense.

BUYER shall insure itself with respect to liability for bodily injury, including death and property damage resulting from the use, application, storage or failure of the Goods in amounts of at least \$500,000 per person and \$1,000,000 per occurrence for bodily injury and \$250,000 for property damage. Use of whatever amount of liability coverage may be required by EPOXY from time to time by EPOXY. BUYER shall also comply with the Worker's Compensation Laws of the state in which BUYER is doing business and shall maintain Employer's Liability coverage in an amount of at least \$500,000. Upon written request from EPOXY, BUYER shall provide EPOXY with written evidence satisfactory to EPOXY that such insurance is in force and effect.

**9. Shipping and Taxes** — The Goods and any all replacement batches are shipped F.O.B. Billerica, Massachusetts and BUYER assumes all risks of loss or damage to Goods while in transit.

Any taxes arising from the sale and delivery of the Goods, however designated or levied or based on the purchase price of the Goods or on this Invoice Agreement or the Goods, including without limitation state and local privilege sales, use or excise taxes and any taxes or amounts levied thereon paid or payable by EPOXY in respect of the foregoing exclusive, however, of taxes based on net income, upon request by EPOXY, shall be paid directly by BUYER or shall be reimbursed by BUYER to EPOXY if already paid by EPOXY, but in no event, shall EPOXY have the obligation to pay any such taxes.

**10. Delivery** — EPOXY shall use its reasonable efforts to make timely delivery of the Goods, but shall be excused from any delays arising out of strikes, slowdowns, lockouts, fire, storms, earthquakes, floods, lightning, epidemics, theft, inability to obtain materials or shipping space breakdowns, delays of carriers or supplies, acts of God, government statutes, proclamations or regulations, expropriation or confiscation of properties, interference by civil or military authorities, riot, civil commotion, war, hostilities, malicious mischief, fraud or delay in receiving necessary information from purchase, or any other causes beyond its reasonable control not herein enumerated. All stated delivery dates are approximate and EPOXY shall under no circumstances be liable to BUYER for damages, special, consequential, incidental or otherwise, for delays or failure to give notice of delay, whether or not used by or resulting from EPOXY's negligence. Failure to deliver the Goods by the promised delivery date will not give BUYER the right to cancel or rescind the contract between EPOXY and BUYER unless delivery is not made by EPOXY to the carrier within 90 days of such promised delivery date.

In the event EPOXY is unable to make full delivery by reason or storage of raw materials in EPOXY's plants or in the plants of its suppliers, or because of any of the causes set forth above, or other causes beyond EPOXY's control not herein enumerated, whether similar or dissimilar, BUYER agrees to accept proportionate delivery of the types of products included among the Goods in EPOXY's hands produced by it or its suppliers and if EPOXY is unable to perform its obligations hereunder by reason of any of the foregoing causes performance to the extent so hindered or prevented shall be excused.

### 11. Price Adjustments

**a. Price Determination** All prices of the Goods are subject to change without notice and if the Purchase Order calls for future delivery of the Goods on any portion thereof at a time later than sixty (60) days from the date of the Purchase Order, the prices of the Goods will be determined as of the time of delivery. EPOXY reserves the right to correct any mathematical, stenographic or clerical errors in any invoice or other written material pertaining to the Goods.

**b. Alteration and Modification** All changes in the Goods or the specifications requested by BUYER after receipt of the Purchase Order by EPOXY shall be solely within the discretion of EPOXY and the BUYER agrees to be bound by EPOXY's determination as to any resulting increase in the purchase price. Any alteration of modification with respect to the Goods, which may be required in order to comply with any applicable law or any governmental rule or regulation, and which is performed by EPOXY, after the receipt of the Purchase Order, shall be at BUYER's expense and shall result in an increase in the purchase price. Such expense shall include all labor, parts, service, transportation and all other expense connected with any such alteration or modification. The aforesaid in no way obligates EPOXY to perform or to make any such alteration or modification.

**c. Taxes** in case of the imposition by Federal, State, Municipal or Foreign authorities of any additional duty tax or other governmental charge upon the raw materials entering into the production of the Goods or upon or measured by the production, sale or shipment of the Goods, then the purchase price for the Goods shall be increased by an amount equal to the additional cost or expense to EPOXY which is caused thereby.

**12. Payment and Terms Authority** — In exchange for shipment of the Goods by EPOXY, the purchase price shall be due in cash from BUYER to EPOXY within thirty (30) days after shipment. These terms apply to partial as well as complete shipments. BUYER shall have no right to divert or to make payments to any person other than directly to EPOXY at its office address designated on EPOXY's sales invoice. BUYER agrees to pay a service charge at the rate of one and one half (1.5%) percent per month (18% per annum), or the maximum rate allowed by local law, whichever is less, on past due accounts.

BUYER represents and warrants to EPOXY the BUYER has corporate or other power to make and perform this Invoice Agreement and that the making and performance of this Invoice Agreement by BUYER have been duly authorized by all necessary corporate or other action by the BUYER and will not violate any provision of law or its Articles of Incorporation or Bylaws, or result in the breach of any agreement to which BUYER is a party. BUYER further represents that any credit granted hereunder is business and commercial in nature and therefore is exempted from compliance with Regulation Z (12 CFR 226) as amended, effective July 1, 1969, in Lending. In the event this representation is not correct, BUYER waives all claims arising from EPOXY's failure to provide a Disclosure Statement or any other requirement under said law.

**13. Seller's Remedies** — Time is of the essence of this contract and upon failure of BUYER to make any payments due under this contract or to accept the Goods, EPOXY, at its sole discretion and option shall be entitled to rescind the contract and BUYER shall at EPOXY's request, pay to EPOXY in lieu of the enforcement of the contract between EPOXY and BUYER, as liquidated damages, a sum equal to thirty (30%) percent of the list price of the Goods, which sum BUYER agrees is a fair measure of damages and if shipment has been made, EPOXY may retake and or resell the Goods and recover from BUYER all damages suffered including the expenses of repossession, transportation from the factory and return, demurrage, cartage, loading and unloading expense, packaging, selling and advertising costs and all other similar expenses actually incurred by EPOXY by reason of the shipment and attempted delivery of the Goods.

EPOXY reserves the right at its option and sole discretion, to delay shipments or deliveries of the Goods to BUYER to demand cash or satisfactory security before making shipment to cancel all or any portion of this contract and or to declare all sums owing by BUYER on account of the purchase of the Goods immediately due and payable without notice or demand upon the occurrence of any of the following events of default:

**a.** Default by BUYER in the payment or performance of any liability, indebtedness or obligation of BUYER to EPOXY, whether contained in this Invoice Agreement or not.

**b.** Any warranty representation or statement made or furnished to EPOXY by or on behalf of BUYER proves to have been false in any material respect when made or furnished.

**c.** Any event which results in the acceleration of the maturity of indebtedness of BUYER to others under any indenture agreement undertaking or otherwise.

**d.** Death, dissolution, termination of existence, insolvency, business failure, appointment of a receiver of any part of the property of BUYER, assignment for the benefit of creditors by execution of a trust mortgage by, the recording or existence of any lien for any unpaid taxes or any other cause whatsoever against, the calling of a meeting of creditors of, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against BUYER, or

**e.** If EPOXY decides in its sole discretion, that the outstanding indebtedness of BUYER to EPOXY or other creditors exceeds reasonable credit allowances, if EPOXY shall deem itself to be insecure or if EPOXY for any reason becomes dissatisfied with BUYER's performance in connection with prior sales from EPOXY to BUYER including without limitation, arbitrary deductions, price offsets, unethical practices or unjust complaints by BUYER with respect to previous shipments.

**14. Collection Expenses and Interest** — in addition to all other remedies provided herein, BUYER shall reimburse EPOXY, on demand, for all costs and expenses, including reasonable attorney's fees and fees of collection agencies, incurred by EPOXY in collecting the purchase price for the Goods or any other amounts owed hereunder and in exercising any of its rights or remedies hereunder.

**15. Waiver** — No delay or omission on the part of EPOXY in exercising any of its rights or remedies hereunder shall operate as a waiver of such right or remedy or any other right or remedy. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All EPOXY's rights and remedies, whether evidenced hereby or by any other agreement, instrument or document, shall be cumulative and may be exercised separately or concurrently.

**16. Assignable** — Neither this Invoice Agreement nor any right or interest hereby granted to the BUYER shall be assigned by BUYER or by operation of law without the prior written consent of any authorized officer of EPOXY and any assignment without such written consent shall be null and void and shall not bind EPOXY.

**17. Entirety of Agreement** — The Purchase Order supplemented in part and superseded in part by the Invoice Agreement embodies the full and complete understanding between EPOXY and BUYER with regard to the purchase and sale of the Goods, and no modification or waiver of any terms or conditions thereof, nor any representation, or warranties shall be of any force or effect unless in writing and signed by an authorized officer or manager of EPOXY. If EPOXY requires additional procedures or documents to carry out the terms and conditions hereof, BUYER agrees to furnish and to execute promptly such procedures or documents. No course of dealing between EPOXY and BUYER shall be deemed to be a modification, waiver or disclaimer of any terms, conditions, provisions, remedies, rights or powers set forth in the Purchase Order and Invoice Agreement, as amended in writing.

**18. Binding Effect** — All provisions and terms of the contract between BUYER and EPOXY with respect to the purchase and sale of the Goods shall inure to the benefit of and become binding upon the heirs, executors, administrators, successors, representatives, receivers, trustees and assigns of the parties.

**19. Severability** — All provisions of this Invoice Agreement shall be considered as separate terms and conditions, and in the event that any one shall be held illegal, invalid or unenforceable, all other provisions hereof shall remain in full force and effect as if the illegal, invalid or unenforceable provision were not a part hereof provided however, that whenever possible the illegal, invalid or unenforceable provision shall be deemed modified and effective to the extent it may thereby be made legal, valid and enforceable.

**20. Applicable Law** — The contract between EPOXY and BUYER with respect to the Goods, all amendments thereto, all supplements thereof, and all acts, transactions, agreements, certificates, assignments and transfers thereunder, and all rights and remedies of the parties thereto, shall be governed as to their validity, enforcement, construction and effect, and in all other respects, by the laws of the Commonwealth of Massachusetts.

**21. Notices** — Except as otherwise expressly provided in this Invoice Agreement no power, interest right or remedy of EPOXY and no debt, liability or obligation of BUYER arising under the Purchase Order or the Invoice Agreement shall be diminished, discharged, limited, expanded, surrendered, released or otherwise modified by the delay or the failure of EPOXY to deliver to BUYER any and all notices, demands, protests or other writings required by the Purchase Order or the Invoice Agreement or any amendments thereof or supplements thereto.

**22. Reselling** — BUYER shall not resell or enter into any agreement to resell any of the Goods to any third-party without expressly including these Terms of Sale as part of that agreement or resale. In addition, BUYER shall make available to any subsequent purchaser all product materials including data sheets, technical specifications, warranty and other safety or instructional information provided to BUYER and relating to the Goods. EPOXY shall have no liability to any third-party from any such resale.

BUYER HAVING CAREFULLY READ ALL PROVISIONS OF THIS INVOICE AGREEMENT, ACKNOWLEDGES RECEIPT OF COPY OF THIS INVOICE AGREEMENT AND AGREES THAT THE TERMS CONTAINED HEREIN SHALL SUPERSEDE THOSE TERMS IN THE PURCHASE ORDER WHICH ARE CONFLICTING, INCONSISTENT OR CONTRADICTORY THERETO, AND THAT IT HAS NOT RELIED UPON ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE GOODS EXCEPT THOSE EXPRESSLY SET FORTH IN THIS INVOICE AGREEMENT.

“Above Terms and Conditions apply to Epoxy Tech and all its subsidiaries.”