

## SURTEC'S TERMS AND CONDITIONS OF SALE (NORTH AMERICA)

**1. PRICE, OFFER AND ACCEPTANCE.** The sale of products ("Products") by SurTec, Inc. ("Seller") to the "Buyer" identified on the face hereof, are exclusively governed by the following terms and conditions (this "Contract"). A price quote by Seller to Buyer made with these terms and conditions supersedes all prior quotations and agreements. Prices quoted by Seller are valid for thirty (30) days from date of quote, afterwards Seller reserves the right to increase any price in the event of increased costs beyond Seller's reasonable control including, without limitation energy, labor and raw material costs, or modifications to the specifications, or quantity of ordered Products. When Buyer issues a purchase order or accepts the Products, Buyer accepts these terms, and any additional or different terms or modifications to this agreement proposed by Buyer, whether in a purchase order or otherwise, are expressly rejected by Seller except for terms related to product prices, quantity, specifications, delivery schedules, and locations that match Seller's quotation. Except where otherwise prohibited by law, all applicable sales, excise, use or similar taxes or charges for the sale of Products will be in addition to the stated price and paid by Buyer.

**2. TERMS OF PAYMENT.** Terms of payment shall be as quoted or as stated on the face hereof. Buyer will pay in U.S. Dollars, without offset, all invoiced amounts with order in advance of delivery, or if authorized for credit by Seller at Seller's sole discretion, within thirty (30) days from date of Seller's invoice. Seller charge and collect interest at the rate of 1.5% per month or the maximum rate permitted by law for overdue amounts. Seller may, among other remedies at law, including the right of setoff, either to terminate this Contract or to suspend further deliveries in the event Buyer fails to make any payment when it is due. Seller reserves the right to require full or partial payment in advance based on Seller's opinion of Buyer's credit or financial condition.

**3. DELIVERY.** Products will be delivered FOB at Seller's shipping point, or Ex Works (ExW - Incoterms 2010) with respect to shipments made to locations outside of the United States or from Seller's North America based facilities outside of the U.S. Buyer takes title and risk of loss to the Products upon delivery, and expenses shall thereafter rest upon Buyer including without limitation all risks and expenses incurred in the storage and transportation of the Products and all insurance charges, fees, taxes, customs, duties and other governmental charges or levies and all other expenses whatsoever thereafter incurred with respect to the Products. Delivery dates are estimated and are subject to change. Seller may make delivery in installments, each of which may be separately invoiced and paid as billed without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining installments. Seller will use reasonable efforts to deliver Products on time, but will not be liable for any expenses or damages incurred as a result of late delivery. Freight charges on shipments outside of the United States and Canada will be as specified on the face hereof or on the price sheet for the Products. In the event of any general increase in freight costs or any ruling or regulation affecting freight rates which results in increased freight costs, Seller may, at its option, increase the price for the Products to reflect such additional freight costs without advance notice.

**4. FORCE MAJEURE.** Neither party will be liable if its performance is delayed or made impossible or commercially impracticable due to acts of God, unusually severe weather, civil commotion, terrorism, military authority, war, riot, fire, labor trouble or strikes, unavailability of materials or components, explosion, breakdown or accident, delay in transportation, plant shutdown, compliance with governmental requests, laws, regulations, order or actions, unforeseen circumstances, or causes beyond such party's reasonable control.

**5. QUANTITY VARIATIONS, CHANGES AND RETURNS.** On any individual order or release against an order for Products not stocked as a standard item, or not packed in standard cartons or packages, or on which special fabrications or constructions are involved, Seller reserves the right to ship and invoice for a quantity of Products which may vary up to 10% over or under the quantity specified on such order or release and Buyer shall accept delivery of and pay for such revised quantity. Seller will give due consideration to any request by Buyer for modification or cancellation of the order or release against an order evidenced by this invoice/acknowledgement, but the same may not be modified or canceled without the written consent of Seller. Orders with indefinite delivery dates are accepted upon the understanding that Seller shall have the right to fill said order as it sees fit in the course of its manufacturing schedules and to hold the Products for Buyer's account at Buyer's expense and risk pending receipt of definite shipping instructions and, where required, of governmental authorization. Goods sold by Seller may be returned for credit only if permission for such return is granted by Seller. Buyer will be responsible for any freight costs incurred due to return of goods by prepaid terms. Seller will issue credit to Buyer after returned goods are approved after Quality Control Inspection. Restocking fees of 20% of the net value of sold goods can be applied by Buyer solely discretion.

**6. END USE.** Determination of the suitability of the Products for the uses contemplated by Buyer or its customers for such Products is the sole responsibility of Buyer. Buyer and its customers assumes all risks and liability for loss, damage or injury to property of Buyer, Buyer's customers or others arising out of the use or possession of the Products furnished hereunder. Buyer agrees that Seller is not responsible for any loss, damage or injury to person or property arising out of Buyer's purchase, possession, or use of any Products supplied by Seller. Buyer shall comply with all applicable laws and regulations relating to the use, storage and/or handling of the Products. Buyer shall have sole control and responsibility over any warnings to be given to end users concerning the use and handling of the Products or property. Buyer shall indemnify Seller against any and all losses, damages, liabilities, claims, suits, costs and expenses (including reasonable attorney's fees and court costs) which may be brought against, suffered or incurred by Seller as a result of any personal injury (including death) and/or any property damage arising out of or connected with the utilizing, handling, storing, transporting, processing, further manufacturing or other use or resale of such Products or property, used alone or in connection with any other materials. Buyer shall comply with all applicable laws and regulations relating to the use, storage and handling of the Products.

**7. CONFIDENTIALITY.** Buyer agrees that all formula and technical information relating to the Products are confidential and proprietary to Seller and that Buyer is purchasing the Products solely for use in Buyer's manufacturing processes and not for analysis, reverse engineering resale or other distribution to third parties. Buyer will not disclose any confidential or proprietary information about Seller or Seller's Products to any other person or use any such information for any purpose other than Buyer's purchase and use of the Products. Buyer will not provide samples or extra Products to any third parties.

**8. LIMITED WARRANTY, REMEDIES AND LIMITATIONS.** Seller warrants the Products to be free from material defect upon delivery. Buyer's exclusive remedy and Seller's sole liability shall be limited to a refund of the purchase price of, or replacement of, Products proven to be materially defective. Such refund or replacement is conditioned upon Buyer giving Seller written notice within thirty (30) days from the date of shipment by Seller that such Products are nonconforming with respect to this limited warranty. If requested by Seller, Buyer will promptly return to Seller's plant all unconsumed Products alleged by Buyer to be materially defective, and Seller will pay freight thereon. This limited warranty applies to the original purchaser of the Products only and it does not extend to any third party. THE ABOVE LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, WRITTEN OR UNWRITTEN, STATUTORY, EXPRESS OR IMPLIED, AND TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER DISCLAIMS ANY OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS SHALL NOT APPLY TO THIS WARRANTY STATEMENT OR TO SALES OF GOODS BEING SUPPLIED UNDER THIS CONTRACT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SELLER SHALL NOT BE LIABLE UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY FOR ANY LOSS OF USE OF THE GOODS, INCONVENIENCE, OR DAMAGES OF ANY TYPE, WHETHER DIRECT, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL (INCLUDING DAMAGES FOR LOSS OF GOODWILL, LOSS OF REVENUE OR PROFIT, ECONOMIC LOSS, PROPERTY DAMAGE OR WORK STOPPAGE AND INCLUDING ATTORNEYS' FEES).

**9. PATENT INFRINGEMENT.** Seller will defend or settle at its sole expense, any third party claim, demand, or suit against Buyer ("Claim") alleging that the use of the Products, infringes a U.S., Mexican, or Canadian patent, copyright, trade secret or other intellectual property right; provided (a) the alleged infringement does not arise from Seller's compliance with specifications furnished by Buyer; (b) Seller receives prompt written notice of such Claim and exclusive control over the its defense and/or settlement; and (c) Buyer provides Seller with all information available to Buyer for the defense and cooperates with Seller in the defense, and does not take a position adverse to Seller. Further, Seller will have no liability hereunder to the extent a claim of infringement is based on (1) a modification to the Products by Buyer or a third party, (2) use by Buyer of the Products in combination with other products not made by Seller, or (3) Products made to specifications not provided by Seller. Except for third party claims above, and subject to the limitations above, Seller's exclusive obligation to Buyer as to good declared to infringe, and Seller's right as to Products which Seller believes are likely to infringe, is the acquisition of a license, or the replacement of Products with non-infringing Products, the modification of the Products so that they are non-infringing. If Seller determines that none of the foregoing alternatives are reasonably available, Seller will issue a refund equal to the purchase price for the affected unused Products. This paragraph states Seller's entire liability for claims related to patent infringement, copyright, trade secret or other intellectual property infringement.

**10. TERMINATION.** Subject to the following provisions, either party may terminate this Contract upon thirty (30) days' prior written notice in the event the other party breaches any material term hereof; provided, however, that during any such notice period, the party in default may cure its default and thereby abate the termination. Notwithstanding the foregoing, Seller may terminate this Contract effective immediately upon written notice to Buyer in the event (a) of Buyer's failure to pay any of Seller's invoices within the time provided in this Contract, (b) Buyer generally fails to pay its debts as they become due, (c) of Buyer's insolvency (whether based on Seller's reasonable belief that Buyer's liabilities exceed assets, the existence of a bankruptcy, assignment for the benefit of creditors or other similar proceedings involving Buyer, a liquidation of a significant portion of Buyer's assets or otherwise) and (d) of a sale of substantially all the assets or a change of control of the ownership of Buyer. If Buyer is in default hereunder, including by failure to pay invoices, Seller may suspend shipments of Products, without liability to Seller, until the default has been cured, all invoices are current and Seller receives adequate assurance of future performance.

**11. NOTICES.** Any written notice or demand may be given to a party by mailing it to the party at its address set forth above, or at such address as the party may provide in writing to the other party and shall be effective when deposited in the United States mail, duly addressed and with postage prepaid for certified mail delivery with return receipt requested.

**12. CHOICE OF LAW; COMMENCEMENT OF ACTION; COSTS AND EXPENSES.** This Contract shall be governed and interpreted in accordance with the laws of the State of Ohio and, for the purpose of resolving any issue pertaining to conflict of laws, this Contract shall be deemed to be fully and solely executed, performed and/or observed in Ohio. Seller and Buyer irrevocably agree and consent that any action or proceeding arising from the transactions contemplated herein shall be brought in Cuyahoga County, Ohio Circuit Court and/or the Federal District Court for the Northern Ohio, and that such Courts shall have personal jurisdiction over Seller and Buyer for purposes of such action or proceeding. Any action against Seller for breach of Contract, breach of warranty or otherwise must be commenced within one (1) year after the cause of action has accrued. Buyer shall be obligated to Seller for all costs and expenses (including reasonable attorney's fees and expenses and fees for collection agencies) incurred by Seller in collecting any amounts not timely paid by Buyer hereunder or in exercising any of its other rights hereunder.

**13. COMPLIANCE.** The parties will comply with applicable federal, state, local and foreign laws, orders, rules, regulations and ordinances, including export controls and import compliance, anti-boycott measures, Foreign Corrupt Practices Act ("FCPA"), embargoes, sanctions, shipment to prohibited destinations or end-user, and for a prohibited end-use. Unless otherwise agreed in writing, Buyer shall be responsible for compliance with applicable statutory and regulatory requirements relating to chemicals during Buyer's import, shipping, storage, export, distribution, application and use of Products. If Buyer exports, re-exports, diverts, stores, transfers, distributes, applies, uses or imports the Products, Buyer assumes responsibility (i) for obtaining required export and import authorizations from applicable jurisdiction or country and (ii) for complying with applicable statutory or regulatory registration, information, and/or notification obligations relating to chemicals. Unless otherwise agreed, Seller is responsible for certain regulatory and other legal compliance, for example, outside the U.S. the European regulation for the Registration, Evaluation, Authorization and Restriction of Chemicals ("REACH"). However, Seller is not responsible for compliance as to products produced by Buyer which incorporate the Products, or as to any use of Products by Buyer or Buyer's customers other than as covered by the Limited Warranty set out in this Contract.

**14. ENTIRE AGREEMENT; WAIVER; SEVERABILITY.** This Contract constitutes the entire agreement between Buyer and Seller with respect to the sale of Products supplied hereunder and cannot be modified except by a new written contract signed by both parties. Buyer agrees, however, that Seller may insert missing information or correct obvious errors in any related invoice or acknowledgement. Waiver by a party of any provision hereof in one instance shall not constitute a waiver as to any other instance. If any provision of this Contract is unenforceable, invalid or illegal, the remaining provisions will remain in full effect.

**NOTE: THIS IS A CONFIDENTIAL MESSAGE, INTENDED SOLELY FOR THE PERSON TO WHOM IT IS ADDRESSED. IF YOU RECEIVE THIS MESSAGE IN ERROR, PLEASE FORWARD IT TO THE CORRECT PERSON OR MAIL IT BACK TO US. THANK YOU.**