

## **ALLEIMA USA LLC TERMS & CONDITIONS**

### **1. General**

BY ACCEPTING THESE TERMS AND CONDITIONS ("TERMS"), EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THESE TERMS, YOU ("YOU" OR "BUYER") AGREE THAT, UNLESS THERE IS AN APPLICABLE SIGNED SUPPLY OR SERVICES AGREEMENT BETWEEN THE PARTIES, THESE TERMS GOVERN ALL SALES BY ALLEIMA USA LLC ("SELLER") TO THE GOODS DESCRIBED IN SUCH ORDER (COLLECTIVELY, THE "GOODS") AND YOUR ACCESS, RECEIPT AND USE OF SUCH GOODS AND THIS WEB SITE. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THESE TERMS AND MAY NOT PURCHASE, ACCESS RECEIVE OR USE SUCH GOODS OR SITE.

These Terms supersede any terms and conditions in any documents provided by Seller or Buyer. Seller expressly rejects any additional or conflicting terms provided by Buyer and none of the provisions conditions contained in these Terms may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Seller and delivered by Seller to Buyer. No prior course of dealings or usage of trade shall be relevant to supplement or explain these Terms unless otherwise expressly stated herein.

### **2. Offers, Orders, Acknowledgment of Orders**

- a. An offer made in writing by Seller is valid if accepted by Buyer within 14 days from the date of the offer.
- b. If Buyer has sent in or telephonically provided an order without any offer having previously been made by Seller, any contract shall be deemed to have been entered into only when Seller has dispatched a written acknowledgment of the order.

### **3. Description of Goods**

- a. Seller agrees to sell and Buyer agrees to purchase, the goods described on the reverse side of this form.
- b. Seller may substitute items of comparable quality for the goods, if Seller determines that such item or items will not be available on a timely basis to support the delivery scheduled by the parties. Any such substitution shall not affect the contract price.
- c. Statements made in printed materials are binding only if the contract explicitly refers to them. Samples provided to Buyer are to be regarded as type samples: conformity of delivered goods with samples is not guaranteed.

### **4. Prices**

- a. Prices are subject to change without notice. All orders are accepted subject to Seller's price in effect at time of shipment.
- b. All changes in freight rates or transportation charges used by Seller in computing prices and charges shown with the order acknowledgment occurring after the date of the order acknowledgment will be paid by Buyer. Seller shall not be liable for any transportation charges incurred at destination such as spotting, switching, drayage, demurrage, pier unloading charges, etc.
- c. Seller reserves the right to charge Buyer with the amount of any taxes which Seller may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption, servicing, or transportation of any of the goods sold, excepting only those based on Seller's net income.

### **5. Drawings and Technical Documents**

All drawing and technical documents delivered by either of the parties to the other party remain the property of the delivering party, and the receiving party may not improperly use, reproduce, or otherwise disclose such materials to third parties.

### **6. Manufacture**

Unless otherwise agreed to in writing by Seller, all goods shall be furnished subject to Seller's standard manufacturing variations and practices and within limits and sizes Seller produces. Goods purchased are subject to customary quantity variations recognized by trade practice.

## **7. Delivery: Risk of Loss**

- a. Terms of shipment shall be FOB Seller's manufacturing facility – USA. If a delivery time is stated as a certain period, the period will be calculated from the date when the contract is made.
- b. Risk of loss shall pass to Buyer when goods are delivered to a designated carrier at Seller's manufacturing facility. Seller shall not be responsible for any damage, loss or expense resulting from any action or omission occurring during, or attributable to, transportation.

## **8. Buyer's Delay in Acceptance**

- a. If Buyer determines that it cannot observe an agreed time for the delivery or receipt of the goods (in whole or in part), or if delay appears probable, Buyer shall promptly give notice to Seller.
- b. In such event, Seller shall, at its option, have the right to (i) deliver the goods at the time agreed upon in the contract, or (ii) extend the date for delivery for a reasonable period, or (iii) cancel the contract. If Seller extends the period for delivery, Buyer shall remain liable to make all payments as if the goods in question had been delivered, and Seller shall, as necessary, arrange for storage of the goods and insure the goods at Buyer's risk and expense.

## **9. Seller's Delay in Delivery**

- a. If Seller cannot observe an agreed upon time for the delivery of the goods, or if delay appears probable, Seller shall promptly give notice to that effect to Buyer, listing the time when Seller will deliver.
- b. A reasonable delay by Seller shall not be grounds for Buyer to terminate the contract, unless otherwise agreed to by parties.

## **10. Inspection; Complaints**

- a. Buyer shall inspect the goods upon delivery. Failure of Buyer to inspect the goods and notify Seller of faults or shortages within 14 days after the goods have been delivered shall act as a complete waiver of Buyer's rights with respect to any claims against Seller.
- b. Complaints regarding any faults in the goods shall be made in writing, specifying the nature and extent of the fault in reasonable detail.

## **11. Electronic Access**

- a. Seller may, at its discretion, provide Buyer and Authorized Users (as defined below) with access to and use of certain Seller-designated electronic sites or portals ("Electronic Access"). These terms and conditions and any other terms provided by Seller in relation to any Electronic Access (collectively, "eCommerce Terms") govern all matters related to Electronic Access, including in relation to any information, data, sites, software, documentation, portals, links, systems, products, services, applications, transactions, content or other materials provided through any Electronic Access (collectively, "eCommerce Materials"). By Buyer's or any Authorized User's access to or use of any Electronic Access or any eCommerce Materials, Buyer hereby agrees to, and shall ensure each Authorized User's compliance with, the eCommerce Terms.
- b. Subject to the eCommerce Terms, Seller grants Buyer a limited, non-exclusive, revocable, non-transferable, non-sublicensable right for Authorized Users to access and use the applicable eCommerce Materials solely on behalf of Buyer via the applicable Electronic Access. Seller, on behalf of itself and its affiliates, licensors and contractors, reserves all rights not expressly granted to Buyer under this section.
- c. Buyer hereby grants Seller the right to use any data, information or other content provided or made available by or on behalf of Buyer (or any Authorized User) in connection with Electronic Access (collectively, "Buyer Content") as reasonably necessary to provide use of Electronic Access or eCommerce Materials. In addition, Seller may use and disclose any data associated with Buyer Content, in aggregate and de-identified form, to any person and for any lawful purpose. Seller may retain any data or records relating to Buyer's or any Authorized User's access to or use of Electronic Access in relation to regulatory or legal requirements or enforcement of, or performance under, the contract.
- d. In connection with any Electronic Access, Buyer will furnish Seller with, and promptly update, an accurate and complete list of the names of persons Buyer authorizes for Electronic Access (each, an "Authorized User"). Seller will issue user-ids,

passwords and any other applicable security devices or credentials for each Authorized User (collectively, "Access Credentials"). Buyer shall be solely responsible for Authorized Users' access to and use of Electronic Access (and any eCommerce Materials), for the confidentiality and security of Access Credentials, and for any Electronic Access using or under any Access Credentials. Seller shall not have any obligation to verify the actual identity of any person who accesses Electronic Access using or under any Access Credentials. Buyer shall not, and shall not permit any Authorized User or other person to, breach any security measures used in connection with Electronic Access (or eCommerce Materials) or reverse engineer or attempt to determine the source code or underlying algorithms for any eCommerce Materials.

- e. All non-public information and materials provided as part of the eCommerce Materials or made available through any Electronic Access (collectively, "Confidential Information"), including any intellectual property rights therein, are the exclusive and confidential property of Seller and/or its affiliates, licensors and contractors. Buyer shall not, and shall ensure that each Authorized User does not, without Seller's prior written consent, disclose or make available to any person or make unauthorized use of any Confidential Information. Buyer shall take all reasonable care to protect the confidentiality of the Confidential Information, and Buyer shall be responsible for any unauthorized access to or use of any Confidential Information.
- f. In its sole discretion at any time, Seller may modify or eliminate any Electronic Access (or any eCommerce Materials) and may terminate or suspend Buyer's, or any Authorized User's, access to or use of any Electronic Access or eCommerce Materials. Upon any termination of Electronic Access, Buyer (or the applicable Authorized User) shall promptly return all Confidential Information (including Access Credentials) in its possession or control.
- g. Seller shall be entitled to rely on any actions or instructions associated with any Authorized User (or its Access Credentials) until Seller receives written notice from Buyer of the change in status of the applicable Authorized User and receives all applicable Access Credentials, and Buyer assumes all risk and accepts full and sole responsibility for all such actions and instructions.
- h. In connection with Electronic Access, Seller may provide access to eCommerce Materials from third parties ("Third Party Materials"). Third Party Materials may be subject to third party terms and conditions, and Buyer shall agree to and comply with, and ensure that each applicable Authorized User agrees to and complies with, any such third party terms. Seller does not endorse, and shall not be responsible for, any such Third Party Materials.
- i. Buyer shall indemnify Seller for any claims, liabilities, damages, costs and expenses (including attorneys' fees and expenses) arising from any breach of the eCommerce Terms, any Buyer Content, or any access to or use of any Electronic Access, eCommerce Materials or Confidential Information by or on behalf of Buyer, any Authorized User or any person under or using any Access Credentials.

## **12. Exclusive Remedies**

- a. If the goods shipped by Seller to Buyer are defective or not in conformity with the specifications for such goods, Seller shall reasonably and promptly, at its own expense and after consultation with Buyer as Seller's exclusive obligation and Buyer's exclusive remedy with respect to any non-conforming or defective goods, either (i) remedy the fault (e.g., by repair or reprocessing), or (ii) after Buyer's return of the faulty goods to Seller, promptly deliver new and conforming goods to Buyer, or (iii) in the event that repair or replacement is not practicable, credit Buyer amounts paid by Buyer for goods.
- b. If Seller repairs or replaces the goods, Seller shall pay the costs of transportation for return and reshipment, but shall not be required to pay for any expenditure incurred for dismantling and reinstallation.

## **13. Limitations of Liability**

**UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR BUSINESS INTERRUPTION) ARISING FROM ANY CLAIM WHATSOEVER, WHETHER BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S AGGREGATE LIABILITY TO BUYER SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNT PAID BY BUYER TO SELLER UNDER THE CONTRACT FOR THE PURCHASE OF GOODS.**

## **14. Warranty Disclaimer**

**THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS, ELECTRONIC ACCESS, ECOMMERCE MATERIALS, CONFIDENTIAL INFORMATION OR THIRD PARTY MATERIALS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, ACCURACY, AVAILABILITY, RELIABILITY, QUALITY, COMPREHENSIVENESS, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.**

#### **15. Force Majeure**

- a. The obligations of Buyer or Seller under this Agreement (other than Buyer's payment obligations) will be suspended to the extent that such party is wholly or partially precluded from complying with its obligations under this Agreement by force majeure. "Force Majeure" includes, but is not restricted to, fire, storm, flood, earthquake, explosion, accident, act of the public enemy, war, rebellion, insurrection, sabotage, outbreak, epidemic, public health emergency, quarantine restriction, labor dispute, labor shortage, transportation embargo or failure, curtailment or delay in transportation, act of God, act (including laws, regulations, orders, advisories, disapprovals or failure to approve) of any government or public health agency or authority, whether national, statewide, municipal, or otherwise, or any other event or circumstance beyond such party's control. If any Force Majeure limits Seller's ability to deliver Goods to Buyer, Seller may make partial deliveries to Buyer in proportions that are reasonable under the circumstances.
- b. In addition to, and without limiting, the foregoing, Buyer expressly acknowledges and agrees that it was and will not be possible for Seller to foresee, plan for, or mitigate all the consequences that the existence and spread of the SARS-CoV-2 virus (the "Pandemic") may have or cause, including without limitation, the actions or recommendations by authorities. Consequently, Buyer acknowledges that: (i) Seller's obligations and ability to perform under this Agreement may be affected thereby; (ii) challenges and/or disruptions in delivery may occur; and (iii) changes to the terms of this Agreement may be necessary, on a case by case basis. The parties agree that they will work together in good faith to agree on possible adjustments to the terms of this Agreement with a view toward securing as little disturbance or interruption to goods/service delivery as is reasonably practical provided that Seller reserves the right to make equitable adjustments to delivery times and/or prices to the extent reasonably necessary to mitigate the consequences of the Pandemic.
- c. Where a Force Majeure event occurs, Seller shall give Buyer notice as reasonably practicable.
- d. If any Force Majeure event will delay the contract for a period exceeding ninety (90) days, either party may cancel the contract by written notification to the other. Where Buyer cancels contract, Seller shall be entitled to receive compensation for the expenditures it has incurred until the time of cancellation, but excluding any consequential damages.

#### **16. Infringement of Rights of Third Parties**

If goods are manufactured in accordance with drawings, models, or other prototypes or patterns supplied by Buyer, or in accordance with any other form of documentation supplied by Buyer, Buyer shall indemnify Seller for any infringement of rights of third parties arising from the use and manufacture of such materials, including, without limitation, infringement of patents, copyrights, or trademarks of such third party.

#### **17. Tools and Models**

- a. Repairs of tools and models belonging to Buyer and in the custody of Seller shall be paid for by Buyer if such repairs are caused by wear and tear or reasons not solely attributable to the misuse of such tools and models by Seller. If Seller is responsible for repairing a tool or model, the cost of repairs shall not exceed the lesser of (i) the value of the tool or model; or (ii) the amount paid by Buyer to Seller under the contract, for the purchase of goods for which the tool or model was provided.
- b. If Seller retains the tools or models after delivery of the goods for which the tools or model was provided, Seller shall keep them at the expense of Buyer, unless otherwise agreed to in writing by the parties. All storage of such tools and models shall be at the risk of Buyer. After ninety (90) days have lapsed since completion of delivery of the goods, Seller has the right, after notification to Buyer in writing, to discard or return such tools and models unless otherwise agreed. Transportation of such tools and models shall be at the risk and expense of Buyer.
- c. The term "tools and models" in this context includes equipment belonging to Buyer, and provided to Seller, required for production of the goods.

#### **18. Overdue Payment**

- a. In case Buyer shall fail to make payments in accordance with these Terms, Seller in addition to its other rights and remedies may at its option defer further shipments until such payments are made or may terminate this contract, and Buyer shall not have any cause of action or be entitled to any setoff, counterclaim or recoupment against Seller by reason of such action.
- b. Amounts overdue for payment will be charged interest at the rate of the then Prime Rate as published in the Wall Street Journal plus six (6) percent, but in no event more than the maximum permitted by applicable law. Seller may, at its election, retain a security interest in the goods until paid for in full.

#### **19. Assignment**

This contract may not be assigned, in whole or in part, by either party except with the prior written consent of the other party, except that (i) Seller may assign any of its rights to receive any payment from Buyer hereunder, and (ii) Seller may subcontract the performance of any of its obligations under the contract.

#### **20. Entire Agreement**

These Terms represent the entire agreement between the parties with respect to the goods and supersedes all prior discussions or understandings between them. The warranty disclaimers, limitations of liability, indemnification and confidentiality provisions of these terms and conditions shall survive the contract.

#### **21. Amendment Waiver**

- a. This contract may not be changed orally, and no amendment or modification of any of the terms and conditions herein, nor any waiver of said terms and conditions, shall be valid or binding unless such amendment, modification or waiver is contained in a written agreement or instrument signed by both parties.
- b. The failure of Seller to insist on strict compliance with these terms and conditions, or to delay in exercising its rights hereunder, shall not constitute an amendment or waiver of such rights.

#### **22. Applicable Law**

The contract shall be governed by the laws of the Commonwealth of Pennsylvania.

#### **23. Disputes**

Any disputes between the parties shall be settled at the option of Seller either by (i) arbitration in Pittsburgh, Pennsylvania, in accordance with provisions of the regulations regarding conciliation and arbitration of the American Arbitration Association, by one or more arbitrators appointed in the means prescribed in the said regulations, or (ii) by a court of competent jurisdiction in Pittsburgh, Pennsylvania.