

**BEVOLUTION GROUP  
STANDARD TERMS AND CONDITION  
OF ACCEPTANCE AND SALE**

(TERMS APPLICABLE TO SALES BY JUICE TYME, INC., LEMON-X CORPORATION,  
DR. SMOOTHIE BRANDS, INC. and DR. SMOOTHIE ENTERPRISES, EACH d/b/a  
“Bevolution Group” AND EACH, A “SELLER”)

**1. Terms of Sale.** These Terms and Conditions of Sale ("Terms") are the only Terms which govern sales of any product or products ("Product" and, collectively, "Products") to buyer ("Buyer") by seller ("Seller") (Buyer and Seller, individually, a "party" and, collectively, the "parties"). Sales by Seller to Buyer of Products are expressly limited to and conditioned upon acceptance of these Terms, regardless of whether Buyer purchases Products by phone, in person, verbally, by purchase orders, electronic orders, Electronic Data Interchange ("EDI"), acknowledgements, confirmation, or other writings or forms of communication (collectively, "Purchase Orders"). Unless expressly agreed by Seller in a writing signed by Seller as described in Section 22 hereof, any additional or conflicting terms and conditions contained on, attached to, or referenced by Buyer's Purchase Orders, or other prior or later communication between Buyer and Seller, shall have no effect on the Terms of purchase of any Product by Buyer from Seller and are expressly rejected by Seller. Buyer's commencement of performance (including, without limitation, ordering, purchasing or taking delivery of Products) shall in all cases constitute Buyer's unqualified and unconditional acceptance of these Terms.

**2. Proposal/Quotations.** Proposals/quotations made by Seller are only valid in writing and for thirty (30) days from the date of the quotation unless otherwise set forth in Seller's quote. All proposals/quotations are subject to change or withdrawal without prior written notice to Buyer prior to acceptance by Buyer unless otherwise specifically stated in the quotation. Quotations are made subject to approval by Seller of Buyer's credit, in Seller's sole discretion.

**3. Price.** Unless otherwise specifically agreed to in writing by Seller, all prices are exclusive of any freight costs and any sales, use, value added, excise, gross receipts, business and occupation or similar present or future taxes or tariffs imposed by any governmental body on the sale, delivery, use or other handling of the Products or in connection with any transactions contemplated herein. Prices assume order quantities sufficient to meet Seller's standard minimum order requirements for applicable Products. Unless otherwise agreed in writing, any variation in quantities shipped over or under the quantities ordered (not to exceed 15%) shall constitute compliance with Buyer's order and the stated price per item will continue to apply. Seller reserves the right to adjust prices on undelivered Products to reflect changes in Seller's cost of Products. All orders are accepted subject to Seller's price in effect at time of shipment. All prices are F.O.B. Seller's shipping point.

**4. Terms of Payment.** Unless otherwise specifically agreed to in writing by Seller, terms are net thirty (30) days from date of Seller's invoice. If the Buyer fails to pay by the due date any sum required to be paid by the Buyer to the Seller hereunder, the Buyer will pay to the Seller for each delinquent payment or part thereof interest from the due date until paid at the rate of Prime Interest Rate plus 6%, unless limited by applicable law. Seller shall also have the right, among other remedies, either to terminate the order or to suspend further performance in the event Buyer fails to make any payment when due. The Buyer shall also pay to Seller all reasonable costs and expenses (including but not limited to attorney's fees) incurred by the Seller in connection with the Seller's efforts to collect such delinquent payment(s). Seller makes no assurance or guarantee regarding any amount of credit or the continuation of such credit to Buyer. If Seller, in its sole discretion, provides Buyer with a line of credit to facilitate purchases of Products from Seller, such credit line may be amended, decreased or terminated at any time in Seller's sole discretion. If Seller determines, in its sole discretion, that the creditworthiness or future performance of Buyer is impaired or unsatisfactory, Seller may, in addition to its other rights and remedies: (i) suspend deliveries of Products; (ii) require prepayment by wire transfer of immediately available funds at least three (3) days prior to a scheduled shipment of Products; and/or (iii) require Performance Assurance (as hereinafter defined) prior to a scheduled shipment. Buyer hereby waives written notice of any such action. "Performance Assurance" means collateral

in the form of either cash, letter(s) of credit, guaranty, or other security acceptable to Seller in its sole discretion. Seller reserves the right, at any time, to Set-off against any amount that Seller and/or its affiliates owe to Buyer and/or its affiliate under any agreement(s) or transaction(s) between such parties. "Set-off" means set-off, offset, combination of accounts, netting of dollar amounts of monetary obligations, right of retention or withholding or similar action exercised by Seller. Buyer shall not withhold payment of any amounts due and payable by reason of any Set-off or claim against Seller, whether relating to Seller's breach, bankruptcy or otherwise. Until payment in full is made, Buyer hereby grants Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Products, wherever located, whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing.

**5. Delivery.** Delivery times shall be agreed between Seller and Buyer at the time of each order but shall in any event be subject to Seller's customary lead times. Unless otherwise specifically agreed to in writing by Seller, title, and all risk of loss or damage to Products shall pass from Seller to Buyer upon delivery of Products to the carrier for delivery, F.O.B. Seller's shipping point. Buyer shall be responsible for all unloading costs and shall provide equipment and labor necessary for receipt of Products. Seller shall not be liable for any non-delivery of Products (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of non-delivery within three (3) days of the date when the Products would, in the ordinary course, have been received. Any liability of Seller for non-delivery of Products shall be limited to replacing the Products within a reasonable time or adjusting the invoice for such Products to reflect the actual quantity delivered. If and to the extent that Products are to be delivered from any Seller-affiliated facility, public warehouse, or supplier, such entity shall have the right to require the execution of an access agreement prior to granting Buyer, its carriers, contractors or agents, access to such facility. Buyer agrees that it, and its carriers, contractors and agents, will comply with the facility's safety rules and regulations. The quantity of any shipment of Products as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary. If Seller delivers to Buyer a quantity of Products of up to 15% less than the quantity set forth in the sales confirmation, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the shortfall and shall pay for such Products at the price set forth in the sales confirmation adjusted pro rata. Seller may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale and Buyer shall pay for the Products shipped, in accordance with the payment terms specified in the Purchase Order, whether such shipment is in whole or partial fulfillment of a Purchase Order. Any claims for shortages or damages suffered in transit shall be submitted by Buyer promptly to the carrier. While Seller will use all reasonable commercial efforts to maintain the delivery date(s), all shipping dates are approximate. Seller shall not be liable to Buyer for damages or charges resulting from a delay in the delivery of Products, or for partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom, including spoilage or obsolescence.

**6. Limited Warranty.** The Seller warrants that the Products delivered hereunder, at the time of delivery, shall (i) not be adulterated or misbranded within the meaning of those terms under the Federal Food, Drug and Cosmetic Act, (ii) delivered with Product title and free and clear of any liens or encumbrances, and (iii) be produced according to current "good manufacturing practices". The Buyer assumes all risks incurred in the use of any Product delivered hereunder. The limited warranty in (i) above shall be void and Seller shall have no liability or responsibility for any claims respecting the quality or condition of the Product (a) if Buyer has not examined, inspected, sampled and tested the Product, or cause the Product to be examined as required herein, or (b) Buyer's agents or carriers do not store and handle the Product properly in accordance with the Product specifications or Seller's direction. Buyer, having the expertise and knowledge in the intended Use of Products and any Use or other product made therefrom, assumes all risk and liability for results obtained by the Use of Products, whether Used singly or in combination with other ingredients or in any process. EXCEPT AS SET FORTH IN THIS SECTION, SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF FITNESS OF THE PRODUCT FOR A PARTICULAR PURPOSE. ANY DETERMINATION OF THE SUITABILITY OF THE PRODUCT FOR THE USE CONTEMPLATED BY BUYER IS BUYER'S SOLE RESPONSIBILITY.

**7. Inspection/Non-Conforming Shipments.** Immediately upon Products' receipt, Buyer shall, at its sole cost and expense, inspect Products to check for damage and to ensure that it has received all quantities ordered. No later than three (3) days after Buyer's receipt of Products and before the use, disposition, processing, or any other change from the original condition of any part of the Products (collectively, "Use" or, as a verb, "Used"), Buyer shall notify Seller in writing if any Product is found to be deficient, defective or short and shall furnish such written evidence and other documentation as Seller may reasonably request. Buyer's failure to give timely, written notice to Seller of any deficiency, defect or shortage within such three (3) day period shall constitute an unqualified acceptance of the Product and a waiver by Buyer of all claims with respect thereto. If Buyer has reason to believe any Product does not comply with the limited warranty set forth herein, Buyer shall not Use the Product without the prior written approval of the Seller.

**8. Returns.** Generally, Seller will not accept Product returns. A Product may be returned on an exceptions-only basis and only with Seller's prior written authorization, which can be conditioned or denied at any time in Seller's sole discretion. Any return authorized by Seller will be subject to a restocking charge of twenty-five percent (25%) of the invoiced price for the Product.

**9. Force Majeure.** The Seller shall not be liable for failure to make any delivery hereunder caused by or resulting from events or circumstances beyond Seller's reasonable control, including without limitation, strikes, fires, floods, wars, riots, loss, destruction or unavailability of raw material, unavailability of transportation facilities, disruption of utilities, delays of carrier, embargoes, accidents, or restrictions imposed by any government or government authority, epidemics or pandemics. The requested or state delivery date under any order shall be extended during any period in which such delivery shall be prevented or delayed by reason of any of the foregoing causes, provided that if any delivery hereunder be so prevented or delayed for more than two (2) months, either party shall have the right to cancel this Order with respect to such delivery by providing timely written notice to the other party. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products, services, and resources among itself and its customers in such manner as Seller, in its sole judgment, deems fair and equitable and may take any other action it deems reasonable, in its sole discretion under the circumstances, such as eliminating the production of certain Products, without liability.

**10. Limitation on Liability and Limited Remedies.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOST OR PROSPECTIVE PROFITS, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST EARNINGS, LOST PROFITS OR BUSINESS INTERRUPTION, WHETHER OR NOT BASED UPON SELLER'S NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY, IN TORT OR ANY OTHER CAUSE OF ACTION INCLUDING, INTER ALIA, THOSE INCIDENTAL AND CONSEQUENTIAL DAMAGES REFERENCED IN THE UNIFORM COMMERCIAL CODE. Buyer's exclusive remedy against Seller for any cause of action under the Terms, including for failure to deliver, is, at Seller's option, either: (i) replacement of the Products; or (ii) refund of the amount paid to Seller for the Products. IN NO EVENT SHALL SELLER'S CUMULATIVE LIABILITY EXCEED THE AMOUNT PAID BY BUYER TO SELLER FOR THE PRODUCTS. BUYER AGREES THAT BUYER'S REMEDY IN (i) OR (ii) IS FAIR AND ADEQUATE.

**11. Limitations on Suits and Actions.** Buyer shall not commence any claim to enforce buyer's rights or remedies arising from this sale later than one year from the date of shipment. If any claim by buyer cannot be settled amicably between the parties, such claim shall be settled by arbitration, in accordance with the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrator(s) shall be final and binding upon the parties and judgment upon the award may be entered in any court having jurisdiction thereof.

**12. Intellectual Property.** All drawings, know how, inventions, devices, developments, processes, copyrights, trademarks, patents and applications therefore, and other information or intellectual property disclosed or otherwise provided to Buyer by Seller, including intellectual property developed by Seller as a part of its relationship with Buyer, and all rights therein will remain the property of Seller and will be kept confidential by Buyer in accordance with these terms and conditions. Buyer shall have no claim to, nor ownership interest in, any intellectual property and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request of Seller. Buyer shall indemnify and hold Seller harmless against any and all claims, demands, suits and/or costs whatsoever arising out of or relating to any violation or infringement or any alleged violation or infringement of any patent, trademark, or copyright in relation to any Product manufactured in accordance with any designs and/or specifications provided by Buyer.

**13. Termination.** The Seller shall have the right in its sole discretion, by notice given to the Buyer, to terminate any order upon the occurrence of any direct or indirect, voluntary or involuntary, sale, lease, transfer, assignment, merger, consolidation or other disposition of the Buyer's assets, it being understood that in the event such shall occur (and without prejudice to the termination remedy specified), (x) the Buyer shall remain fully liable for its obligations under this Agreement, and (y) the transferee of such assets or such facility shall also be liable for all obligations of the Buyer under this Agreement. In addition, Seller may cancel any purchase order or releases thereunder that are not scheduled for shipment within the succeeding thirty days. If Buyer notifies Seller of Buyer's intention not to fulfill any obligation under a purchase order, Buyer shall be liable to Seller for all finished Products, work in process, and unique or surplus raw materials and supplies produced or ordered in reliance on

such purchase order. Any and all purchase orders for tooling, fixtures and equipment shall be paid for at the contract price, regardless of the stage of completion.

**14. Default.** Upon the occurrence of any of the following: (i) the failure by Buyer to provide payment when due, and such failure remains uncured for a period of at least ten (10) days; (ii) the failure of Buyer to perform any other required obligation where such failure is not excused or cured within ten (10) days after written notice thereof; or (iii) the occurrence of a Bankruptcy Event (as hereinafter defined), then any and all obligations of Buyer, including payments or deliveries due, will, at the option of Seller, become immediately due and payable or deliverable, as applicable, and Seller, in its sole discretion and without prior notice to Buyer, may do any one or more of the following: (a) suspend its performance; (b) cancel any Purchase Orders or other sales agreed to by Buyer and Seller; and/or (c) Set-off against any amount that Seller and its affiliates owe to Buyer and its affiliates under any agreement or transactions(s) between such parties. If Seller suspends performance and withholds Product delivery as permitted above, Seller may sell the Products to a third party and deduct the proceeds of such sale from the claim against Buyer. All reasonable costs resulting from Buyer's default as identified above, including, without limitation, all costs associated with the transportation (including demurrage and other vessel or shipping-related charges), storage, and sale of the Product shall be paid by Buyer. In addition, Seller shall be entitled to recover from Buyer all court costs, attorneys' fees and expenses incurred by Seller in connection with Buyer's default, and interest on past due amounts at the rate specified in Section 8 of these Terms. The foregoing rights, which shall include, but not be limited to, specific performance, shall be cumulative and alternative and in addition to any other rights or remedies to which Seller may be entitled including at law or in equity. "Bankruptcy Event" means the occurrence of any of the following events with respect to Buyer or any Performance Assurance provider for Buyer: (i) filing of a petition or otherwise commencing, authorizing or acquiescing in the commencement of a proceeding or cause of action under bankruptcy, insolvency, reorganization or similar Law; (ii) making of an assignment or any general arrangement for the benefit of creditors; (iii) having a bankruptcy petition filed against it and such petition is not withdrawn or dismissed within thirty (30) days after such filing; (iv) otherwise becoming bankrupt or insolvent (however evidenced); (v) having a liquidator, administrator, custodian, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets; or (vi) being generally unable to pay its debts as they fall due.

**15. Confidential Information.** All information furnished or made available by Seller to Buyer in connection with the subject matter of these terms and conditions, Seller's quotation, or Buyer's purchase order shall be held in confidence by the Buyer. Buyer agrees not to use such information or disclose such information to others without Seller's prior written consent. The obligations in this paragraph will not apply to any information in the public domain which Buyer can show by written records was in Buyer's possession prior to disclosure by Seller, or any information which is legally made available to the Buyer by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.

**16. Compliance with Laws.** Buyer is solely responsible for complying with all Laws. Buyer shall hold Seller harmless from and against any and all losses, damages, liabilities, claims, costs and expenses relating to any claim, action, proceeding, or lawsuit, threatened or commenced, arising out of a breach of such Laws. Buyer shall not and shall not permit any third parties to, directly or indirectly, export, reexport, or release any Products to any jurisdiction or country to which, or any party to whom, the export, reexport, or release of any Products is prohibited by Law. Buyer shall be responsible for any breach of this Section 15 including breach by its successors' and permitted assigns, parent, affiliates, employees, officers, directors, partners, members, shareholders, customers, agents, distributors, resellers, or vendors. Buyer shall comply with all Laws and complete all required

undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, reexporting, or releasing any Product. Buyer shall provide prior written notice of the need to comply with such Laws to any person, firm, or entity which it has reason to believe is obtaining any Products from Buyer with the intent to export or reexport. For purposes hereof, "Laws" means all applicable laws, treaties, conventions, directives, statutes, ordinances, rules, regulations, orders, writs, judgments, injunctions or decrees of any governmental authority having jurisdiction over the transactions, either in the United States or in the country where the Buyer is located, or in which subsequent Buyers or consumers are located, including, without limitation, the export and/or import control Laws of other countries. Once Product become property of the Buyer, the Buyer assumes all responsibility for shipments of Products requiring any import or export clearance.

**17. Further Handling and Use.** Seller shall not be liable for, and Buyer shall indemnify, defend and hold harmless Seller, its affiliates and their respective equity owners, shareholders, officers, directors, members, managers, employees, representatives and agents ("Indemnitees") from and against any and all claims, losses, liabilities, costs and expenses, including attorneys' fees, (collectively, "Claims") arising out of or resulting from the handling, Use, combination with other ingredients, incorporation, manufacture, storage, processing, alteration, distribution, transportation, sale or marketing of Products, or any other action or inaction with regard to the Products, in each case after the delivery thereof to Buyer, including, without limitation, product liability claims, intellectual property claims, and other liability for injuries, death, losses or damages; provided however, that Buyer shall not be liable to Seller for damages directly caused by the sole negligence of Seller. Buyer's obligation shall survive the termination, cancellation or expiration of all Purchase Orders delivered pursuant to these Terms and the cessation of business between Seller and Buyer.

**18. Entire Agreement.** This order contains the entire agreement between the parties and supersedes any prior oral or written agreements or communications between them relating to the subject matter hereof.

**19. No Assignment.** The Buyer may not transfer, assign, pledge or otherwise dispose of this order, or any interest or right hereunder, without the express written consent of the Seller. Any infringement or attempted assignment in contravention of the foregoing shall be null and void, and shall permit Seller, in addition to any other rights that it may have, to terminate all Purchase Orders. These Terms are solely for the benefit of Seller, its affiliates, the Indemnitees, and Buyer and shall not be deemed to confer upon or give any other party any right, claim, cause of action or interest herein.

**20. Governing Law/Venue.** The validity, performance, construction, and effect of these Terms, and all matters arising out of or relating thereto, shall be interpreted in accordance with the Laws of the State of Illinois, without regard to its conflicts of law rules or principles. The United Nations Convention on Contracts for the International Sale of Goods or any subsequently-enacted treaty or convention shall not apply or govern the Terms or performance thereof or any aspect of any dispute arising therefrom. Any action or proceeding between Buyer and Seller relating to the Terms shall be commenced and maintained exclusively in the state or federal courts in Chicago, Illinois, and Buyer submits itself unconditionally and irrevocably to the personal jurisdiction of such courts. BUYER AND SELLER EACH WAIVE, TO THE FULLEST

EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY SUIT, ACTION, CLAIM OR PROCEEDING RELATING TO OR ARISING OUT OF THESE TERMS.

**21. Compliance with Export Regulations.** In the event Seller sells Product to Buyer under this Agreement as a domestic transaction, and Buyer later exports Product, Buyer shall assume all responsibilities as the "U.S. Principal Party in Interest." Buyer agrees that all applicable import and export control laws, regulations, orders and requirements, including without limitation those of the United States and the jurisdictions in which Buyer is established or from which Products may be supplied, will apply to their receipt and use. In no event shall Buyer use, transfer, release, divert, transship, import, or export/re-export Products in violation of such applicable laws, regulations, orders or requirements. Buyer represents and warrants that it is not referenced on the "specially-designated nationals" list maintained by the United States Office of Foreign Assets Control ("OFAC") of the United States Treasury and is not otherwise restricted from participating in an export of goods from the United States. If Buyer violates any United States export laws or regulations, including but not limited to the Export Administration Regulations and/or the United States economic sanctions administered by OFAC, Seller may, immediately and without notice, terminate any purchase order submitted by Buyer, and/or any business arrangement or relationship with Buyer. If the Product is to be exported outside of the United States, Buyer will be responsible for obtaining and maintaining, if applicable, all international regulatory approvals and ensuring that the Product specifications and all analysis and other testing conducted complies with all applicable international laws and regulations.

**22. Compliance with Anti-Terrorism and Anti-Bribery Laws.** Buyer represents and warrants that neither Buyer nor any of its parents, affiliates, representatives, agents or employees: (i) is identified, either by name or an alias, pseudonym or nickname, on the lists of "Specially Designated Nationals" or "Blocked Persons" maintained by the U.S. Treasury Department's Office of Foreign Assets Control (text currently available at [www.treas.gov/offices/enforcement/ofac/](http://www.treas.gov/offices/enforcement/ofac/)); (ii) is directly or indirectly owned or controlled by the government of any country that is subject to a United States embargo; (iii) acts, and none of them will act, directly or indirectly on behalf of the government of any country that is subject to a United States embargo; or (iv) has violated, and none of them will violate, without limitation, any sanctions program that is established by Executive Order of the President or published by the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"), that is designated by the President or OFAC pursuant to the Trading with the Enemy Act, SO U.S.C. App. § 5, the International Emergency Economic Powers Act, SO U.S.C. §§ 1701-06, the Patriot Act, Public Law 107-56, Executive Order 13224 (September 23, 2001) or any Executive Order of the President issued pursuant to such statutes. Buyer further represents and warrants that, in all actions it or its directors, officers, employees or agents take, on behalf of itself and its directors, officers, employees and agents, neither it nor any of its directors, officers, employees or agents will violate any requirements or restrictions of the United States Foreign Corrupt Practices Act, 15 U.S.C. 78dd-1 et. seq. or any other applicable anti-corruption laws in each of the jurisdictions in which Buyer operates. Specifically, Buyer represents and warrants that it will prevent its directors, officers, and employees from offering anything of value to any government official or any official of any state-owned enterprise, whether foreign or domestic, with the corrupt purpose of influencing that official for Buyer's business advantage. Seller reserves the right to unilaterally report to any government's law enforcement authorities any information that it deems, in its sole discretion, necessary or appropriate to disclose whether that information comes from the financial records maintained under this section or another source.

**23. Miscellaneous.** These Terms supersede any prior terms and conditions. The captions and section headings set forth in these Terms are for convenience only and shall not be used in defining or construing any of the terms and conditions herein. Waiver or failure to enforce by either party any breach of the terms and conditions contained herein will not be construed as a waiver of any other term or condition or continuing breach. The invalidity or unenforceability or any provisions hereunder shall not affect the validity or enforceability of its other provisions. No course of dealing, course of performance, or usage of trade shall be considered in the interpretation or enforcement of these Terms. All technical advice, information, services, specifications, and recommendations by Seller and its affiliates are intended for use by persons having skill and know-how, and are accepted by Buyer at its own risk, and neither Seller nor its affiliates assumes responsibility for results obtained or damages incurred from their use. No employee, agent, nor representative of Seller has any authority to bind Seller to any term, affirmation, representation, or warranty concerning a Product not set forth herein, and unless a term, affirmation, representation or warranty is specifically included in these Terms, it shall not be enforceable. No statements or agreements, oral or written, not contained herein will vary or modify the terms hereof. Neither party shall claim any amendment, modification or release of any provisions hereof unless the same is in writing and such writing: (i) specifically refers to these Terms; (ii) specifically identifies the term amended; and (iii) is signed by a duly-authorized officer of Seller and Buyer. All notices, consents, communications or transmittals under these Terms shall be in writing and shall be deemed received on the day of delivery if delivered by internationally or nationally-recognized overnight courier or delivery service, (with confirmation of receipt), or within five (5) business days if mailed by United States certified mail, return receipt, postage prepaid, addressed to the party to whom such notice is given at the address of such party.