

## Terms & Conditions

### 1. Agreement

These terms and conditions (the "Terms and Conditions"), together with the provisions of the Quotation (the "Quote") and Order Acknowledgment (the "Acknowledgment"), and collectively with the Terms and Conditions and the Quote (the "Agreement"), constitutes the entire agreement of Rytec Corporation ("Seller") and Buyer (as defined on the Quote) with respect to the products ("Products") and/or services ("Services") described on the Quote and/or Acknowledgment and supersedes any other agreement or understanding of the parties with respect to such sale. Acceptance of Buyer's order is expressly conditioned on Buyer's acceptance of all of the terms and conditions contained herein in lieu of those in Buyer's purchase order. Buyer will be deemed to have assented to the terms and conditions of this Agreement unless Seller receives written notice of any objection by Buyer within the earlier of (i) acceptance by Buyer of the delivery of the Products and/or Services or (ii) 10 days after Buyer's receipt of this form. This Agreement represents the complete and final expression of the agreement of the parties, and no terms or conditions in any way adding to, modifying or otherwise changing the provisions stated herein, including by custom, usage of trade or course of dealing or performance, shall be binding upon Seller unless expressly agreed in writing and signed by an authorized officer of Seller. Notwithstanding the foregoing, if Seller and Buyer have a written agreement in effect that covers the sale of the Products and/or Services sold hereunder that has been signed by an authorized officer of Seller, that agreement will govern the terms and conditions of sale solely to the extent that its terms are in addition to and do not conflict with the terms and conditions of this Agreement.

### 2. Pricing, Taxes and Other Charges

All prices are subject to adjustment, without notice, to Seller's prices in effect at the time of shipment. Any increase in transportation rates and any changes in routing resulting in an increase in transportation costs shall be paid and borne by Buyer. Unless otherwise provided on the face of this form, any manufacturer's tax, occupation tax, sales tax, service tax, excise tax, duty, custom inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between Seller and Buyer shall be paid by Buyer. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller, therefore.

### 3. Payment

Payment is due 30 days after the date of Seller's invoice. Interest will be charged at the rate of 18% per annum (but not more than the highest rate permitted by applicable law), prorated from date due to the date paid, on

accounts not paid when due. Seller reserves the right to require payment for any shipment hereunder in advance, or satisfactory security, if the financial performance or credit worthiness of Buyer is unsatisfactory to Seller. If Buyer fails to fulfill the terms of payment of any order placed with Seller, Seller may defer further manufacture or shipment of orders until such payment is made or may at its option cancel this order; in such event, Buyer will remain liable for all unpaid accounts.

#### 4. Title and Delivery

Unless otherwise stipulated in this Agreement, shipments of Products are made, and delivery shall occur F.O.B. Seller's place of manufacture. Regardless of shipping terms or freight payment, delivery of Products to the first carrier shall be deemed delivery to Buyer, and thereupon title to such goods and risk of loss or damage shall be the responsibility of Buyer. Seller reserves the right to make delivery in installments, unless expressly stipulated in this Agreement. All such installments shall be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. All claims for loss or damage to goods in transit are the responsibility of Buyer and should be made to the carrier and not to Seller. Any claim for shortage of Products and/or component parts occurring prior to delivery by Seller to the carrier must be made in writing to Seller within 10 days after receipt of shipment and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by Buyer. The sale of any Product to Buyer in no way conveys to Buyer, either expressly or by implication, any intellectual property license whatsoever.

#### 5. Returned Shipments

If any shipment is returned to Seller as a result of Buyer's unexcused delay or failure to accept delivery, Buyer will pay all additional costs incurred by Seller.

#### 6. Force Majeure

All delivery dates are approximate and not guaranteed. Seller shall not be liable for delays in shipment or default in delivery for any cause beyond Seller's reasonable control including, without limitation, any act of God, act of Buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, riot, act of terrorism, delay in transportation, shortage of labor, raw material, production or transportation facilities, labor difficulties involving employees of Seller or others, or other contingencies of manufacture or shipment. In the event of any delay in Seller's performance due in whole or in part to any cause beyond Seller's reasonable control, Seller shall have such additional time as may be reasonably necessary under the circumstances. Without limiting the generality of the foregoing, Seller may, without causing any breach or incurring liability, allocate Products,

Services, component parts, or Seller's employees and contractors, which are in short supply, irrespective of the reasons therefore, among buyers in any manner which Seller in its sole discretion deems advisable.

## 7. Storage

If Products are not shipped within 7 days after notification to Buyer that the Products are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instructions, Seller may store such Products at Buyer's risk in a warehouse or yard upon Seller's premises, and Buyer shall pay all handling, transportation, and storage costs at the prevailing commercial rates upon submission of invoices therefore.

## 8. Modified Products

Because Seller is continually researching and improving its Products, it reserves the right at any time to make such improvements, corrections and/or modifications in the design or specification of Products, except with respect to Products being made in accordance with Buyer's specifications. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

## 9. Infringement

Subject to the limitations of Section 10, Seller shall indemnify Buyer from and against any claim or suit that may be brought against Buyer by a third party alleging that any Product sold hereunder infringes a valid registered U.S. patent, trademark or copyright in existence as of the date of shipment. Seller's indemnity obligation under this Section 9 shall not extend to any claim or suit that: (i) is based on the combination or use of the Products with any other goods or components not manufactured by Seller, including for any infringements of combination or process patents covering the use of the Products in combination with other goods or materials not furnished by Seller; (ii) is based on the use of the Products in a manner for which the Products were not designed by Seller; (iii) is based on or with respect to Products not designed by Seller or which were otherwise manufactured by Seller according to drawings, designs or specifications proposed or furnished by Buyer; (iv) is based on the modification of the Products other than by Seller, with or without authorization; or (v) relates to a claim of contributory infringement resulting from the use or resale by Buyer of Products sold hereunder. As a condition to such indemnification under this Section 9 Buyer must: (i) have made all payments then due hereunder; (ii) promptly notify Seller of such claim or suit; (iii) provide all reasonable assistance and cooperation requested by Seller in settling or defending against the claim or suit; and (iv) permit Seller to control completely the defense, settlement, or compromise of any such claim or suit. If any Product becomes the subject of any claim subject to indemnity pursuant to this Section 9, and the use of such Product is enjoined, or in the event that Seller elects to compromise or settle the claim, Seller shall have the right, at its option and expense, to procure for Buyer the right to continue using such Product, to replace

it with a non-infringing Product, to modify the Product to become non-infringing, or to refund the fees and transportation costs paid by Buyer for the Product. In no event shall Seller be responsible for any compromise or settlement made without Seller's written consent. The foregoing states the entire liability of Seller for infringement.

#### 10. Limitations of Liability

IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL SELLER'S LIABILITY TO BUYER FOR ANY CLAIM ARISING UNDER THIS AGREEMENT EXCEED THE PRICE PAID BY BUYER FOR THE SPECIFIC PRODUCTS PROVIDED BY SELLER GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AGREES THAT IN NO EVENT SHALL SELLER'S LIABILITY TO BUYER AND/OR ITS CUSTOMERS EXTEND TO INCLUDE INCIDENTAL, INDIRECT, EXEMPLARY, CONSEQUENTIAL, CONTINGENT OR PUNITIVE DAMAGES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, SELLER SPECIFICALLY DISCLAIMS ANY LIABILITY FOR PROPERTY OR PERSONAL INJURY DAMAGES, DAMAGES CAUSED BY DELAY IN PERFORMANCE, PENALTIES, SPECIAL OR PUNITIVE DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, LOSS OF USE OF PRODUCTS OR ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME, SHUT-DOWN OR SLOW DOWN COSTS, OR FOR ANY OTHER TYPES OF ECONOMIC LOSS, AND FOR CLAIMS OF BUYER'S CUSTOMERS OR ANY THIRD PARTY FOR ANY SUCH DAMAGES.

#### 11. Buyer's Indemnity

Buyer shall indemnify Seller from and against any and all claims, losses, damages, costs and expenses (including, without limitation, attorney's fees and other costs of defending any action) which Seller may incur as a result of any claim by Buyer or third parties arising out of or in connection with the Products and/or Services sold hereunder and based on product or service defects not proven to have been caused solely by Seller's negligence.

#### 12. Confidentiality

Any sketches, proposals, models, samples, or other information furnished to Buyer by Seller are intended for confidential use by Buyer, shall remain the property of Seller, and shall not be disclosed or used to the detriment of Seller's competitive position. Such information shall not be used or disclosed by Buyer without the express written consent of Seller.

### 13. Cancellations; Returns

Products cannot be returned, and orders once accepted cannot be canceled or altered, except upon terms and conditions acceptable to Seller, as evidenced in writing and signed by an authorized officer of Seller. If Seller agrees to a cancellation, Seller shall be entitled to payment of the full price, less the amount of any expenses saved by Seller by reason of the cancellation and Buyer shall be required to return all goods already shipped and shall be responsible for all shipping charges, costs of shipment and return associated with such order. Returned Products must be securely packaged to reach Seller without damage; any cost incurred by Seller to put the Products in marketable condition due to damage caused during shipment or otherwise caused by Buyer will be charged to Buyer.

### 14. Buyer's Property

Any property of Buyer placed in Seller's custody for performance of this contract is not covered by Seller's insurance, and no risk is assumed by Seller in the event of a loss or damage to such property by fire, water, burglary, theft, civil disorder, or any accident beyond the reasonable control of Seller.

### 15. Governing Law

This Agreement between Seller and Buyer shall be governed solely by the laws of the State of Illinois, including the Uniform Commercial Code as enacted in that jurisdiction, without giving effect to its choice of law provisions. No statutes, regulations, rules, or orders shall be incorporated herein unless specifically referred to herein. Any dispute arising under or in connection with this Agreement shall be brought in federal or state courts in Cook County, Illinois, and Buyer irrevocably submits to the jurisdiction of such courts and waives any objection it may have to the jurisdiction or venue of such courts. Any and all claims arising out of or relating to this Agreement shall be barred unless a judicial proceeding is commenced within 2 years from the date the complaining party knew or should have known of the facts giving rise to such claim.

### 16. Jury Waiver

SELLER AND BUYER IRREVOCABLY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OF COUNTERCLAIM, WHETHER AT LAW OR IN EQUITY, BROUGHT BY EITHER PARTY.

### 17. Waiver; Severability

Waiver by Seller of any breach of these terms and conditions shall not be construed as a waiver of any other breach, and failure to exercise any right arising from any default hereunder shall not be deemed a waiver of such right which may be exercised at any subsequent time. In the event that any one or more of these terms or

conditions is held invalid, illegal, or unenforceable, such provision or provisions shall be severed, and the remaining terms and conditions shall remain binding and effective.

18. California Proposition 65

This product may contain chemicals known to the State of California to cause cancer, and birth defects or other reproductive harm. For more information, see [www.p65warnings.ca.gov](http://www.p65warnings.ca.gov).

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