

**OLD WORLD INDUSTRIES, LLC  
GENERAL TERMS AND CONDITIONS  
FOR SALE OF GOODS**

**1. Definitions.** Capitalized terms in these Terms shall be defined and have the meanings as set forth herein. For easy reference, some of the defined terms are set forth below:

- (a) **“Affiliate”** means, in relations to any Party, any entity or person controlled by the Party, any entity or person that controls the Party, or any entity or person under common control with the Party. For this purpose, “control” of any Party, entity or person means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Party, entity or person, whether through the ownership of voting securities, by contract, or otherwise.
- (b) **“Blanket Purchase Order”** means a Purchase Order, schedule agreement or autofill arrangement that does not contain specific quantities or delivery dates but contains basic information on the Products that Buyer intends to purchase from Seller pursuant to Releases issued from time to time by Buyer.
- (c) **“Buyer”** means the entity listed as buyer or purchaser on the Sales Confirmation.
- (d) **“Laws”** means international, federal, state, local or other laws, statutes, directives, treaties, quotas, ordinances, and regulations.
- (e) **“Parties”** means Buyer and Seller, collectively. “Party” means either Buyer or Seller, individually.
- (f) **“Products”** means the goods or products referenced on the Sales Confirmation and corresponding Purchase Order.
- (g) **“Purchase Order”** means a Transmission by Buyer to Seller containing an order or other document evidencing an offer to purchase from Seller the Products referenced therein. For the avoidance of doubt, any references to Purchase Orders hereunder also include any applicable Releases.
- (h) **“Release”** means a Transmission specifying quantities of Products and desired shipping or delivery dates, pricing and referencing an applicable Blanket Purchase Order.
- (i) **“Sales Confirmation”** means a Transmission by Seller to Buyer containing a quotation, order acknowledgement, order confirmation, order alteration, customer-facing documents, invoice, or other document evidencing an offer to sell to Buyer the Products referenced on such Transmission.
- (j) **“Seller”** means Old World Industries, LLC, an Illinois limited liability company, or any Affiliate of Old World Industries, LLC referencing these Terms on the Sales Confirmation.
- (k) **“Terms”** means these General Terms and Conditions for Sale of Goods.
- (l) **“Transmission”** means any transmission from one Party to the other Party electronically through a computer network, EDI, or otherwise, by mail of hard copy, or by such other means as may be agreed.

**2. Acceptance and Applicability.** Any Sales Confirmation either referencing these Terms or including a copy of these Terms with the Sales Confirmation (either by regular or electronic mail) is an offer by Seller for the sale of the Products specified on the face of such Sales Confirmation. Buyer shall be deemed to have accepted the Sales Confirmation and these Terms upon the earlier of (i) Buyer’s acknowledgement in writing (including through electronic transmission within Seller’s portal) of its intent to be bound by the Sales Confirmation; (ii) Buyer’s sending a purchase order in response to a Sales Confirmation that is a quotation; or (iii) Buyer’s instructions to Seller to ship the Products. Unless otherwise agreed to, Seller may withdraw the Sales Confirmation at any time and for any reason without any liability before it is deemed accepted by Buyer. Buyer’s acceptance of any Sales Confirmation is unqualified, unconditional, and subject only to these Terms and any terms specifically set forth on the Sales Confirmation or any documents executed in writing by both Buyer and Seller. Seller expressly rejects any additional or different terms and conditions, including those which may appear in any Purchase Order or Release of Buyer or which may be found on Buyer’s electronic supplier portal, including any “clickwrap” terms. If Seller’s Sales Confirmation and these Terms have been sent to Buyer in response to a Purchase Order, Release, or other type of offer made by Buyer, these Terms: (a) shall supersede and control all provisions in Buyer’s offer; (b) shall be a rejection of Buyer’s offer; and (c) shall constitute an offer by Seller to Buyer. In addition to direct sale of Products from Seller to Buyer, Seller also works with its distributors in providing Products to end users. In some cases, Seller receives a Purchase Order from Buyer, but then Seller’s distributor fulfills such Purchase Order to Seller (referred to as a “Last Mile Partner”). In the event of a Last Mile Partner arrangement, Seller’s distributor shall be responsible for delivery of Products to Buyer, but these Terms shall otherwise apply to such transaction. In other cases, Seller’s distributor may have Seller directly provide Products to certain of distributor’s customers that submit purchase orders to distributor directly (referred to as a “Reverse National Account”). In the event of a Reverse National Account, these Terms shall apply between Seller and distributor’s customer as if distributor’s customer were the “Buyer” hereunder, except that invoicing and payment shall be as agreed between such distributor and its customer.

**3. Entire Agreement.** The Sales Confirmation, together with (i) these Terms; (ii) any documents incorporated herein by reference; (iii) any specifications transmitted to Buyer by Seller in connection with the Sales Confirmation; and (iv) any manufacturer or supplier warranties generally provided by Seller for certain Products, constitutes the sole and entire agreement of the Parties with respect to the Sales Confirmation, and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, with respect to the subject matter of the Sales Confirmation. In the event of a conflict between these Terms and any terms found in the body of the Sales Confirmation, the terms contained in the body of the Sales Confirmation shall prevail.

**4. Amendments.** The Sales Confirmation and these Terms may only be amended or modified in a writing which specifically states that it amends the Sales Confirmation and these Terms and is signed by an authorized representative of each Party.

**5. Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate the Sales Confirmation and corresponding Purchase Order with immediate effect and without liability upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under these Terms and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Additionally, Seller may terminate the Sales Confirmation and corresponding Purchase Order with immediate effect upon written notice to Buyer for any reason ("Termination for Convenience"). In the event of Seller's Termination for Convenience, Seller's only liability, and Buyer's sole and exclusive remedy, shall be Seller's reimbursement to Buyer for any of Buyer's reasonable, actual, and documented costs and expenses incurred by Buyer due to Seller's Termination for Convenience, provided that Buyer uses commercially reasonable efforts to mitigate such expenses.

**6. Delivery.** Seller shall use commercially reasonable efforts to deliver Products on the specified delivery date identified on the Sales Confirmation (the "Delivery Date"). Unless otherwise set forth on the Sales Confirmation or as agreed in writing by the Parties, Seller shall deliver Products to Seller's, or Seller's supplier's facility (the "Delivery Point"), using Seller's standard methods for packaging and shipping such Products. Unless otherwise agreed to by Buyer and Seller, Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the Delivery Point. 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 units shipped whether such shipment is in whole or partial fulfillment of Buyer's Purchase Order. If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Seller's notice that the Products have been delivered at the Delivery Point, or if Seller is unable to deliver the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, availability of space at the Delivery Point, documents, licenses or authorizations: (i) risk of loss to the Products shall pass to Buyer; (ii) the Products shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

**7. Quantity.** If Seller delivers to Buyer a quantity of Products of up to five percent (5%) more or 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 surplus or shortfall and shall pay for the quantity so supplied.

**8. Shipping Terms.** Shipping terms shall be as set forth on the Sales Confirmation. If no shipping terms are set forth on the Sales Confirmation, shipping terms shall be as set forth on Buyer's Purchase Order. If no shipping terms are set forth on the Sales Confirmation or Purchase Order, shipping terms shall be Ex Works Seller's (or Seller's supplier's) facility (INCOTERMS 2010).

**9. Title and Risk of Loss.** Unless stated otherwise in the Sales Confirmation, title to Products and risk of loss thereof shall pass upon delivery to Buyer or to Buyer's designated customer or carrier at the Delivery Point.

**10. Inspection and Rejection of Nonconforming Products.** Buyer shall inspect the Products within ten (10) days of receipt ("Inspection Period"). Buyer will be deemed to have accepted the Products unless it notifies Seller in writing of any Nonconforming Products during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. "Nonconforming Products" means only the following: (i) Product shipped is different than identified in Buyer's Purchase Order; or (ii) Product's label or packaging incorrectly identifies its contents. If Buyer timely notifies Seller of any Nonconforming Products, Seller shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer acknowledges and agrees that the remedies set forth in this Section 10 are Buyer's exclusive remedies for the delivery of Nonconforming Products.

**11. Prices.** Prices stated on the Sales Confirmation shall be firm for the corresponding Purchase Order. In the case of a Blanket Purchase Order, the prices of such Products shall be Seller's most recent price list as made available to Buyer. All Prices are exclusive of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

**12. Payment Terms and Invoicing; Credit Terms; Security Interest.**

**(a) Payment Terms and Invoicing.** Payment terms shall be as set forth on the Sales Confirmation, which shall be measured from Seller's invoice date. If no payment terms are set forth on the Sales Confirmation, payment shall be made thirty (30) days from Seller's invoice date. An invoice shall be provided to Buyer upon and as to each delivery of Products under a Purchase Order or Release and shall reference the

applicable Purchase Order number. If requested by Seller, Buyer shall send Purchase Orders in an electronic format specified by Seller and in the electronic location provided by Seller to Buyer, which may include uploading to Seller's electronic portal.

- (b) **Credit Terms.** Buyer shall maintain its account with Seller in accordance with the payment terms set forth above and in accordance with any credit line established by Seller. If Seller reasonably believes, in its discretion, that Buyer's creditworthiness is impaired, Seller shall have the right at any time to immediately change and/or reduce or eliminate Buyer's credit limit. In addition, Seller shall have the immediate right to make any future deliveries subject to pre-payment, standby letter of credit, guaranty or COD if Buyer: (1) fails to pay as required hereunder; (2) fails to provide Seller with requested financial information; (3) files for bankruptcy or assigns any assets for the benefit of creditors; (4) shows evidence of severe financial distress; or (5) breaches or defaults under this Agreement or any other agreement with Seller or its subsidiaries or affiliates.
- (c) **Security Interest.** To secure Buyer's prompt and complete payment and performance of any and all present and future indebtedness, obligations and liabilities of Buyer to Seller under the Sales Confirmation and these Terms, Buyer hereby grants Seller a first-priority security interest, prior to all other liens and encumbrances, in all inventory of Products purchased under this Agreement, wherever located (including in transit), and whether now existing or hereafter arising or acquired from time to time, and in all replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. Buyer acknowledges that the security interest granted under this Section is a purchase-money security interest under the Uniform Commercial Code. Seller may file a financing statement for the security interest, and Buyer shall execute any statements or other documentation necessary to perfect Seller's security interest in the Products. Seller is entitled to all applicable rights and remedies of a secured party under applicable law.

### **13. Limited Warranty.**

- (a) **Limited Warranty.** Seller warrants that Products shall: (i) be conveyed with good title, free and clear of any and all third-party liens, security interests, and encumbrances; (ii) be free of any material defects in materials and workmanship; and (iii) materially conform to Seller's applicable specifications for Products. THESE ARE THE ONLY WARRANTIES SELLER MAKES, AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, UNDER STATUTE OR ARISING OTHERWISE IN LAW, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, ARE DISCLAIMED BY SELLER.
- (b) **Warranty Period.** The warranty period ("Warranty Period") for Products shall be: (a) in the case of finished Products that are resold to Buyer's customers or end users ("Buyer's Customers"), from the Delivery Date and continuing until the expiration of the warranty period offered by Seller to end users of Seller's Products (Seller's warranties to end users, if any, can be found at [www.peakauto.com/peak-info/warranty/](http://www.peakauto.com/peak-info/warranty/)); or (b) in the case of all other Products, unless otherwise agreed to by the Parties in writing, thirty (30) days from the Delivery Date.
- (c) **Warranty Limitations.** The Product warranty above shall not apply to any Product that (i) has been subjected to abuse, misuse, neglect, negligence, accident, improper testing, improper installation, improper storage, improper handling, abnormal physical stress, abnormal environmental conditions or use contrary to any instructions issued by Seller; (ii) has been reconstructed, repaired or altered by a person other than Seller or its authorized representative; or (iii) has been used with any third-party products, hardware or product that has not been previously approved in writing by Seller.
- (d) **Exclusive Remedy.** During the Warranty Period, in the event of a breach of this Section, Seller shall, in its sole discretion, replace or repair the defective or nonconforming Products, or credit or refund the price of such Products. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.

**14. Buyer's Responsibility.** Where applicable, Seller shall furnish Buyer with safety data sheets ("SDS") for the Products. Buyer shall familiarize itself and its employees with the contents of the SDS. Buyer shall disseminate all the information in the SDS to persons whom Buyer reasonably foresees being exposed to the Product's potential hazards. Once Product is delivered to Buyer or its designated carrier at the Delivery Point, Buyer assumes all responsibility and risk and liability arising from: (1) the transportation, unloading, discharge, storage, handling and use of the Product, including use thereof alone or in combination with other substances; (2) the improper functioning or failure of unloading, discharge, transportation or storage systems equipment used by Buyer or any of Buyer's employees, agents, contractors, subcontractors, third-party service providers or representatives, whether recommended by Seller or not; and (3) the failure by Buyer or any of Buyer's employees, agents, contractors, subcontractors, third-party service providers or representatives to comply with Laws governing unloading, discharge, storage, handling and use of the Product. Except to the extent of Seller's negligence, Buyer assumes the risk of all damage, loss, costs and expense, and agrees to indemnify, defend and hold harmless Seller, any affiliate, their successors and assigns, and any shareholder, member, director, manager, officer, employee or agent thereof, from and against any losses, damages, costs and expenses (including attorneys' fees) arising out of, caused by or connected with the loading, unloading, use, possession, storage, disposal or transportation of the Product or any product made therefrom (whether by Buyer, any distributor, end-user, or governmental authority), and from any failure by Buyer to adhere to Export Requirements as defined and set forth below.

**15. Marked Labeling.** If Buyer instructs Seller to apply or affix Buyer's, or Buyer's Customer's, trademarks, brand, logo or other trade indicia ("Buyer Marks") on or to the Products, Buyer shall either provide Seller with labels for this purpose ("Buyer Marked Labels") or provide Seller with all artwork, in whatever form(s) agreed to by the Parties, for this purpose.

## **16. Intellectual Property.**

- (a) **Buyer's Intellectual Property Rights/Use of Marks.** If Buyer instructs Seller to apply or affix Buyer Marks on or to the Products in accordance with Section 15 (Marked Labeling), Buyer hereby grants to Seller the limited, revocable, non-exclusive, and non-transferable right to do so on or to the Products supplied and sold to Buyer hereunder. For purposes of the Sales Confirmation and these Terms, Buyer warrants that it has the rights in, interest in, control of, or ownership of such Buyer Marks.
- (b) **Seller's Intellectual Property Rights.** Seller represents and warrants that it owns or has the right to use, transfer or sub-license (by right of license or otherwise) all of the trademarks of Seller and other Intellectual Property Rights of Seller, if any, pertaining to the Products supplied herein (other than those rights owned or controlled by Buyer above) and has not granted, licensed, sublicensed or otherwise transferred any of such Seller's Intellectual Property Rights to any third party that would impair Buyer's use (or the use of Buyer's Customers) of the Products, including the advertising, distribution, importing, marketing, merchandising, promotion, sale, offer for sale, or resale of same. "Intellectual Property Rights" means patents, patent applications, copyrights, trade secrets, and industrial design rights.

**17. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOST PROFITS AND LOSS OF GOODWILL) ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF HOW CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR RECOVERY. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNTS PAID TO SELLER FOR THE PRODUCTS SOLD HEREUNDER.

**18. Indemnification.** Buyer shall indemnify, defend, and hold harmless Seller, Seller's Affiliates, and their respective directors, officers, employees, shareholders, agents, successors, assigns, consultants, and business invitees from and against any and all claims, demands, liabilities, losses, damages, costs, enforcement procedures, and expenses, of whatsoever nature (including costs, litigation expenses, and reasonable attorneys' fees) arising out of, caused by or in any way connected with: (i) any breach by Buyer of the Sales Confirmation or these Terms; (ii) any negligence or intentional misconduct of Buyer, its shareholders, members, directors, managers, officers, employees, agents, or contractors in connection with Buyer's performance under the Sales Confirmation and these Terms; and (iii) any actual or alleged infringement or misappropriation of any trademark or Intellectual Property Right of a third party relating to the Marked Labeling or any Intellectual Property Rights provided by Buyer to Seller.

**19. Insurance.** Buyer shall, at its own cost and expense, obtain and maintain policies of insurance as described below (or such other coverage limits as agreed to by the Parties in writing or as set forth in this Agreement) with insurance companies having an A.M. Best Rating of "A-" or better for financial strength and "VII" or better for financial size. The limits set forth below are minimum limits and shall not be construed to limit Buyer's liability. A certificate of insurance evidencing such insurance policies shall be provided to Seller prior to acceptance of a Sales Confirmation, shall be updated at least annually and shall be made available to Seller as requested. All policies shall (i) waive subrogation rights in favor of Seller, where permitted by law; (ii) be designated as primary coverage to any similar coverage carried by Seller; (iii) specify that Seller shall be given at least thirty (30) days' prior written notice of any material modification, cancellation or termination of coverage; and (iv) name Seller as an additional insured using language substantially similar to, "Old World Industries, LLC, and any and all subsidiaries, directors, officers, employees, and agents as their interest may appear shall be named as additional insured with regard to this insurance policy." Buyer's failure to obtain and maintain the required insurance will not relieve it of any obligation contained in the Sales Confirmation or these Terms, including liability for claims in excess of the required limits of liability. For any subcontractors of Buyer, including any carrier hired by Buyer, Buyer shall cause such subcontractor to comply with this Section, including naming Seller as an additional insured.

- (a) **Commercial General Liability** insurance, including personal and advertising injury, medical payments, bodily injury, and property damage, with minimum limits of \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- (b) **Workers Compensation/Employer's Liability** insurance, if Buyer's employees or agents will be entering Seller's (or Seller's supplier's) premises, with statutory limits, or \$1,000,000 if no statutory requirement, and \$1,000,000 in employer's liability coverage.
- (c) **Automobile Liability** insurance, if Buyer's employees or agents will be driving on Seller's (or Seller's supplier's) premises or making delivery to Seller's (or Seller's supplier's) premises, with minimum limits of \$1,000,000 per occurrence.
- (d) **Umbrella/Excess Liability** insurance is acceptable to meet the above defined requirements. Buyer shall cause each insurance company to provide the insurance on an umbrella basis in excess over and no less broad than the liability coverages required herein (including as to Seller's additional insured status), with the same inception and expiration dates as Commercial General Liability insurance, and with coverage that "drops down" for exhausted underlying aggregate limits of liability coverage.

**20. Confidentiality.** From time to time, one Party may need to disclose to the other Party certain Confidential Information (defined below). Each Party acknowledges and agrees that it will use commercially reasonable efforts to disclose only such Confidential Information that is reasonably necessary for the purchase and provisioning of Products from Seller to Buyer (the "Purpose"). The term "Confidential Information," as used in this Agreement shall mean any and all information disclosed or conveyed by one Party or its agents (the "Disclosing Party") to the other Party or its agents (the "Recipient") in or via any conference, conversation or meeting (face-to-face, video, telephone, web or otherwise); document (e-mail, facsimile, instant message, presentation, regular mail, request for proposal, letter, memorandum, writing, or otherwise); or any other type of conveyance including information pertaining to or related to: (i) current or future products and services (including current and future product and service development and

pricing); accounting, asset, business, commercial, corporate, developmental, distribution, financial, growth, human resources, intellectual property (including copyright, patent, trademark, trade secrets, code, formulas, know-how, ideas, inventions, and pending applications), investment, licensing, marketing, manufacturing, operations, pricing, production, real estate, research, or technical data, methods, plans, policies, presentations, processes, programs, procedures, records or strategies; customer and prospective customer accounts and lists; and any other business, commercial or technical information relating to the Disclosing Party's current or prospective businesses, facilities or properties; (ii) anything marked or otherwise identified by the Disclosing Party as confidential, restricted, proprietary, or secret; and (iii) anything disclosed or observed under circumstances under which a reasonable person would understand that such information is or should be confidential or proprietary to the Disclosing Party. Recipient shall take all necessary steps to protect Confidential Information with at least the same degree of care that Recipient uses to protect its own confidential and proprietary information of like kind but in no event less than reasonable care. Except as otherwise expressly agreed to in writing by the Disclosing Party, Recipient shall not (a) use any of Disclosing Party's Confidential Information other than for the Purpose; or (b) disclose to any third party any of Disclosing Party's Confidential Information. Recipient shall obligate its employees or agents who have or shall receive any part of the Confidential Information to not use or disclose it except as permitted herein. Upon written notice from the Disclosing Party, or upon the termination of this Purchase Order, all copies of the Confidential Information shall be returned to the Disclosing Party or destroyed/deleted within five (5) days of such request; provided, however, that Recipient shall have the right to maintain one archived copy for its records and defense of claims and litigation. If the Disclosing Party elects to have the Confidential Information destroyed/deleted, Recipient shall certify the destruction/deletion of same within the time period set forth in this Section. The above-stated provisions on confidentiality shall not extend to any information that: (1) was already in Recipient's possession before its receipt from Disclosing Party without restriction on its use or disclosure; (2) is or becomes available to the general public through no act or fault of Recipient; (3) is rightfully disclosed to Recipient by a third party without restriction on its use or disclosure; or (4) is independently developed by the Recipient without using any of the Disclosing Party's Confidential Information. In the event a court order or governmental regulation requires the Recipient to disclose all or part of the Confidential Information, such Party shall give the Disclosing Party prior written notice of the scope of the anticipated disclosure so as to enable the Disclosing Party to undertake all reasonable efforts to challenge such order or have such court or governmental agency maintain the secrecy and confidentiality of the Confidential Information. In addition to other remedies, each Party acknowledges that monetary damages may be insufficient for any breach of this Section, and either Party shall be entitled to seek specific performance and injunctive and equitable relief as a remedy if a material breach of this Section is established. The Parties' obligations under this confidentiality provision shall continue for a period of three (3) years after the later of (a) disclosure of Confidential Information; (b) the delivery of Products under a Purchase Order; or (c) the expiration or termination of a Blanket Purchase Order.

**21. Compliance with Laws.** Each Party agrees to comply with all applicable Laws as they affect their respective obligations hereunder.

**22. Export Controls.** The Parties acknowledge that they as well as the Product sold or otherwise transferred under this Agreement may be subject to U.S. and Canadian export controls (including deemed export and re-export) Laws and U.S. Laws regarding embargoes, sanctions and similar Laws applicable to exports ("Export Requirements"). The Parties agree that Seller's sale or supply of the Product as well as its use, transfer or resale by Buyer may be subject to one or more of these Export Requirements, and Buyer agrees to understand and to comply with any of these Export Requirements that are applicable to Buyer.

**23. Force Majeure.** Neither Party shall be liable to the other for any delay or failure in performing its obligations under the Sales Confirmation and these Terms to the extent that such delays or failures are caused by: accident; actions of any governmental authority; acts of God (e.g., earthquake, explosion, fire, flood, violent storm); labor unrest and strikes; riots, sabotage and other terrorist actions; transportation interruptions; war; failure or delay of transportation, shortage of, or inability to obtain, raw materials, supplies, equipment, fuel, power, or other operational necessity or any other cause beyond the reasonable control of Seller or Buyer that delays, prevents, restricts, limits, or renders commercially infeasible or impractical, the performance of the Sales Confirmation ("Force Majeure Condition"). Any Party claiming such a Force Majeure Condition under the Sales Confirmation and these Terms shall provide prompt written notice to the other Party of the event causing such Force Majeure Condition and shall diligently and in good faith attempt to remedy same. For so long as Seller's ability to perform is affected by the Force Majeure Condition: (i) Seller may, at its option, elect to allocate its total productions of the Product among its various internal (if any) or external requirements (e.g., commitments to its other customers) in Seller's reasonable discretion; and (ii) Buyer may obtain the quantities of Product which Seller is unable to deliver from another source without any obligation to Seller. In the event a Force Majeure Condition affects either Party's performance under the Sales Confirmation and these Terms for at least ninety (90) days, the unaffected Party may terminate the Sales Confirmation upon written notice to the affected Party.

**24. Miscellaneous.**

**(a) Assignment.** Buyer shall not assign, transfer, delegate or subcontract any of its rights or obligations under the Sales Confirmation or these Terms without the prior written consent of Seller. Any purported assignment or delegations in violation of this Section shall be null and void. No assignment or delegation shall relieve Buyer of any of its obligations hereunder.

**(b) Governing Law; Dispute Resolution; Venue and Attorneys' Fees.**

**(i) Choice of Law.** If Seller is Old World Industries, LLC, or its Affiliate located in the United States or Canada, the Sales Confirmation and these Terms, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the State of Illinois, excluding conflicts of laws rules which might apply the law of a different jurisdiction. If Seller is an Affiliate of Old World Industries, LLC that is located outside of the United States or Canada, the Sales Confirmation and these Terms, and the rights and obligations of the Parties hereunder, shall be governed by and construed in accordance with the laws of the jurisdiction where such Affiliate is located, excluding conflicts of laws rules which might apply the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to any transaction pursuant to these Terms.

- (ii) Good Faith Negotiations.** The Parties shall use commercially reasonable efforts to resolve any and all claims and disputes arising under the Sales Confirmation and these Terms first through good faith negotiations and without initially resorting to litigation, or other similar proceedings; provided, however, that either Party shall be entitled to: (i) seek injunctive relief in any forum of competent jurisdiction to avoid irreparable harm, for breach of confidentiality, or for infringement or misappropriation of its intellectual property rights; or (ii) commence litigation in the venue set forth below to avoid being barred by an applicable statute of limitations; in each case without first attempting to resolve such claim or dispute through good faith negotiations or mediation.
- (iii) Mediation.** If the Parties are unable to resolve such claim or dispute via good faith negotiations, the Parties agree, prior to commencement of any legal action or suit, to submit to at least one day of non-binding mediation in Cook County, Illinois (or, in the case where Seller is an Affiliate of Old World Industries, LLC located outside of the United States or Canada, in the jurisdiction where such Affiliate is located) with a mediator chosen jointly by the Parties and with costs to be divided equally between the Parties.
- (iv) Litigation and Venue.** Any legal action, suit, or proceeding with respect to this Agreement shall be brought exclusively in state or federal court in Cook County, Illinois (or, in the case where Seller is an Affiliate of Old World Industries, LLC located outside of the United States or Canada, in the jurisdiction where such Affiliate is located) and each Party consents to the jurisdiction of such court for all matters that arise under the Sales Confirmation and these Terms. Each Party waives the right to formal service of process and agrees to accept service of process via hand delivery or by U. S. Mail, postage prepaid, certified or registered, return receipt requested, or by such other method as is authorized by applicable law. EACH PARTY ALSO IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY LEGAL ACTION, SUIT, OR PROCEEDING ARISING FROM OR RELATED TO THE SALES CONFIRMATION OR THESE TERMS.
- (v) Attorneys' Fees.** The prevailing Party in any litigation hereunder shall be entitled to attorneys' fees and costs. The prevailing Party, for purposes of awarding attorneys' fees and costs, shall be: (i) the claiming Party if the judgment is an amount equal to or greater than such Party's settlement demand; or (ii) the defending Party if the judgment is equal to or lower than such Party's written settlement offer. If the Parties do not exchange a written settlement demand and a corresponding written settlement offer, or if the judgment is less than the written settlement demand but greater than the written offer, the Parties shall pay their own attorneys' fees and costs.
- (c) Equitable Relief.** The Parties agree that if any term, condition, obligation or restriction in the Purchase Order or these Terms is breached and the damages to the aggrieved Party are difficult or impossible to ascertain or quantify, the aggrieved Party shall be entitled to injunctive or other equitable relief, in addition to any other remedies such Party may have under law.
- (d) Independent Contractor.** Each Party shall act solely as an independent contractor, and nothing herein shall at any time be construed to create the relationship of an employer and employee, partnership, principal and agent, or joint venture as between Seller and Buyer. A Party shall have no right or authority and shall not attempt to enter into any contract, commitment, or agreement, or incur any debt or liability of any nature, in the name of or on behalf of the other Party. Each Party shall conduct its affairs with regard to third parties so as to avoid the appearance or creation of any relationship between the Parties other than that of seller and purchaser.
- (e) Notices.** All notices given under the Sales Confirmation and these Terms shall be in writing and addressed to the Parties at the addresses set forth on the face of the Sales Confirmation or to such other address that may be designated by the receiving Party in writing. All notices shall be delivered personally, by nationally or internationally recognized express delivery service, by registered or certified mail (in each case, return receipt requested, postage prepaid), or by such method as shall permit the sender to verify delivery. Notice shall be deemed effective upon the earlier of (i) the date when actually delivered to the Party; or (ii) the date when deposited with the mail or delivery service if the sending Party also sends a copy of the notice to the receiving Party by electronic mail on the date such notice is deposited. Any notice to Seller shall require that a copy be sent to the following:
- Old World Industries, LLC  
3100 Sanders Road, Suite 500  
Northbrook, Illinois 60062  
Attention: General Counsel
- (f) No Third-Party Beneficiaries.** The Sales Confirmation and these Terms are for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.
- (g) Headings.** The titles and subtitles of the Sections in these Terms are for reference and identification purposes only. They are not intended to modify, restrict or expand upon the content of the Sections themselves.
- (h) Severability.** If any provision of the Sales Confirmation or these Terms is held invalid or inoperative, the other provisions of the Sales Confirmation and these Terms shall be deemed valid and operative, and, so far as is reasonable and possible, effect shall be given to the intent manifested by the provision held invalid or inoperative. In the event that any court of competent jurisdiction shall determine that any provision of the Sales Confirmation and these Terms or the application thereof is unenforceable because of the duration or scope thereof, the Parties hereto agree that such court in making such determination shall have the power to reduce the duration and scope of such provision to the

extent necessary to make it enforceable and that the Sales Confirmation and these Terms in their reduced form shall be valid and enforceable to the full extent permitted by law.

- (i) **Survival.** Provisions of the Sales Confirmation and these Terms which by their nature should apply beyond the term of the Sales Confirmation shall survive the termination or expiration of the Sales Confirmation, including Section 13 (Limited Warranty), Section 16 (Intellectual Property), Section 17 (Limitation of Liability), Section 18 (Indemnification), Section 19 (Insurance), Section 20 (Confidentiality), Section 21 (Compliance with Laws), and Section 24(b) (Governing Law; Dispute Resolution; Venue and Attorneys' Fees).
- (j) **Cumulative Remedies.** The rights and remedies under the Sales Confirmation and these Terms are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise.
- (k) **Waiver.** No waiver by either Party of any of the provisions of the Sales Confirmation or these Terms shall be effective unless explicitly set forth in writing and signed by the Party so waiving. The written waiver of any breach of any term or condition in this Agreement shall not be construed as a waiver of any subsequent breach of the same or any other term or condition. No course of dealing and no failure to act on any incident of breach under the Sales Confirmation or these Terms shall be construed against either Party as a waiver of its right to act in the future.
- (l) **Interpretation.** The term "day" means a calendar day unless expressly stated otherwise. The terms "including," "include," and "included," shall be interpreted as if followed by the words "without limitation."