

TERMS AND CONDITIONS OF SALE BY KRAIBURG TPE CORPORATION

General Provisions

ACCEPTANCE OF BUYER'S ORDER IS CONDITIONAL ON BUYERS ASSENT TO THE TERMS AND CONDITIONS CONTAINED HEREIN. IF BUYER OBJECTS TO ANY TERMS HEREIN, SUCH OBJECTION MUST BE IN WRITING AND DELIVERED TO SELLER WITHIN A REASONABLE TIME, NOT TO EXCEED 10 DAYS OF RECEIPT OF THIS DOCUMENT. FAILURE TO MAKE SUCH A TIMELY EXCEPTION, OR ACCEPTANCE BY BUYER OF ANY GOODS DELIVERED BY SELLER HEREUNDER, SHALL BE CONCLUSIVELY DEEMED ASSENT TO THE TERMS AND CONDITIONS HEREIN. SELLER'S FAILURE TO OBJECT TO PROVISIONS CONTAINED IN ANY COMMUNICATION FROM BUYER WILL NOT BE A WAIVER OF THE PROVISIONS HEREOF. PRE-PRINTED TERMS AND CONDITIONS ON OR ATTACHED TO BUYER PURCHASE ORDERS SHALL BE OF NO FURTHER FORCE OR EFFECT.

1. DEFINITIONS

As used herein, "Seller" means KRAIBURG TPE Corporation, its affiliates and subsidiaries, "Product" means any product sold by a Seller, "Buyer" means a party purchasing any Product from a Seller, and "Agreement" means these terms and conditions of sale.

2. TAXES

Prices do not include any taxes, now or hereafter enacted, applicable to the Products sold on this transaction. Taxes will be added by Seller to the sales price where Seller invoices the same to comply with law, and will be paid by Buyer unless Buyer provides Seller with a proper tax exemption certificate.

3. PRICES, RELEASES, AND SETOFF

Prices apply only if the quantity ordered hereunder is released for shipment within ninety (90) days from the date of Seller's receipt of Buyer's order, except when within thirty (30) days of a general market price increase announcement by Seller. Otherwise, Seller's standard price in effect at time of release shall apply to quantity shipped and Buyer shall pay the difference in price, if any, and Seller has the right to terminate this contract. In such event, Buyer is liable for termination charges as set forth herein. Buyer grants to Seller the right at any time during the course of this contract to revise prices hereunder by Seller's giving to Buyer written notice, such revised prices to apply to all goods thereafter shipped. If Buyer provides written objection within ten (10) days following notice of a price change established by Seller, Seller shall have the option of terminating this contract with no liability to Seller. Due to the customized nature of Seller's products, no returns will be accepted once title transfers to Buyer as stipulated under Paragraph 4 below.

4. TITLE AND DELIVERY

All shipments of goods shall be delivered EXW (Ex-Works) Seller's plant or F.O.B for ocean transfer, and title and liability for loss or damage thereto shall pass to Buyer upon Seller's delivery of the goods to a carrier for shipment to Buyer, and any loss or damage thereafter shall not relieve Buyer from any obligation hereunder. Buyer shall be liable for costs of insurance and transportation and for all import duties, taxes and any other expenses incurred or licenses or clearance required at port of entry and destination. Seller may deliver goods in installments.

Shipping dates are approximate only. Seller shall not be liable for any loss or expense, whether by way of contract or tort, (consequential or otherwise) incurred by Buyer if Seller fails to meet the specified estimated delivery schedule because of unavoidable production or other delays.

All provisions of this Paragraph 4 apply to both domestic and international shipments, except that title to goods shipped outside the U.S. shall pass at the point of destination; risk of loss or damage and all expense associated with goods shipped outside the U.S. shall be the responsibility of the Buyer.

5. QUANTITIES

Any variation in quantities shipped over or under the quantities ordered (not to exceed 10%) shall constitute compliance with Buyer's order, and the stated unit price will continue to apply. The quantities and weight of products shown in the invoice shall govern all disputes between the parties, unless Buyer gives notice of shortage to the agent of the delivering carrier and Seller within 24 hours after receipt of products by Buyer.

6. ACCEPTANCE OF PRODUCT

Acceptance shall be presumed conclusively to have occurred fifteen (15) days following delivery of product to Buyer, unless Buyer has accepted the product prior to that date.

7. TERMS AND METHOD OF PAYMENT

Where Seller has extended credit to Buyer, terms of payment shall be net thirty (30) days from date of invoice. The amount of credit or terms of payment may be changed, or credit withdrawn by Seller at any time. If the goods are delivered in installments, Buyer shall pay separately for each installment. Payment shall be made for the goods without regard to whether Buyer has made or may make any inspection of the goods. If shipments are delayed by Buyer, payments are due from the date when Seller is prepared to make shipments. Goods held for Buyer are at Buyer's risk and expense.

8. FORCE MAJEURE

Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or Seller's suppliers, including, but not limited to, war (whether an actual declaration thereof is made or not), sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof, judicial action, labor dispute, accident, fire, explosion, flood, storm or other act of God, shortage of labor, fuel, raw material or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. Seller may allocate production and deliveries among Seller's customers.

9. LEGAL COMPLIANCE

Buyer, at all times, shall comply with all applicable federal, state and local laws and regulations. Export of the products covered by this quotation or acknowledgment may be subject to export license control by the U.S. government. It is Buyer's responsibility to obtain any licenses which may be required under the applicable laws of the U.S. including the Export Administration Act and regulations promulgated thereunder. Seller will give Buyer Safety Data Sheets ("SDS") for Products sold hereunder. Buyer understands that some Products may be hazardous materials or hazardous substances under various laws and regulations when handled or processed. Buyer agrees to familiarize itself (without further reliance on Seller) with any hazards of the Products, their processing and applications and the containers in which the Product is shipped and to comply with all applicable laws relating to any hazardous materials or substances found in the Products.

10. CHANGES

Any notice or instruction from the Buyer received subsequent to Seller's acknowledgment, including supplementary information contained in a confirming purchase order, which has the effect of changing the specifications, scope of work, or other terms, will be effective only upon an appropriate adjustment in the price and/or delivery date, and acceptance of any change by Seller in writing. Changes will only be considered if they are received by Seller in the form of a confirmed (return receipt) communication from Buyer at least fifteen (15) business days prior to the scheduled delivery date.

11. LIMITED WARRANTY

Seller, except as otherwise hereinafter provided, warrants the goods against faulty workmanship or the use of defective materials under normal use and conditions, as deemed by the product specifications. Seller will consider adjustment or replacement of defective products only if Buyer submits written notice of any claimed defect to Seller within 15 days after Buyer's receipt of such

product. Failure to give written notice of any claim within fifteen (15) days from the date of delivery shall constitute a waiver by Buyer of all claims regarding such products. Seller shall not be responsible for any defects unless Seller has a full opportunity to investigate any claimed defects. No adjustments or returns will at any time considered, given or permitted as to any products designated by Seller, in any invoice or other document, as “distressed”, “off-spec”, or “past shelf life”. This paragraph represents Seller’s sole and exclusive obligations, and Buyer’s sole and exclusive remedies, with respect to or arising out of any defective product sold by Seller hereunder. THE WARRANTIES EXPRESSLY PROVIDED IN THIS AGREEMENT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WHICH WARRANTIES ARE SPECIFICALLY DISCLAIMED. SELLER WARRANTS THAT PRODUCT WILL CONFORM TO THE PRODUCT SPECIFICATIONS PROVIDED HOWEVER THERE IS NO IMPLIED WARRANTY THAT THE PRODUCT WILL BE MERCHANTABILITY OR FIT FOR BUYER’S PARTICULAR END-USE PURPOSE.

12. INDEMNIFICATION

Buyer agrees to indemnify and hold harmless Seller, its affiliates, employees and agents, from and against any and all actual or threatened liabilities, damages, losses, demands, judgments, causes of action, claims (including intellectual property infringement claims), expenses and costs which arise from or relate to Buyer’s actual or intended use of the products, or the performance, non-performance or purported performance of any covenant or agreement, or the breach of any representation, warranty, covenant or agreement thereunder.

13. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY

IN NO EVENT SHALL SELLER BE LIABLE TO BUYER UNDER, IN CONNECTION WITH, OR RELATED TO THIS AGREEMENT OR THE SALE OF PRODUCT HEREUNDER FOR SPECIAL, COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY, OR OTHERWISE, AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SELLER’S TOTAL LIABILITY TO BUYER, WHETHER BASED ON BREACH OF CONTRACT, WARRANTY, TORT, PRODUCT LIABILITY OR OTHERWISE, IN CONNECTION WITH OR RELATED TO THIS AGREEMENT OR THE SALE OF PRODUCT HEREUNDER SHALL NOT EXCEED TO ACTUAL PRICE PAID FOR THE SPECIFIC PRODUCTS GIVING RISE TO SUCH LIABILITY.

14. CALIFORNIA SAFE DRINKING WATER AND TOXIC ENFORCEMENT ACT OF 1998 (Prop 65)

In the form delivered to Buyer, the Product, to Seller’s knowledge, would cause no exposure to substances at exposure levels requiring a warning under the California Safe Drinking Water and Toxic Enforcement Act of 1998 (“Proposition 65”). Because the Product is subsequently processed by Buyer and further modified in the downstream fabrication process, it is possible that the basic chemical composition of the Product as it leaves Seller’s facility and is delivered to Buyer may be modified in the end product available to Buyer’s customers. Therefore, Seller makes no certifications as to the Product once it has been subsequently processed by Buyer or others, further modified by plastic fabrication techniques, exposed to additional heat histories or secondary chemicals, or processed in combination with any other materials (collectively referred to as “Downstream Fabrication”). Further, Seller disclaims and does not assume any risks or liabilities arising out of end products found to cause exposures above the Safe Harbor levels as defined by the Proposition 65 regulations. This information is based on Seller’s current knowledge and it shall not absolve Buyer of the responsibility to test its intended end-use product after Downstream Fabrication.

15. TERMINATION AND CANCELLATION

Seller may terminate this Agreement, in whole or in part, at any time upon written notice to the Buyer and Seller shall not be liable to Buyer for any losses, damages or expenses resulting from such termination. Additionally, if, in Seller’s judgment, the Buyer’s financial condition does not justify the terms of payment specified, Seller may cancel this Agreement or adjust Buyer’s

payment and/or credit terms effective immediately upon written notice to Buyer in the event: (a) Buyer fails to pay any Seller invoice, within the time provided in this Agreement on two or more occasions, (b) Buyer generally fails to pay its debts as they become due, or (c) of a sale of a majority of the assets, or a change of control of the ownership of Buyer.

16. NON-WAIVER OF DEFAULT AND COLLECTION RIGHTS

In the event of any default by Buyer, Seller may invoke any remedy provided by law or by the terms herein stated, and may decline to make further shipments. If Seller elects to continue to make shipments, Seller's actions shall not constitute a waiver of any default by Buyer or in any way affect Seller's legal remedies for any such default.

In the event Seller resorts to a third party or to litigation in order to collect amounts due Seller, Buyer agrees to pay costs of collection for amount owed to Seller, including, but not limited to, attorney's fees, court costs, and interest in the amount of 1% per month (12% per annum), from the date the amount is due.

17. APPLICABLE LAW AND FORUM

The validity, performance and construction of this contract shall be governed by the laws of the state of Georgia where Seller is incorporated and resides, as shown on the face hereof and such state shall be the only jurisdiction in which any suit may be brought against Seller regarding any dispute arising of this transaction.

18. U.S. GOVERNMENT CONTRACTS

If the goods to be furnished under this contract are to be used in the performance of a U.S. Government contract or subcontract, and a U.S. Government contract number shall appear on Buyer's purchase order, those clauses of the applicable U.S. Government procurement regulations which are required by Federal Statute to be included in U.S. Government subcontracts are incorporated herein by reference.

19. ASSIGNMENT

This contract is binding upon and inures to the benefit of the parties and the successors and assigns of the entire business and good will of Buyer, or of that part of the business used in the performance of this contract, but shall not be otherwise assignable, without the prior consent of Seller.

20. SEVERABILITY OF TERMS

If any phrase, clause or provision shall be declared void, the validity of any other provisions shall not be affected thereby.

21. RELEASE OF INFORMATION

Neither party hereto shall, without the prior written consent of the other party which will not be unreasonably withheld), publicly announce or otherwise disclose the existence of the terms of this agreement, or release any publicity regarding this amendment. This provision shall survive the expiration, termination or cancellation of this Agreement.

22. MODIFICATION

THIS CONTRACT CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES RELATING TO THE SALE OF THE GOODS DESCRIBED ON THE FACE HEREOF, AND NO ADDITION TO OR MODIFICATION OF ANY PROVISION OF THIS CONTRACT SHALL BE BINDING UPON SELLER UNLESS MADE IN WRITING AND SIGNED BY A DULY AUTHORIZED REPRESENTATIVE OF SELLER LOCATED AT SELLER'S APPROPRIATE ORDER ENTRY LOCATION.

23. MEDICAL APPLICATIONS

Buyer understands that the Products are not intended for use in any medical application involving permanent implantation in the human body and agrees not to use any Product for any such application, or for any other application into which, to Buyer's knowledge, Seller has previously declined to sell Products. Seller, at its sole discretion, may refuse to sell Product to Buyer for any

medical end-use application which is not deemed as safe or represents a high risk of liability. Note: Any products from our THERMOLAST® M series are designed for applications in medical technology including indirect blood contact applications. The usage of products from KRAIBURG TPE for medical application with direct blood contact is non-permissible.