

# TERMS AND CONDITIONS OF SALE

## 1. PARTIES; APPLICABILITY.

(a) These Terms and Conditions of Sale (these "Terms and Conditions") are the only terms which govern the sale of the Products (as defined below) and the provision of Services (as defined below) by Vernay Europa B.V. ("Seller") to the person, firm, or other entity purchasing such Products and/or Services as indicated in the Proposal ("Buyer").

(b) The accompanying proposal (the "Proposal") and these Terms and Conditions (collectively, this "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. These Terms and Conditions prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such other terms. Fulfillment of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions. All materials, goods, or merchandise described in Proposal, regardless of type, are referred to herein as "Products." Products shall include Tooling supplied by the Seller as defined below. "Services" include without limitation all design, engineering, testing and any related consulting or professional services Seller may provide to Buyer as set forth in the Proposal and any accompanying documentation.

## 2. ACCEPTANCE OF PURCHASE ORDERS.

This Proposal constitutes an offer from the Seller to Buyer on the Terms and Conditions set forth herein. All offers are subject to final acceptance by Seller. Seller accepts Buyer's individual purchase orders and/or call-offs or releases off of blanket purchase orders, as applicable, only on the condition that Buyer agrees to accept the Terms and Conditions set forth herein and to waive any terms and conditions contained in any order form, purchase order, confirmation order, blanket purchase orders, or any other writing of Buyer, whether previously or hereafter delivered which either add to, differ from, modify, conflict with, or are otherwise inconsistent with these Terms and Conditions. These Terms and Conditions supersede any inconsistent terms and conditions in any documentation submitted by Buyer to Seller. Buyer's failure to object in writing to the Terms and Conditions set forth herein prior to placing an order with Seller will constitute agreement by Buyer to these Terms and Conditions.

## 3. BUYER'S CANCELLATION OF ORDER.

Except as otherwise provided herein, Seller reserves to its sole judgment and discretion when and under what circumstances it will approve any order changes and/or cancellations. Buyer must request any cancellation by delivering a written request to Seller. The requested cancellation shall become effective upon Buyer's receipt of Seller's written consent to the requested cancellation. If the Seller consents to cancellation of an order on which the Seller was working, the Buyer will reimburse to seller all cost and expense incurred by seller. If the Buyer's cancelled order includes finished goods, it will be assessed a cancellation charge of 100% of sales price reduced by any cost of shipping if applicable. If the finished goods have previously been shipped to the Buyer prior to the cancellation, Seller may also assess the Buyer a cancellation charge equal to any discount given for those goods shipped. With respect to any Services ordered as set forth in the Proposal, Buyer will be charged for all Services actually performed by Buyer up to the date of cancellation.

## 4. PRICES.

(a) Unless otherwise provided in the Proposal, all Product prices are Ex Works (Incoterms 2020) Seller's facility specified in the Proposal, and include standard packaging. Prices for Products and Services do not include applicable taxes or governmental charges. All such taxes and governmental charges will be added to Seller's invoice as a separate charge and will be paid by Buyer.

(b) Except for the payment terms applicable to Tooling set forth below, the purchase price for Products sold and Services provided hereunder shall be due and payable in the full invoice amount in U.S. dollars within 30 days from the date of invoice; provided, however, that Seller reserves the right in its sole discretion to cancel or change credit terms and to request advance payment at any time. Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owing by Buyer to Seller, without prejudice to and without discharging the remainder of any such indebtedness or obligation, regardless of any condition, provision, statement, legend or notation appearing on, referring to, or accompanying such check or remittance.

(c) The prices for Products and Services set forth in the Proposal shall be valid for thirty (30) following the date of the Proposal. Thereafter, if Buyer has not placed an order pursuant to the Proposal, Seller may revise the prices for the Proposal with thirty (30) days written notice to Buyer. With respect to any order placed by Buyer under a Proposal, Seller shall be permitted to revise the prices of Products set forth in that Proposal for any unfilled portion of such order. Seller shall notify the Buyer of the proposed price revisions in writing before working to fill any portion of an order that would be subject to the price revision. If the price revision is unacceptable to the Buyer, the Buyer may, at its option, cancel the unfilled portion of the order within five (5) days after notice of the price revisions by notifying Seller in writing. The cancellation of the unfilled portion of the order will become effective upon Seller's receipt of the written cancellation and will be subject to all applicable cancellation charges as set forth in Section 3 above.

(d) Seller shall be permitted, without advance notice to the Buyer, to increase the prices of Products in the event of and proportionately with (i) any increase in Seller's cost (materials, labor, and overhead) incurred as a result of Buyer's interruption of Seller's production run or Buyer's change in quantities of production previously ordered; (ii) state, local, or foreign taxes or duties upon any supplies or materials used or incorporated in the manufacture of Products; or (iii) the imposition of any tax, charge, or regulation concerning the selection, cost, employment or processing of labor or materials. Such change in price shall be binding on the Buyer.

(e) Time is of the essence of all payments due hereunder, and if any payment due Seller is collected at law, or through an attorney-at-law or under advice therefrom, or through a collection agency, Buyer agrees to pay all costs of collection, including, without limitation, all court costs and reasonable attorney's fees.

(f) Upon the failure of Buyer to make any payment when due hereunder, or in the event of default, breach or repudiation by Buyer of any obligation to Seller, whether contained herein or otherwise, or if Buyer becomes insolvent, calls a meeting of its creditors, or if any bankruptcy, insolvency, reorganization or arrangement proceeding is commenced by or against Buyer under federal, state or other applicable law, Seller shall have (in addition to all rights and remedies Seller may have at law or in equity) the option to: (i) cancel this and any other transaction with Buyer; (ii) defer any deliveries to Buyer and suspend all Services for Buyer; or (iii) declare the full purchase price of all Products and Services sold hereunder under this Proposal or any other applicable order(s) immediately due and payable.

(g) If Seller agrees to vary or relax the method or terms of payment with respect to any order placed by Buyer, such variance or relaxation shall not affect in any manner whatsoever Seller's right thereafter as to that or any other order to require payment in accordance with the terms specified herein.

## 5. TOOLING DEFINITION.

Molds, dies, and other support details used in the production process shall be collectively referred to as "Tooling." Tooling shall not include prototype tooling ("Prototype Tooling"). The Buyer shall have no right or interest with respect to any Prototype Tooling, regardless of the level of separately quoted or paid charges or any supplemental agreements with respect to products design or production.

## 6. PROPERTY RIGHTS.

One of the four following options applies as indicated in the Proposal:

**(a) Option A-1: Buyer-Owned Tooling Supplied by Seller.** Seller shall separately quote and Buyer shall pay Tooling charges. Tooling shall become Buyer's property upon Seller's receipt of full and final payment, subject to Seller's Right of Possession and Seller's Right of Disposal as set forth below.

**(b) Option A-2: Buyer-Owned Tooling Supplied by Buyer.** Buyer or Buyer's agent shall supply and deliver Tooling to Seller at Buyer's sole risk and expense. Tooling shall remain Buyer's property, subject to Seller's Right of Possession (if applicable) and Seller's Right of Disposal as set forth below.

**(c) Option B: Seller-Owned Tooling.** Seller shall not separately quote or bill Buyer for any Tooling charges. All rights, title and interest in such Seller-Owned Tooling, including any and all Intellectual Property Rights of Seller contained therein, shall be and remain the sole property of Seller, and nothing in this Agreement shall be deemed to grant Buyer any right, title and interest in such Seller-Owned Tooling or any Intellectual Property Rights of Seller contained or embedded therein.

**(d) Option C: Seller-Owned Tooling with Assured Capacity.** Buyer shall pay the Tooling contribution. Upon receipt of full and final payment, Buyer shall be entitled to use of the quoted production capacity for the life of the Tooling in accordance with all terms and conditions set forth herein.

## 7. SELLER'S RIGHT OF POSSESSION.

In consideration of Seller's sensitive technical and business know-how, proprietary knowledge, and other Intellectual Property Rights embodied or conveyed in Tooling supplied by Seller, Seller may elect to retain in Seller's possession all Tooling other than unaltered Tooling supplied by Buyer under Section 6(b), Option A-2 above, notwithstanding any property rights of the Buyer in the Tooling. If Seller elects to retain possession of Tooling which is Buyer's property, Buyer shall be entitled to receive from Seller as full compensation for such Tooling an amount equal to the reasonable residual value of the Tooling based upon the customarily applied depreciation schedule.

## 8. SELLER'S USE OF TOOLING.

Tooling which is Buyer's property shall be used exclusively to fill Buyer's orders. Seller may use Tooling which is not Buyer's property for any other purposes in Seller's sole discretion.

## 9. RISK OF LOSS.

Seller shall bear the risk of loss and purchase appropriate casualty insurance policies for all Tooling other than Tooling supplied by Buyer. Buyer shall bear the risk of loss and purchase appropriate casualty insurance coverage for Tooling supplied by Buyer.

#### **10. DISASTER RECOVERY.**

In the event of Seller's catastrophic casualty or bankruptcy, Seller may elect to relinquish possession of Tooling to Buyer as part of a disaster recovery plan; provided, however, that any such transfer shall not convey any of Seller's rights, title or interest in or to the Tooling design or other Seller Intellectual Property Rights contained or embodied in such Tooling.

#### **11. MAINTENANCE.**

Unless specifically agreed to the contrary in writing, Seller shall provide ordinary and routine maintenance for Tooling used to fill Buyer's orders during the useful life of the Tooling. Seller reserves the right to determine the need for replacement or need for major repair of Tooling. Such replacement or major repair shall be at the Buyer's expense.

#### **12. SELLER'S RIGHT OF DISPOSAL.**

If (i) Tooling has not been used to fill Buyer's orders for a period of at least three (3) years and (ii) with respect to Buyer-owned Tooling, Seller has provided Buyer written notice to Buyer and Buyer has not requested the return of the Tooling in writing within twenty (20) days of receiving the written notice from Seller, Seller may dispose of the Tooling at Seller's discretion and at Buyer's sole expense without any liability or obligation to compensate the Buyer for the Tooling.

#### **13. PROTOTYPE TOOLING.**

The Buyer shall have no right, title or interest with respect to any Prototype Tooling, regardless of the level of separately quoted or paid charges or any supplemental agreements with respect to products design or production.

#### **14. INTELLECTUAL PROPERTY RIGHTS.**

Seller shall remain the sole and exclusive owner of all of Seller's Intellectual Property Rights embodied in or used to design or manufacture of any and all Products as well as any and all Tooling supplied or altered or modified by Seller. Buyer shall remain the sole and exclusive owner of all of Buyer's Intellectual Property Rights embodied in or used in the design or manufacture of any and all Products and any Tooling supplied by Buyer.

#### **15. SELLER'S LIEN.**

Seller shall possess a lien in Buyer's Tooling to secure payment of all amounts owed by Buyer to Seller.

#### **16. PAYMENT TERMS - TOOLING.**

Buyer shall pay for the Tooling under the following schedule: one-third of the total Tooling amount due shall be paid upon Buyer's submission of its purchase order; another one-third of said Tooling amount shall be due once Tooling is complete and satisfactory to Seller; and the balance of said Tooling amount shall be invoiced thirty (30) days after submission of Product samples using the Tooling unless otherwise agreed upon in the Proposal.

#### **17. SECURITY INTEREST.**

To secure Buyer's obligations hereunder, Seller reserves a security interest in all Products sold hereunder together with all proceeds thereof, until all payments with respect to the Products have been received by Seller. Buyer agrees upon request by Seller to perfect and maintain the security interest reserved herein. Buyer hereby constitutes and irrevocably appoints Seller as its agent and attorney-in-fact for the purpose of executing any and all financing statements, notices and other documents that may be necessary from time to time for Seller to perfect and maintain the security interest reserved herein.

#### **18. DELIVERY AND RISK OF LOSS.**

Unless otherwise provided in the Proposal, delivery of Products hereunder shall be Ex Works Seller's facilities. Buyer agrees to make arrangements for the carriage and insurance of the Products. Buyer assumes all risk of loss for the Products once they are in possession of the carrier, Buyer acknowledges that any damage to any Products from that time on are not the liability of Seller, and Buyer shall look only to the carrier with respect to any such damages. In all cases Buyer shall reimburse Seller for any additional costs or charges for express delivery or similar shipment. Any arrangements and expenses incurred by Seller for carriage and insurance of Products, if applicable, shall be for the account of Buyer, shall be billed to Buyer and shall be due and payable together with the purchase price for the Products. Seller may ship Products in partial shipments and Seller reserves the right to invoice for partial shipments.

#### **19. CONFIDENTIAL INFORMATION.**

All non-public, confidential or proprietary information of each party, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by either party (the "Disclosing Party") to the other party (the "Receiving Party"), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" is confidential information of the Disclosing Party under this Agreement. The Receiving Party agrees that it shall not (i) use any Confidential Information of Disclosing Party for any purpose other than in furtherance of the performance of its

obligations under this Agreement, or (ii) disclose the Confidential Information of Disclosing Party to any third party except as provided in this Section 19. The Receiving Party shall maintain the confidentiality of the Disclosing Party's Confidential Information using procedures no less rigorous than those used to protect and preserve the confidentiality of its own similar proprietary and confidential information, provided that the Receiving Party shall exercise no less than a reasonable standard of care to protect the confidentiality of Confidential Information of Disclosing Party. "Confidential Information" specifically excludes (i) information that is now in the public domain or subsequently enters the public domain by publication or otherwise through no action or fault of the Receiving Party; (ii) information that is known to the Receiving Party without restriction, prior to receipt from Disclosing Party, from its own independent sources as evidenced by Receiving Party's written records; (iii) information that Receiving Party receives from any third party reasonably known by the Receiving Party to have a legal right to transmit such information, and not under any obligation to keep such information confidential; or (iv) information independently developed by the Receiving Party or its employees or agents, provided that the Receiving Party can show that those same employees or agents did not have access to Confidential Information. The Receiving Party may disclose Confidential Information if and to the extent required by applicable law. The Receiving Party must provide prompt notice to Disclosing Party of the requirement to disclose in advance of the disclosure, to the extent permitted by law, and must reasonably cooperate with efforts of Disclosing Party to protect the continued confidentiality of the information. Upon Disclosing Party's request, the Receiving Party shall promptly return all documents and other materials received from the Disclosing Party. If either party should breach or threaten to breach any of the provisions of this Agreement, the non-breaching party, in addition to any other remedies it may have at law or in equity, will be entitled to seek a restraining order, injunction, or other similar remedy in order to specifically enforce the provisions of this Agreement. Receiving Party's obligations under this Section 19 shall remain in effect from the date Receiving Party obtains an item of Confidential Information from Disclosing Party and for a period of five (5) years thereafter, except with respect to items of Confidential Information which rise to the level of a "trade secret" as defined under applicable law or this Agreement, in which case the obligations under this Section 19 shall remain in effect from the date Receiving Party obtains the Confidential Information and for a period of five (5) years thereafter, or for as long as such information retains its status as a "trade secret," whichever period is greater.

## **20. RELATIONSHIP OF PARTIES.**

The relationship between the parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties, and neither party shall have authority to contract for or bind the other party in any manner whatsoever.

## **21. INDEMNIFICATION.**

On Products made, in whole or in part, to the Buyer's design and/or specifications, Buyer will defend, indemnify and hold Seller harmless against any and all cost, expense, or liability in any third-party claim or litigation or other proceeding based on claims of unfair competition, copyright infringements, trade name violation, trade secret violation, patent infringement or the violation or infringement of any other third-party Intellectual Property Rights, arising out of the design, manufacture, sale or use of such Products or any portion thereof.

## **22. LIMITED WARRANTY.**

(a) Subject to any applicable statutory laws to the contrary, Products are warranted only to be free from defects in workmanship and material for a period of thirty (30) days from delivery and shall be subject to Seller's normal manufacturing tolerances and quality control procedures in effect at the time of manufacture and shipment. Buyer will have thirty (30) days following delivery to notify Seller of any defective Products. Seller warrants that all Services will be performed in a professional and workmanlike manner. Buyer will have thirty (30) days following performance of any Services to notify Seller of any defective Services. With respect to any defective Services, Seller shall, at Seller's discretion, either refund the fees actually paid by Buyer for the defective Services or reperform the Services at Seller's expense. All orders are subject to conditions at time of shipment and confirmation by Seller.

(b) With respect to notification and recall programs for any defect in any Product(s), Seller will compensate Buyer as required under the following conditions:

- (i) Seller is required by law or by valid administrative order to compensate Buyer pursuant to any such notification and recall program; and
- (ii) Seller's liability for compensation/damages in the case of a notification and recall program due to a defect in any Product(s) shall be limited to the value of the annual sales of that Product to Buyer in the calendar year in which the notification and recall is made.

(c) With respect to any field action for any Product(s), Seller will compensate Buyer as follows:

- (i) The same Product(s) that have been delivered to Buyer within the same calendar year show an error rate of more than five percent (5%);

(ii) Seller has determined in its sole discretion that the cost for implementing the field action will be less than the cost for remedying the defects if they occur in the field; and

(iii) Seller's liability for compensation/damages in the case of such field action shall be limited to the value of the annual sales of that Product to Buyer in the calendar year in which the field action occurs.

**(d) EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 22, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE PRODUCTS OR SERVICES OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY OF THE PRODUCTS FOR ANY PARTICULAR PURPOSE OR ANY GUARANTEES FOR ANY SPECIFIC LENGTH OF TIME OR MEASURE OF SERVICE, AND SELLER HEREBY DISCLAIMS THE SAME. ONLY THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 22 SHALL BE DEEMED TO HAVE BEEN MADE BY THE SELLER OR RELIED ON BY BUYER.** All previous communications, whether in the form of engineering recommendations or otherwise, are effective only to the extent expressly repeated herein. Engineering recommendations constitute merely the Seller's opinion and best judgment and do not constitute a warranty.

### **23. CREDIT:**

All orders are subject to credit approval. Seller may at any time prior to the delivery to Buyer of the Products or the provision of Services alter, or suspend credit, refuse shipment or cancel unfilled orders or suspend Services when in Seller's opinion, Buyer's financial condition, or the status of Buyer's account, warrants it or when delivery of Products or performance of Services is delayed through Buyer's fault. Any unpaid balance shall constitute a lien on any of Buyer's Tooling in Seller's possession.

### **24. LIMITATION OF LIABILITY:**

Seller's liability for breach of the express warranties set forth in Section 22 above with respect to notification and recall programs and field actions and defective Services shall be limited to those remedies and limits expressly set forth in Section 22 above. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY OTHER PERSON, FIRM OR ENTITY ("PERSON"), WHETHER IN CONTRACT OR IN TORT, OR UNDER ANY OTHER LEGAL THEORY, (INCLUDING, WITHOUT LIMITATION, NEGLIGENCE OR STRICT LIABILITY) FOR LOST PROFITS OR REVENUES, LOSS OF USE OR SIMILAR ECONOMIC LOSS, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR SIMILAR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SALE, DELIVERY, NON-DELIVERY, USE, CONDITION, OWNERSHIP, POSSESSION, SELECTION, TRANSPORTATION, OR RETURN OF ANY OF THE PRODUCTS OR ANY TOOLING, OR THE SERVICES, OR FOR ANY CLAIM MADE AGAINST BUYER BY ANY OTHER PERSON, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM. IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO ANY BREACH OF CONTRACT, TORT, OR OTHERWISE, EXCEED THE INVOICE PRICE OF THE PRODUCTS OR THE FEES ACTUALLY PAID FOR THE SERVICES, AS APPLICABLE, IN RESPECT OF WHICH ANY SUCH CLAIM IS MADE.**

### **25. INSPECTION.**

Limitation of Actions. Buyer shall promptly inspect all Products upon receipt and review all Services provided by Seller. No claim for any breach of the express warranties herein or, if applicable, any warranties under any applicable statutory law shall be valid if Buyer fails to provide written notice to Seller immediately upon discovery of defects of the Products or the Services. With respect to Products, if requested by Seller, defective Products for which a warranty claim is made are to be returned, transportation prepaid, to Seller's facilities. Any improper use, operation beyond tolerance or capacity, substitution of parts not approved by Seller, or any alteration or repair in such manner as in Seller's judgment affects the Products materially and adversely shall void the warranty. With respect to Services, Seller will either refund the fees actually paid or reperform the Services as provided in Section 22 above.

### **26. TENDER.**

Where Buyer has declared or manifested an intention not to accept delivery in accordance with the provisions hereof, no tender shall be necessary, but Seller may, at its option, give notice in writing to Buyer that Seller is ready and willing to deliver in accordance with the provisions hereof and such notice shall constitute a valid tender of delivery. Buyer will be liable for and subject to any applicable cancellation charges as provided in Section 3 above.

### **27. FORCE MAJEURE.**

Seller shall not be liable for any default or delay in the performance of any of its obligations hereunder if such default or delay is caused, directly or indirectly, by fire, flood, earthquake, extreme weather conditions, or other such occurrences; diseases, pandemics and plagues; labor disputes, strikes or lockouts; wars (declared or undeclared), rebellions or revolutions in any country; riots or civil disorder; terrorist attacks; accidents or unavoidable casualties; interruptions of transportation or communications facilities or delays in transit or communication; supply shortages or the failure of any party to perform any commitment to Seller relative to the production or delivery of any equipment or material required by Seller to perform its obligations hereunder; laws, rulings, regulations, orders, decisions or requirements, whether valid, invalid, formal or informal, of any government, tribunal or governmental agency, board or official; or any other cause, whether similar or dissimilar to those enumerated herein, beyond Seller's reasonable control. Seller shall notify Buyer of the happening of any such contingency within

a reasonable period of time. If due to an excusable delay, performance cannot be completed within the original period for performance, the period for performance shall be extended for a reasonable period of time to allow for completion of performance; provided, however, that if Seller is unable to complete performance within three (3) months of the original period for performance, Seller shall be entitled, at its sole discretion, to cancel the order without further obligation or liability to Buyer.

## **28. MISCELLANEOUS.**

(a) Limitations on Assignment. Buyer shall not assign all or any portion of its rights hereunder, or delegate or subcontract all or any portion of its obligations hereunder, without the prior written consent of Seller.

(b) Waiver. No failure on the part of Seller to exercise, and no delay by Seller in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by Seller preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No express waiver or assent by Seller to any breach of or default in the Terms and Conditions of this Agreement, the Proposal or any applicable order shall constitute a waiver of or an assent to any succeeding breach of or default in the same or any other Terms and Conditions hereof or therein.

(c) Forum. Any dispute between Seller and Buyer relating to the Products, the Services or these Terms and Conditions shall be brought only in the State or Federal Courts located in Fulton County, Georgia, and Buyer hereby consents to the jurisdiction of such courts.

(d) Headings. The headings describing the contents of particular paragraphs are inserted only for convenience and shall not be construed as a part hereof or as a limitation on or enlargement of the scope of any of the terms or provisions contained herein.

(e) Entire Agreement. These Terms and Conditions supersede all prior discussions and agreements between the parties with respect to the subject matter hereof, and, together with the Proposal, contains the sole and entire agreement between the parties with respect to the matters covered hereby. By way of illustration and not by way of limitation, all orders submitted by Buyer shall be deemed to incorporate without exception all of these Terms and Conditions notwithstanding any additional or contrary terms and conditions contained in any such Buyer's order. Unless Seller shall expressly advise Buyer to the contrary in writing apart from the provisions of such order, no acknowledgment by Seller of or reference by Seller to or performance by Seller under any such order form shall be deemed to be an acceptance by Seller of any terms or conditions contained therein which are additional to or contrary to these Terms and Conditions. These Terms and Conditions are subject to change by Vernay without prior written notice from time to time and at any time and are published at <http://vernay.com/Vernay/Downloadable-Documents>. Any changes to these Terms and Conditions will be effective as of the effective date set forth therein. Buyer shall have thirty (30) days following the effective date of any such published changes to these Terms and Conditions to provide written notice to Seller that Buyer does not agree to such changes in which case such changes shall only be applicable to any purchase order or blanket purchase order issued by Buyer after the effective date of those changes.

(f) Severability. In the event any of the provisions of these Terms and Conditions are declared unenforceable by a duly authorized court having jurisdiction, the remaining Terms and Conditions shall remain in full force and effect.

## **29. CONTROLLING LAW AND FORUM.**

This Agreement shall be governed by the laws of the state of Georgia excluding the applicability of any conflict of laws rules to the extent the rules require or permit the application of the laws of any jurisdiction other than the state of Georgia. Buyer hereby submits to the personal jurisdiction of the state and federal courts in such state for the purposes of any litigation arising hereunder

## **30. QUANTITY VARIANCE.**

Because of the difficulty in manufacturing and/or packing a specific or definite number of pieces or units of a Product, Seller estimates (by weight) the number of pieces in an order for a particular Product. Because of this manner of estimating the number or pieces of any particular Product in a container, such as a box or a bag, Buyer acknowledges and agrees that the Seller may be allowed a 5% over-or-under run leeway on the quantities of a Product called for by any order unless otherwise agreed upon at the time the order is accepted.

## **31. TAXES.**

In the absence of proper exemption certificates forwarded to Seller by Buyer, Buyer shall reimburse any/or pay to Seller all applicable excise, sales or use taxes or other taxes or governmental charges which Seller is required to pay in connection with the sale of Product or the provision of Services to Buyer.

## **32. Intellectual Property Rights.**

For purposes of this Agreement, "Intellectual Property Rights" means with respect to any information, device, product, or other asset of any kind, all trademark, service mark, copyright, patent, trade secret, moral, know-how, authorship and other proprietary rights relating to any such data, device, patterns, drawings, designs, object code, source code or other asset including, without limitation, all rights necessary for the worldwide design, development, manufacture, modification,

enhancement, sale, licensing, use, reproduction, publishing and display of such data, device, product, object code, source code or other asset.

### **33. NOTICES.**

All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Proposal or to such other address that may be designated by the receiving party in writing. All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt by the receiving party, and (b) if the party giving the Notice has complied with the requirements of this Section 33.

### **34. DISPUTE RESOLUTION.**

(a) Negotiation. The Parties agree to utilize the dispute resolution process to resolve any disputes, claim or question between them with respect to this Agreement ("Dispute") as expeditiously as possible. The Parties shall keep confidential, and shall not disclose to any person except as may be required by law, all aspects of the Dispute and the Dispute resolution process. One Party shall give written notice to the other Party of the Dispute and request commencement of the Dispute resolution process. Then, the project managers from each Party shall meet within five (5) business days to negotiate and use commercially reasonable efforts to promptly reach a resolution of the Dispute. If the Dispute is not resolved by the project managers within such five (5) day period, either Party may give notice to the other Party that the Dispute must be escalated to the senior officers of each Party, who will meet within ten (10) business days to negotiate and use commercially reasonable efforts to resolve the Dispute. In the event the senior officers are unable to resolve the Dispute within [thirty (30) days (unless the Parties mutually agree to extend their discussions) either Party may initiate mediation under the following subsection (b).

(b) Mediation. Either party may submit the Dispute to any mutually agreed to mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the Dispute and the relief requested. The parties shall cooperate with one another in selecting a mediation service, and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties.

(c) Confidentiality. The parties further agree that all offers, promises, conduct, and statements, whether oral or written, made in the course of the mediation by any of the parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

(d) Other Remedies. If the parties cannot resolve any Dispute for any reason, including, but not limited to, the failure of either party to agree to enter into mediation or agree to any settlement proposed by the mediator, within [thirty (30) days] after the mediation has begun, either Party shall be free to pursue any remedies that may be available at law or in equity.