

DAK AMERICAS LLC  
\*\*\*PROPER USE OF PRODUCT\*\*\*

IF THE MATERIAL IDENTIFIED IN THIS SHIPMENT DIFFERS FROM PREVIOUS SHIPMENTS KEEP SEPARATE UNLESS YOUR TESTS PROVE THIS UNNECESSARY.

\*\*\*DAK TERMS AND CONDITIONS OF SALE\*\*\*

1. **Terms.** Buyer's purchase of goods ("**Products**") from DAK Americas LLC (hereinafter "**Seller**") shall be governed solely by these DAK Terms and Conditions of Sale ("**Standard Terms**") and the terms in Seller's invoice (collectively, "**Terms**"). Seller expressly notifies Buyer of its objection to any different and/or additional terms proposed by Buyer including but not limited to any terms and conditions contained in any order or in any other format of Buyer. Seller's sale of the Products is expressly conditioned on Buyer's acceptance of these Terms, and Buyer's acceptance of the Product is a confirmation of the acceptance of these Terms.

2. **Price; Payment; Taxes.** The purchase price of the Products is specified in Seller's invoice. Seller may elect to send the corresponding invoice via regular mail, electronic mail or by any other electronic means. The purchase price does not include any sales, use, revenue, excise or other taxes or governmental charges, all of which are Buyer's responsibility. If Seller is required to collect those taxes or charges, Seller will add them to the purchase price and invoice Buyer (in the original invoice or separately), and Buyer shall pay them. Unless Seller's invoice provides otherwise, the purchase price of Products does not include any services. Unless Seller's invoice specifies a different payment schedule, the total purchase price of the Products shall be due and payable within 30 days after the date of the invoice. No partial payment by Buyer shall constitute an accord and satisfaction or otherwise satisfy the entire outstanding balance of any invoice of Seller, notwithstanding any notation or statement accompanying that payment.

3. **Delivery; Quantity.** All delivery schedule and dates given by Seller are estimates only and Seller is not liable for any delay in delivery. All prices are net of any delivery charges, all of which Buyer shall pay. Delivery shall occur and title and all risk of loss shall pass to Buyer upon the earliest to occur of the following ("**Delivery**"): (a) Buyer takes possession of the Products; (b) the Products leave Seller's premises to be delivered to Buyer; or (c) the Products are placed in the possession of a common, contract or other carrier to be delivered to Buyer. Seller shall not be responsible for any damage to the Products caused by a carrier, and Buyer's sole recourse for that damage shall be against the carrier. Seller may make partial deliveries. Seller may discontinue deliveries on any Product, the manufacture, sale or use of which in its opinion would involve patent infringement. Buyer shall give Seller notice of any discrepancy in the quantity of Products ordered. Seller's count or its weight shall be final and conclusive, except in case of proven error whereby an adjustment shall be made.

4. **Limited Warranty.** Seller warrants to Buyer that the Products will meet Seller's standard written specifications for the Products in effect as of the date of Delivery (available upon Buyer's written request), or such other specifications to which the parties agree in writing executed and delivered by both parties. No agent, sales representative or employee of Seller shall have any authority to modify or expand this warranty in any way. This warranty is limited to the original Buyer and may not be transferred. Buyer, having the expertise and knowledge in the intended selection, application, use or incorporation ("**Use**") of the Products and any product or material made therefrom, assumes all risk and liability for results from the Use of the Products, whether alone or in combination with other materials or reacted with other materials. This warranty shall be null and void, and Buyer assumes all risk and liability, if (a) the Products are abused, misused, damaged by accident, used contrary to Seller's instructions, or modified by anyone not authorized by Seller, (b) the Products are not maintained in accordance with Seller's instructions, (c) Buyer does not pay the purchase price for the Products as and when due, or (d) Buyer does not allow Seller access to the Products for purposes of inspection, repair or replacement.

5. **Buyer's Claims.** Buyer must give Seller written notice of any failure of the Products to comply with the warranty within five days after Buyer identifies any non-compliance; provided that notwithstanding when Buyer identifies such non-compliance, Buyer must notify Seller in writing of any non-compliance no later than 90 days after delivery of the Products. The notice must specify the basis of Buyer's claim in detail and identify the Products at issue. Seller shall have a reasonable opportunity to inspect the Products at issue and a reasonable time to cure any nonconformity. Buyer shall allow Seller access to the Products on Buyer's premises to inspect, or replace the Products, and shall return the Products to Seller, freight and insurance prepaid, at Seller's request, for inspection, or replacement. Buyer shall not ship Products to Seller without first obtaining Seller's approval and instructions. Buyer shall keep all Products subject to a claim segregated until Seller has completed its inspection or has given Buyer written notice with respect to the particular Products that Buyer does not need to continue to segregate those Products. **For any Products that Seller determines do not conform to the warranty, Buyer's sole and exclusive remedy shall be for Seller, at its sole discretion, to replace the non-conforming Product (subject to availability) or refund the amount of the purchase price Seller paid for the non-conforming Product, and in no event shall Seller's liability for any claim be greater than the amount Buyer paid for the non-conforming Product.** Buyer shall be deemed to have waived all warranty claims with respect to the Products that it does not report to Seller in writing within the 90-day period. No claim shall be allowed for Product that has been processed in any manner.

6. **DISCLAIMERS; LIMITATIONS.** Except as expressly set forth the warranty in Section 4, **THE PRODUCTS ARE SOLD AS IS, WHERE IS, WITH ALL FAULTS, AND SELLER DISCLAIMS ALL WARRANTIES AND REPRESENTATIONS OF ANY KIND AS TO THE PRODUCTS, EXPRESS AND IMPLIED, INCLUDING ALL REPRESENTATIONS AND WARRANTIES AS TO MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SUITABILITY OF THE PRODUCTS FOR BUYER'S PURPOSES, THE IMPACT OF THE PRODUCTS ON BUYER'S OPERATIONS AND NON-INFRINGEMENT.** Without limiting the preceding disclaimers, **SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY OF NON-INFRINGEMENT WITH RESPECT TO ANY COMBINATION OF THE PRODUCTS WITH OTHER GOODS, ANY USE OF THE PRODUCTS IN ANY PROCESS, OR ANY DESIGN, SPECIFICATION OR OTHER ASPECT OF THE PRODUCTS BUYER SPECIFIES OR PROVIDES.** Buyer has expertise in the intended use of the Products and items made from the Products. The Products are not approved and cannot be used for implantation or insertion into any human or animal body for any reason (including but not limited to implantation or insertion in any surgically or naturally formed cavity in the human body or animal body, for surgical sutures, shunts or mesh or any other non-trivial contact with bodily fluids or tissues), and Buyer shall indemnify Seller against any claim, demand or liability arising out of a violation of that prohibition. **SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, INCLUDING LOST REVENUES AND PROFITS, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES AND EVEN IF THOSE DAMAGES ARISE OUT OF SELLER'S NEGLIGENCE. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY AMOUNT ARISING OUT OF OR RELATING TO THESE TERMS OR THE PRODUCTS, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, IN EXCESS OF THE PURCHASE PRICE OF THE PRODUCTS AT ISSUE.** Any action or proceeding by Buyer arising out of or relating to these Terms or the Products shall be forever barred unless it is commenced within the earlier of: (a) one year after the claim or cause of action has accrued; or (b) the period prescribed by applicable statute of limitation or repose. These Terms contain Buyer's sole and exclusive remedies relating to these Terms, a breach of these Terms or the Products, regardless of the theory of recovery.

7. **Indemnity.** Buyer agrees to indemnify, defend and hold harmless Seller, its officers, directors, its employees and agents from any and all claims, actions, suits, damages, liabilities, costs, obligations, and expenses whatsoever (including, without limitation, attorneys' fees), whether based on negligence, strict liability, contract or breach of warranty, arising from or relating to (i) Use of the Products, (ii) any processing or modification of the Products in any manner by Buyer, its employees, agents or customers, (iii) use exceeding the Products' specifications, (iv) any breach of warranty or misrepresentation (express or implied) made by Buyer, its employees or agents, (v) any violation of law or regulation by, intentional or negligent act of, or unauthorized representation by Buyer its employees or agents in their Use, sales, distribution or handling of Products, and (vi) any violation or infringement of any patent, trademark, copyright, trade secret or other property interest of a third party arising out of Seller's

compliance with any designs, materials, specifications, or instructions Buyer provides to Seller, its employees or agents. At Seller's request, Buyer shall defend Seller, at Buyer's expense, against any such claim made against Seller.

8. **Cancellation; Delay.** Buyer has no right to cancel any order it submits to Seller or to delay any Delivery. If Seller allows Buyer to cancel an order to delay a Delivery, Buyer shall pay Seller all costs Seller has incurred, and will incur, with respect to the cancellation or delay, including all restocking charges. It is understood and agreed between Buyer and Seller that if this Agreement covers Products that must be manufactured especially for Buyer and such an order is suspended or terminated for any reason, Buyer shall take delivery of and make payment for such Products as have been completed and such Products as are in process on the date notice of suspension or termination is received by Seller. If Buyer for any reason cannot accept delivery of such specially manufactured Products, Buyer shall make payment therefore as though delivery has been made and Seller will store such Products for Buyer's account and at Buyer's expense.

9. **Insurance.** Buyer shall maintain at all times, until the purchase price for the Products is paid in full, with an insurer reasonably satisfactory to Seller, property damage insurance on the Products for their full insurable value and shall provide to Seller upon Buyer's delivery of Products, and from time to time thereafter upon Seller's request, a current insurance certificate showing Seller as loss payee and providing that Seller shall receive at least 10 business days prior written notice of any modification or cancellation of the insurance policy.

10. **Security Interest.** To secure the prompt payment of the purchase price and all other amounts due to Seller with respect to the Products, Buyer hereby grants to Seller a first-priority purchase money security interest in the Products and all proceeds and products of the Products, including insurance proceeds. Buyer hereby authorizes Seller to file all financing statements, continuation statements and other documents necessary or desirable to perfect and to maintain Seller's security interest in the foregoing collateral.

11. **Default; Remedies.** The occurrence of any of the following shall constitute an event of default by Buyer: (a) Buyer's failure to pay any sum to Seller as and when due; or (b) Buyer's default under any other provisions of these Terms which is not cured within 10 days after Seller gives Buyer written notice of default. Upon the occurrence of an event of default, and in addition to any other rights and remedies that Seller may have, Seller shall have the right, at its option, to take one or more of the following actions: (a) declare all or part of Buyer's obligations to Seller immediately due and payable; (b) suspend its performance under or terminate one or more pending orders; and (c) pursue its other rights and remedies under these Terms and applicable law. All amounts Buyer does not pay as and when due shall accrue interest at the lesser of the business prime rate charged by JPMorgan Chase Bank (or its successor) plus three percentage points (3%) per annum or the maximum amount allowed by law, until paid in full. If Buyer defaults under its obligations to Seller, Buyer shall pay Seller all costs of collection, including reasonable attorneys' fees and costs.

12. **Force Majeure.** Seller shall not be liable for delays or failure to perform directly or indirectly resulting from events and causes beyond Seller's reasonable control, including but not limited to accidents, acts of God, acts and omissions of any governmental authority, declared or undeclared wars, terrorism, explosions, strikes or other labor disputes, fires and natural calamities (including floods, earthquakes, storms and epidemics), changes in the law, and delays in obtaining (or the inability to obtain) labor, materials or services through Seller's usual sources at normal prices. If Products or raw materials for producing Products are not available through Seller's usual sources at normal prices, Seller may allocate its supplies among its customers, including those not under contract, in any reasonable manner without liability, but the Agreement shall remain otherwise unaffected. Seller shall have no obligation to purchase supplies of the Product to enable it to perform this Agreement.

13. **Safety.** Buyer shall distribute to its employees and others that handle the Products, and will follow, all safety and other instructions for the use and handling of the Products that Seller provides in its Product specifications and documents accompanying the Products or elsewhere.

14. **General.** Buyer shall not have any right of set-off with regard to any amounts owed to Seller, regardless of any dispute that may arise between the parties. Any notice permitted or required under these Terms shall be deemed given if in writing and delivered personally, deposited in the United States mail, certified mail, return receipt requested, and sent by facsimile or e-mail to the respective addresses of Seller and Buyer. Buyer shall have no intellectual property or similar rights in the Products and Seller's sale of the Products shall not be construed as granting to Buyer any license or intellectual property or similar right applicable to or with the Products. In the event any of provisions of these Terms are held to be invalid by any court of competent jurisdiction, such provision(s) shall be deemed to be severable and these Terms shall then be construed and enforced in accordance with the remaining provisions. Buyer may not assign to any person or entity all or a portion of its rights or obligations under these Terms or any order without Seller's prior written consent, and any attempted assignment without that consent shall be void. Seller reserves the right to correct clerical and typographical errors in any document. Seller's delay in enforcing any right or remedy shall not constitute a waiver, and Seller's waiver of any right or remedy in a particular instance shall not constitute a waiver in any other instance. These Terms and any controversy relating to them or the Products shall be governed by the laws of the State of North Carolina, excluding its conflicts of law principles. The United Nations Convention on the International Sale of Goods is expressly excluded and shall not apply. Any action or proceeding relating to these Terms or their enforcement, or to the Products or services, shall be commenced and heard only in the state courts for Mecklenburg County, North Carolina or the United States District Court for the Western District of North Carolina. Seller and Buyer hereby consent and submit to the jurisdiction and venue of those courts. These Terms shall be binding on, and shall inure to the benefit of, the parties and their respective successors, heirs and permitted assigns. These Terms contain the entire agreement of the parties relating to the Products and supersede all previous and contemporaneous agreements, understandings, usages of trade, and courses of dealing, whether written or oral. These Terms may be modified only by a written agreement, signed by both parties, expressly modifying these Terms.

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