



JOHN MEZZALINGUA ASSOCIATES, LLC GENERAL TERMS AND CONDITIONS OF SALE

John Mezzalingua Associates, LLC, its Affiliates, and Associated Brands
(Revised October 2014)

The following terms and conditions govern the sale of products ("Products") by John Mezzalingua Associates, LLC d/b/a JMA a Delaware limited liability company, with an address at 7645 Henry Clay Blvd., Liverpool, NY 13088, its Affiliates and associated brands. When used herein, the term "Affiliate" shall mean a business entity now or hereafter controlled by, controlling or under common control with JMA. Control exists when any entity owns or controls at least 50% of the voting power of the entity.

These terms and conditions of sale ("Agreement") constitute the final, complete and exclusive agreement between Buyer and JMA relating to the subject matter hereof and supersedes all prior or contemporaneous proposals, understandings, representations, warranties, promises and other communications, whether oral or written relating to such subject matter (including, without limitation, any prior "Terms and Conditions of Sale" published by JMA), unless otherwise specifically agreed to in a writing signed by an authorized representative of JMA. Any term or condition in any order, confirmation or other document furnished by Buyer at any time, which is in any way inconsistent with or in addition to the terms and conditions set forth herein is hereby expressly rejected, and JMA's acceptance of any offer or order of Buyer is expressly made in reliance of Buyer's assent to all terms and conditions hereof. Buyer's acceptance of delivery of any Products shall constitute Buyer's acceptance of these terms and conditions. In the event of conflict between the terms and conditions set forth herein and any other forms, purchase orders, documents or instruments of Buyer, the provisions contained herein shall prevail. Stenographic and clerical errors are subject to correction. A quotation is not a contractual offer and any order resulting from a quotation is subject to written approval and acceptance by JMA.

1. **Prices.** The prices applicable to the Products shall be as quoted by JMA to Buyer and are subject to change. Unless otherwise specified, prices quoted for Products are in USD and do not include packaging costs, any applicable property, sales, use, privilege or other taxes, or any export or import taxes, customs duties, brokerage fees, freight, insurance, container packing or the like, all of which shall be invoiced to and paid by the Buyer with the exception of any insurance charges. The Buyer shall be responsible for insuring the shipment of Products with a reputable insurer for the full invoice value of such shipment. Applicable taxes, if any, shall be paid by the Buyer either directly to the taxing authority or, if collected by JMA, to JMA upon receipt of JMA's invoice for the amount of the tax. In the case of controversy as to whether a transaction is taxable, Buyer agrees to remit the amount of the tax to JMA pending a

specific ruling from the taxing authority which collects the tax.

2. **Purchase Order Process.** Buyer shall place orders for the Products to be purchased hereunder by submitting one or more purchase orders to JMA. Each such purchase order is intended for convenience only and shall state the descriptions and quantities of Products being ordered and the requested shipment dates for such Products. In no event shall any terms and conditions set forth on a purchase order submitted by Buyer other than the terms and conditions set forth herein, including, without limitation, any preprinted terms and conditions of Buyer, be binding on JMA. In addition, no purchase order submitted by Buyer shall be binding on JMA unless and until JMA has accepted such purchase order by written acknowledgment or by shipment of the Products applicable to such purchase order. Orders for the purchase of the Products when

made by the Buyer shall be considered irrevocable for such Buyer. In any event, execution of an order by JMA shall constitute acceptance thereof.

3. **Payments.** Unless otherwise agreed to by JMA in writing, payment for all ordered Products shall be made by advance prepayment or upon issuance of invoice provided that JMA has received evidence that payment is secured by an irrevocable and confirmed Letter of Credit, or has approved Buyer's credit application prior to shipment. If shipments are delayed by Buyer, invoices may be rendered on the date(s) JMA is prepared to make shipment(s). If completion of manufacture or shipment is delayed by Buyer, invoices may be rendered when delay is ascertained, based upon percentage of completion. Products held as a result of Buyer's inability or refusal to accept delivery is at the risk and expense of Buyer. Interest at the rate of one and one-half percent (1-1/2%) per month (not to exceed the maximum interest allowable by law) shall be paid on the unpaid balance of any invoice not paid in full by Buyer. Such interest shall be in addition to the purchase price payable hereunder. In the event JMA commences a legal action or suit to collect the purchase price or any part thereof, Buyer shall, in addition to the full purchase price, be liable for all costs and expenses of such legal action or suit (including reasonable attorneys' fees). If Buyer is in default of any payment obligation to JMA at any time or of any kind, JMA may, in its sole and absolute discretion, terminate any agreed extended credit terms and require all outstanding amounts due, plus interest, to become due and payable immediately. JMA shall be under no obligation to make any shipment when Buyer is in default hereunder or under any other sales agreement between JMA and Buyer. In accordance with the Company's Cancellation policy, advanced payments made by credit card at order placement will be refunded as a credit to the credit card used at the time of purchase only if no product has been shipped against the order at the point the refund is requested. All credits requested after shipment must follow the Company's standard return policy and obtain a Return Merchandise Authorization (RMA) from JMA's Customer Service Department.

4. **Shipment.** Shipment/delivery dates are approximate and are determined from the date of JMA's acceptance of any order(s). All Products will be shipped

F.O.B. JMA's location of shipment (or if outside the U.S., Ex works the Seller (Incoterms 2010)). Title and risk of loss shall pass to Buyer upon delivery to common carrier for shipment to Buyer, notwithstanding any prepayment of shipping charges by JMA, if so required by carrier. All shipment costs shall be paid by Buyer, and if prepaid by JMA, the amount thereof shall be reimbursed to JMA.

5. **Rejection; Damage Claims; and Shortages.** Buyer's right to reject any Products supplied hereunder is conditioned upon Buyer giving JMA a written notice of rejection setting forth the basis thereof within ten (10) days of Buyer's receipt of shipment. Failure to give such notice within such time constitutes Buyer's acceptance of such Products. Products may only be returned when authorized by JMA in writing, and then only on such terms as the JMA may specify. All returns will be subject to a 20% handling charge, and freight must be prepaid by Buyer. All claims for damaged or missing Products must be noted on the bill of lading at the time of receipt and Buyer must immediately thereafter file a claim with JMA and the freight carrier. JMA shall not have any liability for, or any obligation to consider, any claims for damaged Products or Product shortages which are not received by JMA, in writing, within ten (10) days of Buyer's receipt of shipment. Claims so received by JMA within such ten-day period will be considered by JMA, but will only be allowed when justified in JMA's sole and absolute discretion. **ALL RISK OF LOSS OR DAMAGE IN TRANSIT SHALL BE ON BUYER AND ALL CLAIMS FOR LOSS OR DAMAGE IN TRANSIT OR FOR NON-DELIVERY SHALL BE MADE AND PROSECUTED BY BUYER AGAINST THE CARRIER.** Buyer also undertakes to notify JMA within the same ten (10) day term of any extra or additional parts and accessories that may have been delivered to the Buyer by mistake. Such extra or additional parts will be returned at the instructions of JMA.

6. **Delay.** JMA shall make reasonable efforts to deliver the Products hereunder in accordance with the requested delivery date(s), provided that JMA shall not be liable for any delay in delivery due to causes beyond JMA's reasonable control, including, but not limited to, the following force majeure events: acts of God, acts of the government, strikes, wars, acts of hostility, epidemics, import and export restrictions, machinery failure, delays of carriers, inability to obtain necessary

labor, raw materials or semi-finished materials from usual suppliers, breakdown of manufacturing facility, or change in economic conditions. JMA shall not be liable for any damages or penalties whatsoever whether direct or indirect, special, incidental or consequential (including loss of profits, revenue, expected savings, use, records or data, costs of procurement of substitute Products, damage to reputation or goodwill), resulting from JMA's failure or the failure of JMA's suppliers to perform or delay in performing unless otherwise agreed in writing by an authorized representative of JMA. Buyer agrees that any delay in delivery shall not affect the validity of any orders or these terms and conditions.

7. Limited Warranties; Disclaimers.

7(a). JMA represents and warrants that the products delivered by JMA to Buyer shall: (i) conform to agreed-upon specifications for the Product(s), to the extent any specifications were made part of an order; (ii) be free from faulty workmanship and defective materials; and (iii) will not infringe on third party rights. The foregoing warranties shall be limited to a one (1) year period commencing on the date of shipment of the applicable Product(s) or following notice to the Buyer that the Product(s) is/are ready for shipment (the "Warranty Period") provided (i) the Products have been properly cared for and used in accordance with JMA's instructions, if any, (ii) Buyer promptly notifies JMA in writing of any warranty claim during the Warranty Period, and (iii) subject to JMA inspection of the Products, where JMA determines that said Products were in fact defective and that any potential installation of the Products had been performed in a competent manner, in JMA's sole and absolute discretion. The warranties provided by JMA in this Section 7(a) are the only warranties provided by JMA with respect to the Product(s) sold hereunder, and may be modified or amended only by a written instrument signed by JMA. Buyer's remedies and JMA's aggregate liability with respect to the warranties provided by JMA in this Section 7(a) are set forth in and limited by this Section 7 and Section 8 below.

7(b). In the event any Product fails to meet the warranties in Section 7(a) above during the Warranty Period, JMA's sole obligation, in JMA's sole discretion, shall be to either repair or replace the non-conforming Product.

7(c). JMA shall not be liable for any repairs or other claim if alterations have been made to the Products by the Buyer or others without the JMA's written consent. Equipment and accessories furnished by third parties are warranted only to the extent of the original manufacturer's warranty to the JMA and then only to the extent that such original manufacturer's warranty is assignable by JMA to Buyer.

7(d). Notwithstanding anything herein to the contrary, JMA's warranties hereunder shall be considered void and shall not cover damages/defects to Products caused by: (i) normal wear and tear; (ii) Buyer's negligence, abuse, accident, improper storage, user maintenance of the Products; changes to the Products carried out by the Buyer without JMA's prior written approval; (iii) the use of inadequate or unauthorized accessories on the Products; (iv) the use of the Products for purposes other than their intended use; (v) electrostatic discharges, electrical surges, improper electrical connections; or (vi) repairs to, alteration of, or work done on the Products without JMA's prior written authorization.

7(e). All components/parts replaced on the Products during Warranty Period shall be covered by a three (3) month warranty from the date of shipment for such components and/or parts or by the remaining warranty period for the whole Product, whichever will be longer.

7(f). For semiconductors and other equipment not manufactured by JMA, the manufacturer's warranty shall apply subject to the limitations set forth in Section 7(c) above.

7(g). Prior to return of any Product to JMA, or any part or component of such Product alleged to be defective, Buyer shall first obtain a 'Repair Authorization Number' from the JMA staff who evaluated the problem. The 'Repair Authorization Number' must be included on all shipping documents. Any Products, or parts or components of such Products, sent to JMA without an assigned Repair Authorization Number will be rejected.

7(h). All transport charges to ship any Products to be repaired or replaced (including any applicable import duties claimed by governmental authorities as well as

clearance fees) and the relevant return freights shall be the sole responsibility of the Buyer.

7(i). THE EXPRESS WARRANTIES OF JMA STATED IN SECTION 7(a) ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. JMA'S WARRANTY OBLIGATIONS AND BUYER'S REMEDIES ARE SOLELY AND EXCLUSIVELY AS STATED IN THIS SECTION 7.

8. **Limitation of Liability.** Notwithstanding anything to the contrary contained in this Agreement, JMA's aggregate liability in connection with the sale of Product(s) hereunder, regardless of the form of action giving rise to such liability (whether in contract, tort or otherwise), shall not exceed the aggregate purchase price for Products paid by Buyer to JMA pursuant to an applicable order. JMA shall not be liable for any extraordinary, exemplary, special, indirect, consequential or incidental damages of any kind, including without limitation, lost profits, revenue, expected savings, use, records or data, costs of procurement of substitute Products, damage to reputation or goodwill even if JMA has been advised of the possibility of such damages. Except as provided in Section 7(a) above, and subject to the limitations set forth herein, JMA shall not be liable for any claims of third parties relating to any Products, and Buyer will defend JMA and hold JMA harmless against all losses, liabilities, damages, claims and expenses, including, reasonable attorneys' fees, arising out of or in connection with the sale of Products by Buyer or Buyer's employees, agents, customers, or contractors. **THE FOREGOING STATES THE ENTIRE LIABILITY OF JMA WITH REGARD TO THIS AGREEMENT AND JMA'S SALE OF PRODUCT(S) HEREUNDER. THE LIMITATIONS CONTAINED IN SECTIONS 7 AND 8 ARE A FUNDAMENTAL PART OF THE BASIS OF JMA'S BARGAIN HEREUNDER, AND JMA WOULD NOT ENTER INTO THIS AGREEMENT ABSENT SUCH LIMITATIONS.**

9. **Confidential Information;** No License. Technical information contained in plans, drawings, specifications, photographs and other documents disclosed or furnished by JMA constitutes confidential and proprietary property of JMA. Buyer, in the absence of express prior written consent of JMA, shall hold all

such confidential and proprietary information in confidence and may not disclose, sell or dispose of any portion thereof. The sale of Products shall not be construed as granting Buyer any license under any trademark, copyright, or other intellectual property of JMA.

10. **Default.** If Buyer shall fail to pay all or any part of the sums due or to become due to JMA, fail to keep and/or perform any of Buyer's obligations herein, become insolvent or become a party to any federal or state insolvency proceeding or receivership, or become a judgment debtor, any sum due or to become due may, at the option of the JMA, become immediately due and payable in full and concurrently, or in the alternative JMA may at its option terminate this Agreement and exercise any other remedies available under applicable law. Waiver of any default shall not be a waiver of any other subsequent default. In the event of a breach by the Buyer, the cost and expense of any litigation or settlement sustained by JMA in an effort to get the Buyer to perform, remedy, or otherwise cure such a breach, shall be the sole responsibility of the Buyer.

11. **Special Products and Indemnification.** "Special Products" are those Products manufactured or furnished by JMA in accordance with drawings, samples, or manufacturing specifications designated by Buyer or its customers. JMA reserves the right to ship and/or bill 10% more or less than the exact quantity of Special Products ordered by Buyer. All Special Products must be accepted by Buyer within thirty (30) days of manufacture; after thirty (30) days, JMA may invoke a storage charge of 1% per month (12% per annum) on their purchase price. JMA may retain as its own property any special molds, tools, dies or fixtures utilized in manufacturing Special Products. If JMA manufactures or supplies Products to Buyer specifications, Buyer agrees to defend, indemnify and hold harmless JMA from and against any claim, suit, demand, or action, whether actual or threatened, alleging that the Products or any component thereof infringes a patent, copyright, trade secret, or any other proprietary right of any third party, and Buyer shall indemnify JMA against all costs, expenses, and damages arising from any such claim, suit, demand, or action.

12. **Compliance with Laws.** By placing an order with JMA, Buyer represents, warrants and covenants that:

12(a). Buyer will comply with all applicable laws and regulations, including but not limited to the laws and regulations of the United States, and all other jurisdictions governing the marketing, sale, export, and distribution of the Products, including, but not limited to, the U.S. export control laws, the Export Administration Regulations (the "EAR") and the Foreign Corrupt Practices Act of 1977 (the "FCPA"). Diversion via export or re-export contrary to U.S. law is prohibited.

12(b). Buyer has not paid, offered to pay, agreed to pay, or authorized or caused to be paid, directly or indirectly, any money or anything of value to any foreign official (as defined in the FCPA) to induce such official to use their influence to obtain an improper business advantage in connection with the purchase and resale of the Products, nor will Buyer do so at any time in the future.

12(c). In addition to any other obligations of indemnification set forth in this Agreement, Buyer agrees to defend, indemnify and hold harmless JMA and its affiliates and their respective directors, officers, employees, representatives and agents from and against all liabilities, claims, losses, damages, costs and expenses (including attorney's fees) arising out of or in connection with Buyer's breach of any provision of this Section 12 and such obligation shall survive the expiration or earlier termination of this Agreement.

13. **Cancellation.** Orders may be cancelled by Buyer only with the written consent of JMA and upon reimbursement to JMA for any and all expenses and other losses incurred by JMA as a result of such cancellation.

14. **Changes.** JMA reserves the right to make, at any time, such changes in Product design, selection or components, construction, arrangement or equivalent as shall in its judgment constitute an improvement over former practice. JMA may, at its discretion, in the performance of its obligations hereunder, deliver such improved products in lieu of Products ordered by the Buyer, it being understood and agreed, however, that JMA shall be under no obligation to apply such technical changes and improvements to Products already sold and

delivered to the Buyer. Changes in materials, supplies, labor and/or changes made at the request of Buyer shall be at the expense of Buyer. Buyer hereby agrees to pay for the same upon receipt of the JMA's invoice. Changes or alterations made by Buyer or made by JMA (over its recommendation against the same) shall be at Buyer's sole risk and responsibility.

15. **Retained Security Interest.** As security interest for payment of all amounts due to JMA, JMA may file a security interest in all Products sold by JMA to Buyer, after providing prior notice to Buyer of intent to file the security interest.

16. **Notices.** Notices may be delivered by overnight courier or fax, with proof of delivery, or by mail, registered or certified mail, with postage prepaid, in each case addressed to the party at the address such party shall have notified the other party in writing.

17. **Not Transferable.** This Agreement is not transferable or assignable by Buyer either directly or by operation of law without the prior written consent of JMA.

18. **Headings.** Paragraph headings are for convenience only and shall not be construed to define or limit the operative provisions hereof.

19. **Amendments.** No amendment, change to or modification to any orders and/or these terms, or any schedules or attachments hereto, shall be valid unless the same shall be in writing and signed by both JMA and the Buyer.

20. **Applicable Law, Venue.** The rights and duties of the parties under this Agreement shall be governed by the laws of the State of New York without regard to conflict of law rules otherwise applicable. The United Nations Convention on Contracts for the International Sale of Goods shall not apply and is specifically disclaimed by the parties. The federal and state courts located within Onondaga County, New York, USA shall have exclusive jurisdiction to determine any and all actions and proceedings relating to or arising from this Agreement and the sale of Products hereunder and each party hereby irrevocably consents to the

personal and subject matter jurisdiction of such courts with respect thereto.

21. **Severability.** In the event any provision or provisions herein, or parts thereof, shall be held to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired and shall remain in full force and effect.