

TERMS AND CONDITIONS OF SALE

1. **DEFINITIONS** - "Seller" means M. Argueso & Co., Inc. "Buyer" means the business entity that provides Seller with a purchase order or other procurement document.

2. **CONTRACT FORMATION** - These terms and conditions of sale (the "Seller Terms and Conditions") apply to all quotations and offers made by and purchase orders performed by Seller. To the extent that the Seller Terms and Conditions conflict with or are different from those contained in any Buyer purchase order or other procurement document, the Seller Terms and Conditions will control and any additional or inconsistent terms are rejected by Seller unless Seller's acceptance thereof is in writing and specifically refers to each such additional or conflicting term. Buyer's acceptance of or payment for goods will conclusively confirm Buyer's assent to the Seller Terms and Conditions.

3. **PRICES/PAYMENT** - All prices are in U.S. dollars. All prices are subject to adjustment by Seller based upon the cost to Seller of raw materials at the time of raw material purchase by Seller. Unless otherwise agreed, payment terms are net 30 days from the date of invoice. Buyer will pay promptly when due all taxes and assessments upon the goods. Unless specified herein, prices include no federal, state, local, special or other taxes or duties. If imposed on Seller, taxes may be invoiced later to Buyer. Any increase in freight and insurance rates shall be borne by Buyer. Seller reserves the right to withhold shipment of any portion of the goods if Buyer fails to make payment promptly when due for any previous shipment, and the failure to ship any portion of the goods for this reason shall not release Buyer from its obligation to accept and pay for any remaining portion of the goods when shipped.

4. **DELIVERY** - Delivery will be Ex Works (EXW) Seller's dock, per Incoterms 2000. Title and risk of loss pass to Buyer at Seller's dock. Seller's shipping weights shall be final. Seller may deliver in partial shipments and Buyer will accept such shipments in accordance with applicable contractual terms. Seller will not be responsible for any failure, interruption or delay in manufacture or delivery that is related to sabotage, fire, flood, explosion, war, act of, or priorities granted by request of or for the benefit of, any governmental authority, shortage of raw materials or supplies, acts of God or other causes beyond Seller's reasonable control. Seller will not be liable for any damages incurred by Buyer as a result of delay in shipment.

5. **ORDER CANCELLATION** - Orders, once placed, cannot be cancelled or changed except with Seller's consent and upon terms that will indemnify Seller against all loss.

6. **WARRANTY** - Seller warrants that the goods shall conform to agreed specifications, such conformance to be determined and demonstrated by the agreed test and inspection methods and standards. Such conformance shall be certified by Seller. If goods do not conform to this warranty then Buyer's exclusive remedy shall be for Seller to replace the non-conforming goods by shipment to the place to which the original goods were shipped by Seller or, at Seller's option, to refund the purchase price for the non-conforming goods. Authorized returns shall be made by motor freight unless otherwise authorized by Seller. The warranty in this Section 7 is strictly subject to the following conditions: (i) a claim must be received by Seller in writing within ten days after delivery of the applicable goods; (ii) 25% or more of the original unopened packages from the applicable delivery must be available for inspection by Seller; and (iii) claims may be made only with respect to the portion of the goods that has not been processed or altered. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES OR OBLIGATIONS, EXPRESS OR

IMPLIED. SELLER EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SELLER DOES NOT WARRANT THE ADEQUACY OF BUYER'S SPECIFICATIONS. No person is authorized to give any other warranties on Seller's behalf.

7. **LIMITATION OF LIABILITY** - IN NO EVENT WILL SELLER BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOSS OF PROFITS OR USE AND INTERRUPTION OF BUSINESS) SUSTAINED FROM ANY CAUSE OR ARISING OUT OF ANY LEGAL THEORY, WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT TORT LIABILITY OR OTHERWISE. These limitations also apply to any liability that may arise out of third-party claims.

8. **INFRINGEMENT INDEMNIFICATION** - Buyer shall indemnify Seller against loss and save Seller harmless from and against any claims or liabilities or costs (including reasonable attorneys' fees) by reason of any alleged patent infringement arising out of the manufacture or sale of any goods sold to Buyer which are not part of Seller's standard line of products and which are manufactured and supplied to Buyer's specifications. Upon demand by Seller, Buyer shall, at Buyer's cost, defend any such action.

9. **DISPUTE RESOLUTION** - The interpretation of the terms and obligations hereunder will be construed and governed by the laws enacted in the state of Seller's physical location, excluding its choice of law rules and excluding the U.N. Convention on Contracts for the International Sale of Goods. The parties agree that, in any effort to enforce the terms and obligations hereunder, the complaining party will first notify the other party in writing of the alleged dispute and the parties will attempt in good faith to resolve the dispute through prompt discussion and meeting between representatives having decision-making authority regarding the dispute. If the dispute is not resolved by the 30th day after written notice of the dispute was first made, the parties agree to engage in non-binding mediation in the city of Seller's location, using a neutral mediator mutually agreed to and paid for by the parties. If mediation does not resolve the dispute, the parties may resolve the dispute through appropriate legal action. Legal action may be brought only in the state and federal courts located in the state of Seller's physical location, and the parties consent to the jurisdiction of such courts.

10. **SET-OFF** - Buyer will not have any rights to set-off hereunder.

11. **ASSIGNMENT** - Buyer will not assign its rights or obligations hereunder without Seller's prior written consent.

12. **ENTIRE AGREEMENT** - These Seller Terms and Conditions (and any long term agreement under which an order is issued) constitute the entire agreement between the parties with respect to the subject matter herein and supersede all previous proposals, both oral and written, negotiations, representations, commitments, writings and all other communications between the parties. No waiver, alteration, modification of or addition to these Seller Terms and Conditions will be binding unless expressly agreed to in writing and signed by duly authorized representatives of Buyer and Seller. A waiver of any of the terms or conditions hereof will not be deemed a continuing waiver, but will apply solely to the instance to which the waiver is directed.