

## **STANDARD TERMS OF SALE**

### **1. FORMATION OF CONTRACT**

Any term of Buyer's order or of releases pertaining thereto or in any communication from Buyer, which is in any way inconsistent with or in addition to these Terms of Sale, shall not be applicable hereto or binding upon Seller. If Buyer objects to any of these Terms of Sale, such objections shall be in writing and received by Seller at the address stated on the front hereof prior to commencement of performance by Seller. Buyer's execution and return of the Acknowledgement copy, or acceptance of any of the goods or services described on the front hereof (the "items") shall be conclusively deemed to be acceptance of all these Terms of Sale (without regard to whether Buyer makes or may make any inspection with respect to such items). Seller's failure to object to terms contained in any communication from Buyer shall not be deemed to be a waiver of these Terms of Sale.

### **2. PRICES**

Prices are F.O.B. Seller's distribution point, unless otherwise specified on the front hereof. Prices do not include charges for Seller's delivery of items to the carrier for shipment to Buyer or any taxes or duties, now or hereafter enacted, applicable to the terms or to this transaction, all of which charges, taxes and duties shall be Buyer's responsibility. Such charges, taxes and duties shall be added by Seller to the sales price hereunder where appropriate.

### **3. PAYMENT TERMS**

If Seller extends credit to Buyer, terms of payment will be net thirty (30) days after date of invoice or date of delivery, whichever is later. After the due date, the lesser of one and one-half (1 ½%) percent of the unpaid balance (annual rate of 18%) or the maximum late payment penalty charge permitted by law will be added for each month or part thereof that payment is delayed. Seller has the right, at any time, to change the amount of credit or terms of payment or to withdraw credit, and to require partial or full payment in advance as a condition of making further shipments. If Seller delivers in installments, each installment shall be deemed to be a separate delivery for purposes of this paragraph. Payment shall be made without regard to whether Buyer has made or may make any inspection or tests, anything herein to the contrary notwithstanding. If shipments are delayed at Buyer's request, payments shall be due on the date Seller is prepared to make shipments. Goods held thereafter by Seller or carrier for Buyer shall be at Buyer's sole risk and expense.

### **4. RISK OF LOSS AND DELIVERY TITLE**

Liability for loss or damage passes to Buyer when Seller puts goods into possession of a carrier for shipment to Buyer (the carrier being deemed to be acting as Buyer's agent). Seller has the right to deliver in installments. All lead times for product deliveries shall be subject to Seller's approval. Shipping and delivery dates are approximate only. Seller shall not be liable for any loss or expense (consequential or otherwise) incurred by Buyer if Seller fails to meet such dates for any reason, including, but not limited to, the contingencies stated in Paragraph 7 hereof or any other unavoidable production delays, delays in prompt approval of samples by Buyer, modification of specifications previously agreed upon or delays in submission of specifications acceptable to Seller. Delays in delivery, nonconformity or non-delivery of an installment shall not relieve Buyer of its obligations hereunder with respect to any other installments, each installment

being deemed to be a separate contract. Unless specified on the front hereof, Seller shall select the mode of transportation and the carrier. All right, title and interest in and to all items covered by Buyer's order are reserved to Seller until the full purchase price for all such times has been paid. Buyer hereby authorizes Seller to execute and file, at any time or times, one or more financing statements with respect to such items, signed only by Seller.

## **5. INSPECTION AND ACCEPTANCE**

Buyer shall inspect and accept the items covered hereunder within three weeks of the date of Buyer's receipt or six weeks from the date of Seller's shipment, whichever is the shorter period. Any claim for goods nonconforming to conditions of inspection must be made in writing within this period. Seller has the right to examine any items which Buyer claims are nonconforming. Buyer will furnish nonconforming samples for verification by Seller. Repairs that are Seller's responsibility may, at Seller's election, be made at Buyer's premises.

## **6. QUANTITIES**

Any variation in quantities shipped over or under the quantities ordered (not to exceed 5%) shall constitute compliance with Buyer's order and the unit price shall continue to apply. All claims for shortages in excess of such variations shall be made within ten (10) days after date of receipt of shipment.

## **7. CONTINGENCIES**

Seller shall not be liable for any delay in performance or for non-performance, 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 affecting the terms of this contract or otherwise, judicial action, labor dispute, accident, fire, explosion, flood, storm or other Act of God, shortage of labor, fuel, raw materials, tools, dies or equipment or technical or yield failure. Any such delays shall excuse Seller from performance, and Seller's time for performance shall be extended for the period of the delays and for a reasonable period thereafter. If any contingency occurs, Seller may allocate production and deliveries among any or all of Seller's customers as Seller may determine, including, without limitation, regular customers not then under contract and Seller's (including Seller's subsidiaries and affiliates) own requirements for further manufacture or other use.

## **8. SUBSTITUTION AND MODIFICATION OF GOODS**

Seller has the right to modify the specifications of goods designed by Seller and substitute substantially equivalent goods manufactured to such modified specifications.

## **9. WARRANTIES**

Seller warrants all items against defects in material and workmanship under normal use and service for a period of one (1) year from the date of shipment. This warranty shall not apply to items or parts thereof that have been (a) subjected to misuse, neglect, accident, damage in transit, abuse or unusual hazard; (b) repaired, altered or modified by anyone other than Seller; or (c) used in violation of instructions furnished by Seller. All requests for return of items must receive the written authorization of Seller. Seller makes NO WARRANTY as to experimental or

developmental goods or goods not manufactured by Seller. As to goods not manufactured by Seller, at Buyer's request, Seller to the extent permitted by Seller's contract with its supplier shall assign to Buyer any rights Seller may have under any warranty of the supplier thereof.

Seller's warranties extend to the Buyer and to no other person or entity.

Seller's warranties as hereinabove set forth shall not be enlarged, diminished or affected by, and no obligation or liability shall arise or grow out of, Seller's rendering of technical advice or service in connection with Buyer's order of the goods furnished hereunder.

THE FOREGOING ARE IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY OTHER WARRANTY OBLIGATION ON THE PART OF THE SELLER.

#### **10. THIS SECTION INTENTIONALLY LEFT BLANK.**

#### **11. TOOLING**

Unless otherwise expressly provided, Seller will retain title to, possession of, and the right to exclusive use of all jigs, dies, fixtures, molds, patterns, gauges, taps, equipment, manufacturing aids and similar devices, made or obtained for the performance of this contract without regard to whether a separate charge is made for the same.

#### **12. PATENT INDEMNITY**

Seller will defend any suit or proceeding brought against Buyer to the extent that such suit or proceeding is based on a claim that goods manufactured and sold by Seller to Buyer constitute direct infringement of any valid United States patent and Seller shall pay all damages and costs awarded by final judgment from which no appeal may be taken against Buyer on condition that Seller (a) is promptly informed and furnished a copy of each communication, notice or other action relating to the alleged infringement, (b) is given authority, information and assistance necessary to defend or settle such suit or proceeding in such manner as Seller shall determine and (c) is given sole control of the defense (including the right to select counsel), and the sole right to compromise and settle such suit or proceeding. Seller shall not be obligated to defend or be liable for costs and damages if the infringement arises out of compliance with Buyer's specifications or from a combination with, an addition to, or modification of, the goods after delivery by Seller or from use of the goods, or any part thereof in the practice of a process.

If any goods manufactured and supplied by Seller to Buyer are held to directly infringe any valid United States patent and Buyer is enjoined from using the same, or if Seller believes such infringement is likely, Seller will exert all reasonable efforts, at its option and at its expense (a) to procure for Buyer the right to use such goods free of any liability for patent infringement, or (b) to replace (or modify) such goods with a non-infringing substitute otherwise complying substantially with all the requirements of the contract, or (c) upon return of the goods, refund the purchase price and the transportation costs of such goods. If the infringement is alleged prior to completion of delivery of the goods, Seller has the right to decline to make further shipments without being in breach of contract. If Seller has not been enjoined from selling goods to Buyer,

Seller may (at Seller's sole election), at Buyer's request, supply such goods to Buyer, in which event Buyer shall be deemed to extend to Seller the same patent indemnity hereinabove stated.

On goods made in compliance with Buyer's specifications, Buyer shall hold Seller harmless against any expense, loss or damage resulting from actual or alleged infringement or violation of patent, trademarks or proprietary rights of others as a result of Seller's compliance with Buyer's design specifications or instructions.

THE FOREGOING STATES THE SOLE AND EXCLUSIVE LIABILITY OF THE PARTIES HERETO FOR INFRINGEMENT OR THE LIKE OF PATENTS, TRADEMARKS, COPYRIGHTS AND OTHER PROPRIETARY RIGHTS WHETHER DIRECT OR CONTRIBUTORY, AND IS IN LIEU OF ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY IN REGARD THERETO, INCLUDING, WITHOUT LIMITATION, THE WARRANTY AGAINST INFRINGEMENT SPECIFIED IN THE UNIFORM COMMERCIAL CODE.

### **13. TERMINATION AND RESCHEDULE**

Buyer shall not terminate, suspend performance under or issue a "hold" order on its purchase order/contract in whole or in part without Seller's written consent thereto. Buyer's liability for termination, suspension or "hold" shall include Seller's charges therefor beyond the price of finished goods delivered and/or held for Buyer's disposition, such charges including but not limited to costs for work in process and other adjustment of the billing price to Seller's established price applicable to the quantity actually delivered plus an amount equal to twenty percent (20%) of the purchase price.

Buyer may reschedule its order upon written notice to Seller at least 90 days prior to Buyer's scheduled delivery request date for Custom (non-standard) Products or 30 days prior to Buyer's scheduled delivery request date for Standard Products. Orders rescheduled with less than the above specified notice may, at Seller's option, be treated as terminated and subject to the termination charges set forth above. Buyer may reschedule an initial order only once.

### **14. REMEDIES AND DAMAGES**

(a) Where Buyer rightfully and timely rejects or justifiably revokes acceptance of items, or where Buyer has accepted nonconforming items and has timely notified Seller of a breach of warranty, Seller's sole and exclusive liability will be (at Seller's option) to repair, replace or credit Buyer's account with respect to any nonconforming goods returned to Seller during the applicable warranty period set forth above, and with respect to any nonconforming services, on condition that (I) Seller is, promptly upon Buyer's discovery of the nonconformity, notified in writing with a detailed explanation, (II) the nonconforming goods are returned to Seller F.O.B. Seller's plant from which the goods were shipped, and (III) Seller's examination discloses that such items are nonconforming.

WHERE SELLER FAILS TO MAKE DELIVERY OR REPUDIATES OR BREACHES ANY OTHER PROVISION OF THIS CONTRACT (OTHER THAN THE WARRANTY AGAINST PATENT INFRINGEMENTS), INCLUDING, WITHOUT LIMITATION SELLER'S OBLIGATION WITH RESPECT TO NONCONFORMING ITEMS, BUYER SHALL

PROMPTLY GIVE WRITTEN NOTICE TO SELLER. IN THE EVENT THAT SELLER DOES NOT CURE ANY SUCH FAILURE TO DELIVER, REPUDIATION OR BREACH WITHIN (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN BUYER SHALL HAVE THE RIGHT AT ITS OPTION, TO CANCEL THE SPECIFIC QUANTITY OF PRODUCTS AS TO WHICH SUCH REPUDIATION OR BREACH RELATED, AND THAT SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY. IF BUYER DESIRES TO EXERCISE SUCH RIGHT OF TERMINATION, IT SHALL GIVE WRITTEN NOTICE TO SELLER.

EXCEPT AS SET FORTH ABOVE, IN NO EVENT WILL SELLER BE LIABLE TO ANYONE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES FOR BREACH OF ANY OF THE PROVISIONS OF THIS CONTRACT INCLUDING, BUT NOT LIMITED TO, PROVISIONS REGARDING WARRANTIES, INDEMNITIES AND PATENT INFRINGEMENT, SUCH EXCLUDED DAMAGES TO INCLUDE, WITHOUT LIMITATION, COSTS OF REMOVAL AND REINSTALLATION OF ITEMS, LOSS OF GOODWILL, LOSS OF PROFITS OR LOSS OF USE.

(b) Seller has the right to cancel this contract if, in Seller's sole judgment, Buyer's financial condition does not justify the terms of payment applicable from time to time, and upon demand therefore, Buyer shall not immediately comply with any modification of payment terms required by Seller in accordance with Paragraph 3.

If Seller exercises such right to cancel, Buyer shall be liable for the charges referred to in Paragraph 13 in addition to any other remedies Seller may have hereunder or at law.

## **15. WAIVER**

In the event of any default or breach of Buyer, Seller has the right to refuse to make further shipments. Seller's failure to enforce at any time or for any period of time any of the provisions of this contract shall not constitute a waiver of such provisions or of the right of Seller to enforce each and every provision.

## **16. GOVERNING LAW**

The validity, construction and performance of this contract and the transactions to which it relates shall be governed by the laws of the State in which the chief executive offices of Seller are located, without regard to conflict of laws principles. All actions, claims or legal proceedings in any way pertaining to this contract or such transactions shall be commenced and maintained in the courts of such State or in a federal court of the United States physically situated in such state and in no other court or tribunal whatsoever and the parties hereto each agrees to submit themselves to the jurisdiction of such court.

## **17. GOVERNMENT CONTRACTS**

If the terms to be furnished hereunder are to be used in the performance of a United States Government contract or sub-contract and a United States Government contract number appears on Buyer's order or other written communication to Seller those clauses of the applicable United States Government procurement regulation which are mandatory and required by Federal Statute to be included in United States Government subcontracts will be deemed incorporated herein by reference and will control if inconsistent with any provisions of this contract; such clauses

include, without limitation, the affirmative action clauses specified by 41 C.F.R. 60-250.4 (“Veterans”) and 41C.F.R. 60-741.4 (“Handicapped”) and the equal opportunity clause specified by Executive Order 11246.

#### **18. ASSIGNMENT**

This contract is binding upon and inures to the benefit of the parties hereto and the successors and assigns of the entire business and goodwill of either Seller or Buyer or that part of the business of either used in the performance of this contract, but will not be otherwise assignable, except that Seller has the right to assign this contract to an affiliate and to assign accounts receivable, or the proceeds of this contract. Nothing in this contract shall inure to the benefit of or be deemed to give rise to any rights in any third party, whether by operation of law or otherwise.

#### **19. SEVERABILITY**

If any of these Terms of Sale is declared invalid by a court, agency, commission or other tribunal or entity having jurisdiction thereof, the application of such provisions to parties or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term not so declared invalid or unenforceable shall be valid and be enforced to the fullest extent permitted by law and the rights and obligations of the parties shall be construed and enforced as though a valid commercially reasonable term consistent with the undertakings of the parties under the order had been substituted in place of the invalid provision.

#### **20. SET-OFF**

Buyer may not set-off any amount owing from Seller to Buyer against any amount payable by Buyer to Seller whether or not related to this contract.

#### **21. MERGER**

THIS CONTRACT CONSTITUTES THE FINAL WRITTEN EXPRESSION OF ALL TERMS OF THE AGREEMENT RELATING TO THE TRANSACTIONS DESCRIBED ON THE FRONT HEREOF AND A COMPLETE AND EXCLUSIVE STATEMENT OF THOSE TERMS. THIS CONTRACT SUPERSEDES ALL PREVIOUS COMMUNICATIONS, REPRESENTATIONS, AGREEMENTS, PROMISES OR STATEMENTS, EITHER ORAL OR WRITTEN, WITH RESPECT TO SUCH TRANSACTIONS (INCLUDING, WITHOUT LIMITATION, ANY TERMS PROPOSED BY BUYER) AND NO COMMUNICATIONS, REPRESENTATIONS, AGREEMENTS, PROMISES OR STATEMENTS OF ANY KIND MADE BY ANY REPRESENTATIVE OF SELLER, WHICH ARE NOT STATED HEREIN, SHALL BE BINDING ON SELLER. NO ADDITION TO OR MODIFICATION OF ANY PRINTED PROVISION OF THIS CONTRACT WILL BE BINDING UPON SELLER UNLESS MADE IN WRITING (REFERRING SPECIFICALLY TO BUYER'S ORDER) AND SIGNED BY AN OFFICER OF SELLER. NO COURSE OF PERFORMANCE WILL BE DEEMED RELEVANT TO EXPLAIN OR SUPPLEMENT ANY TERM EXPRESSED IN THIS CONTRACT.

#### **22. TAXES**

In the event any sales tax, manufacturer's tax, occupational tax, or other tax is applicable to any shipment made to Buyer on Buyer's order, such tax shall be added to the selling price and shall be paid by Buyer.

### **23. EFFECT OF SUBMISSION**

The submission of this quotation or order acknowledgement does not grant or imply a license under any patents now owned or controlled by Seller or which may become owned or controlled by Seller except to the extent that purchases are made from Seller.

### **24. LIMIT OF LIABILITY AND INDEMNIFICATION**

Seller shall in no event incur any liability or obligation for damages or of any other nature whatsoever to Buyer or any other person with respect to any goods improperly installed or stored, subjected to accident, damage, misuse or abnormal, unusual or improper operating conditions or conditions not made known to or contemplated by Seller at the time of the agreement of sale or applied or used for a purpose or installation other than or at variance in any degree from that for which designed, or operated in any manner or degree beyond their proper capacity or contrary to operating instructions.

Buyer shall hold Seller harmless against liability or obligation with respect to any expense, loss or damage to Buyer or any person resulting from the goods improperly installed or stored, subjected to accident, damage, misuse or abnormal, unusual or improper operating conditions or conditions not made known to or contemplated by Seller at the time of the agreement of sale, or applied or used for a purpose or installation other than or at variance in any degree from that for which designed, or operated in any manner or degree beyond their proper capacity or contrary to operating instructions.

### **25. DEFINITIONS**

The term "Buyer" as used herein shall mean the Customer indicated on the front of this form. The term "Seller" as used herein shall mean Clare, Inc.