



## TERMS AND CONDITIONS OF SALE

Set forth below are Arclin's terms and conditions of sale (the "Terms and Conditions") referred to on the face of the Arclin price list and/or invoice and upon which this sale is made and to which Customer and Arclin agree are as follows:

### 1. SHIPPING

- (a) Customer shall order product using purchase orders, all of which are subject to the terms and conditions of these Terms and Conditions. Arclin shall indicate plainly the Customer's purchase order number on all bills of lading, invoices, and freight bills, and shall include in each shipment a record showing Arclin's name, the contents of the shipment and Customer's purchase order number.
- (b) When shipping, Arclin shall make no declaration of value to carrier except where the shipment is subject to released value rating or customs requirements.
- (c) All shipments are FCA (Incoterms 2010) Arclin's facility.
- (d) Charges will be applicable for short notice order changes.

### 2. TITLE

Title to the product sold hereunder will pass from Arclin to Customer upon loading for transportation at Arclin's facility, and all risk of loss or damage in transit shall be borne by Customer.

### 3. CLAIMS

Customer shall inform Arclin in writing of any shortage in product and of any product found to be defective within seven (7) days after receipt of such product in the case of a shortage and within fifteen (15) days after receipt of such product in the case of product alleged to be defective. Customer is prohibited from making any such claim after any part of the product has been changed from its original condition (except for reasonable test and inspection quantities). If Customer fails to inform Arclin within the specified period, Arclin will be deemed to have satisfactorily performed its obligations. Arclin's invoice weights, volumes, sizes and rates, established in good faith, are to govern unless proved to the satisfaction of the Arclin to be erroneous.

### 4. PATENT INFRINGEMENT

Arclin shall not be liable for any infringement of patent through the use by Customer or others of the product or articles made therefrom, either alone or in conjunction with other products.

### 5. END USE

Any recommendations made by Arclin concerning uses or application of any product are believed reliable, but Arclin makes no representation or warranty of results to be obtained. Final determination of the suitability of the product for the use contemplated by Customer is the sole responsibility of Customer. Customer agrees that it is not relying on Arclin's skill or judgment to select or furnish the products covered under these Terms and Conditions. Customer agrees that Arclin has no reason to know of any particular purpose for which the products under these Terms and Conditions are to be used.

### 6. WARRANTIES

**ARCLIN MAKES NO WARRANTY, REPRESENTATION OR CONDITION OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE PRODUCTS SUPPLIED TO CUSTOMER UNDER THESE TERMS AND CONDITIONS EXCEPT THAT (A) SUCH PRODUCTS SHALL NOT INFRINGE OR MISAPPROPRIATE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY, (B) SUCH PRODUCTS SHALL BE FREE OF ANY CLAIM, LIEN OR ENCUMBRANCE OF ANY NATURE BY ANY THIRD PERSON/PARTY, (C) ARCLIN HAS AND SHALL CONVEY CLEAN TITLE OF ALL SUCH PRODUCTS TO CUSTOMER, AND (D) ALL SUCH PRODUCTS SHALL BE NEW AND OF MERCHANTABLE QUALITY FREE FROM ALL DEFECTS IN DESIGN, WORKMANSHIP AND MATERIALS AND OF THE QUALITY AND SPECIFICATIONS STATED ON THE PURCHASE ORDER AND/OR INVOICE.**

**ARCLIN MAKES NO WARRANTY AND OFFERS NO ASSURANCE OR GUARANTEE, EITHER DIRECT OR IMPLIED, AS TO THE EFFECTIVENESS OR SUITABILITY OF ITS PRODUCTS TO PROTECT FROM FIRE, WATER OR ANY OTHER DAMAGE, WHETHER ANTICIPATED OR FORESEEN. IT IS THE CUSTOMER'S SOLE RESPONSIBILITY TO DETERMINE THE USE OF THE PRODUCTS THAT IT PURCHASES FROM ARCLIN AND WHETHER SUCH USE IS APPROPRIATE. CUSTOMER AGREES TO ASSUME ALL RISK AND LIABILITY WITH REGARD TO ITS USE OF THE PRODUCTS, AS DETAILED IN SECTION 7 BELOW.**

**THE FOREGOING WARRANTIES ARE EXCLUSIVE AND ARE GIVEN IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED. ARCLIN EXPRESSLY DISCLAIMS AND EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ARCLIN SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR FAULT), STRICT LIABILITY OR ANY OTHER LEGAL THEORY, WITH RESPECT TO THE PRODUCTS SOLD BY ARCLIN.**

### 7. LIMITATION OF LIABILITY

- (a) Customer assumes all risk and liability for loss, damage or injury to persons or property of Customer or others arising out of the use or possession of any product sold hereunder. Customer and Arclin shall each use its reasonable best efforts to mitigate any situation causing a breach of these Terms and Conditions so as to minimize the damages of the other party hereto.
- (b) **ARCLIN EXPRESSLY DISCLAIMS LIABILITY FOR, AND IN NO EVENT SHALL ARCLIN BE LIABLE HEREUNDER OR OTHERWISE FOR PERSONAL INJURY DAMAGES, PENALTIES, COST OF CAPITAL, LOST PROFITS OR REVENUES, LOST SAVINGS, DOWNTIME COSTS, COST OF CAPITAL, LOSS OF REPUTATION OR GOODWILL, LOSS OF USE OF A PLANT,**



**CLAIMS RESULTING FROM CONTRACTS BETWEEN CUSTOMER AND ITS CUSTOMER AND/OR SUPPLIERS, EQUIPMENT OR ANY OTHER ECONOMIC LOSS OR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, EVEN IF ARCLIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, NOR SHALL RECOVERY OF ANY KIND AGAINST ARCLIN BE GREATER IN AMOUNT THAN, AND CUSTOMER AGREES THAT IT IS LIMITED TO THE SOLE AND EXCLUSIVE REMEDY AND MEASURE OF DAMAGES OF REPAYMENT OF, THE PURCHASE PRICE OF THE SPECIFIC PRODUCT SOLD AND ALLEGED TO HAVE CAUSED DAMAGE. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF THE FORM OF ACTION AND WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE OR FAULT), STRICT LIABILITY OR ANY OTHER LEGAL THEORY. ARCLIN AND CUSTOMER ACKNOWLEDGE AND AGREE THAT THE EXCLUSIONS OF REMEDIES AND LIMITATIONS OF LIABILITY AND DAMAGES HEREIN REFLECT A BARGAINED-FOR ALLOCATION AND LIMITATION OF RISK, LIABILITY AND DAMAGES.**

**(c) CUSTOMER COVENANTS AND AGREES THAT IT SHALL DEFEND, INDEMNIFY AND HOLD ARCLIN AND ITS OFFICERS, DIRECTORS, MANAGERS, EMPLOYEES, OWNERS, AFFILIATES, AGENTS AND OTHER REPRESENTATIVES (COLLECTIVELY THE "INDEMNITEES") HARMLESS FROM AND AGAINST ANY AND ALL DAMAGES, CLAIMS, LOSSES, EXPENSES, COSTS, OBLIGATIONS, AND/OR LIABILITIES, INCLUDING ATTORNEY'S FEES AND EXPENSES, SUFFERED BY AN INDEMNITEE BY REASON OF, OR ARISING OUT OF (I) ANY FAILURE BY CUSTOMER OR ANY CUSTOMER AFFILIATES TO PERFORM OR FULFILL ANY OF ITS COVENANTS OR AGREEMENTS SET FORTH IN THESE TERMS AND CONDITIONS, (II) ANY LITIGATION, PROCEEDING OR CLAIM BY ANY THIRD PARTY RELATING IN ANY WAY TO THE OBLIGATIONS OF CUSTOMER OR ANY CUSTOMER AFFILIATE UNDER THESE TERMS AND CONDITIONS, OR (III) ANY BREACH OF ANY APPLICABLE LAW, WILLFUL MISCONDUCT OR NEGLIGENT ACT OR OMISSION BY CUSTOMER, ANY CUSTOMER AFFILIATE, ANY SUBCONTRACTOR OF THE CUSTOMER OR A CUSTOMER AFFILIATE, AND ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS OR PERSONS FOR WHOM THEY ARE AT LAW RESPONSIBLE.**

**(d) CUSTOMER AGREES THAT IT IS A SOPHISTICATED PURCHASER AND USER OF THE PRODUCTS COVERED UNDER THESE TERMS AND CONDITIONS. CUSTOMER FURTHER AGREES THAT ARCLIN IS SUPPLYING THE PRODUCTS COVERED BY THESE TERMS AND CONDITIONS IN BULK AND IT IS IMPRACTICABLE FOR ARCLIN TO SUPPLY ANY WARNING INFORMATION ABOUT THE POTENTIAL RISKS OF THE PRODUCTS TO ANYONE OTHER THAN CUSTOMER.**

## **8. DISPUTE RESOLUTION**

(a) The parties hereto agree that the exclusive means to resolve any dispute, controversy or claim, whether directly or indirectly related to these Terms and Conditions or any past or future business relationship between the parties hereto, shall be as follows:

(1) The parties hereto will attempt in good faith to resolve any controversy or claim by promptly conferring in negotiations between representatives of the parties hereto who have authority to settle the controversy. The parties hereto agree to exchange memoranda stating (i) the issues in dispute and their positions, and (ii) the name and title of the representative of the party hereto. If the matter is not resolved by conference of the representatives, either party hereto may initiate arbitration as set forth below.

(2) Any dispute, controversy or claim which cannot be resolved amicably by the parties hereto in accordance with the procedures described in paragraph (1) above shall be solely and finally settled by arbitration administered by the American Arbitration Association ("AAA") under its commercial arbitration rules, or in the case of customers located outside the United States, administered by the International Centre for Dispute Resolution ("ICDR") under its International Arbitration Rules, and judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Except as may be required by law, neither party hereto nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties hereto. The arbitration shall take place before a panel of three arbitrators sitting in New York City, New York. The parties hereto each will select one arbitrator within 30 days of the receipt by respondent of a copy of the demand for arbitration. The two arbitrators so appointed shall nominate the third and presiding arbitrator (the "Chair") within 30 days of the appointment of the second arbitrator. If either party hereto fails to appoint an arbitrator, or if the two-party appointed arbitrators fail to appoint the Chair, within the time periods specified herein, such arbitrator shall, at the request of either party hereto, be appointed by the AAA. The decision of the arbitrators shall be in writing and shall be final and binding on the parties hereto. The arbitrators shall be empowered to award money damages, but shall not be empowered to award punitive damages, exemplary damages, consequential damages, incidental damages or specific performance.

(b) Either party hereto shall be entitled to recover any reasonable attorney's fees and costs incurred in enforcing this Section 8. Otherwise, each party hereto shall bear all of its own costs relating to the arbitration proceeding irrespective of its outcome.

(c) The parties hereto expressly agree that these Terms and Conditions, including section 8, involves and concerns interstate commerce and its interpretation shall be governed by the Federal Arbitration Act (9 U.S.C. § 1, et seq.) ("FAA"), to the exclusion of any different or inconsistent state or local law, ordinance or judicial rule. This section 8 is self-executing. Any disputes concerning the interpretation or enforceability of this section 8, including without limitation, its revocability or voidability for any cause, the scope of the arbitrable issues, and any defense based upon waiver, estoppel or laches, shall be decided by the arbitrator.

(d) This section 8 provides the sole recourse for the resolution of any dispute, controversy or claim now in existence or that may arise in the future. Pursuant to this section 8, both parties hereto expressly waive their right to a jury trial, class action or consolidation, and neither party hereto shall be entitled to join or consolidate disputes by or against others in any arbitration, or to include in any arbitration any dispute as a representative or member of a class, or to act in any arbitration in the interest of the general public or in a private attorney general capacity.

(e) By agreeing to arbitration, the parties do not intend to deprive any court of its jurisdiction to issue a pre-arbitral injunction, pre-arbitral attachment, or other order in aid of arbitration proceedings. In any such action: (1) each of the parties hereto irrevocably and unconditionally consents and submits to the exclusive jurisdiction and venue of the Courts of the State of New York and the Federal Courts of the United States of America located within the Southern District of the State of New York (the "New York Courts"); (2) each party irrevocably waives, to the fullest extent it may effectively do so, any objection, including any objection to the laying of venue or based on the grounds of forum non conveniens or any right of objection to jurisdiction on account of its place of incorporation or domicile, which it may now or hereafter have to the bringing of any such action or proceedings in any New York



Courts; and (3) each of the parties irrevocably consents to service of process by first class certified mail, return receipt requested, postage prepaid. Without prejudice to such provisional remedies as may be available under the jurisdiction of a court, the arbitral tribunal shall have full authority to grant provisional remedies and to direct the parties to request that any court modify or vacate any temporary or preliminary relief issued by such court, and to award damages for the failure of any party to respect the arbitral tribunal's orders to that effect.

#### **9. DELAY/FORCE MAJEURE EVENTS**

(a) At the outset of any delay from any cause, including but not limited to force majeure events, Arclin shall promptly notify Customer's designated representatives by telephone or email of the delay or anticipated delay and shall undertake to shorten the delay by all commercially reasonable means.

(b) Arclin shall not be liable for non-performance or delay in performance outside of its exclusive or whole control (including, but not limited to, acts of God, severe weather (e.g., hurricanes, floods, tornadoes, etc.), delays in transportation, shortages of materials, plant shutdown due to lack of supplies, equipment failure, regulatory or other forced curtailment of all business, strikes, lock-outs, work stoppages or other labor curtailment of all business, governmental action, acts of war or civil unrest and embargoes or any other event not wholly or exclusively in Arclin's control). Upon the occurrence of any such contingency, Arclin may, at its option, suspend or reduce deliveries under these Terms and Conditions during the period of such contingency, with the total quantity deliverable under these Terms and Conditions being reduced by the quantities so omitted.

#### **10. QUALITY AND STANDARDS**

(a) Arclin shall furnish products under these Terms and Conditions in conformance with the agreed upon specifications. If Customer does not provide written specifications regarding the quality of a product, the product furnished by Arclin will conform in material respects to applicable industry standards.

(b) In furnishing the product hereunder, Arclin shall comply in all material respects with all U.S. and Canadian standards (including but not limited to federal, state, provincial, local or international standards with U.S. or Canadian application) applicable to Arclin at the time of delivery.

#### **11. SAFETY INFORMATION**

(a) Arclin shall provide Safety Data Sheets for each of the products sold hereunder and shall label each of the products as required by applicable government regulations or standards. Customer acknowledges receipt of any applicable Safety Data Sheets and acknowledges that there are hazards associated with the products to be delivered pursuant hereto.

(b) Arclin shall provide available health and safety related information, such as toxicological data, that Customer may reasonably request to enable the Customer to comply with all applicable federal, provincial, and municipal statutes, regulations, rules and ordinances relating to Customer's use of the products.

(c) Customer assumes the responsibility of warning and training its employees, representatives, independent contractors and any other person in any way connected with, using or handling the products to be delivered pursuant hereto of all hazards of which Customer is, reasonably should be or may become, aware, including those which are or may in the future be disclosed in the Material Safety Data Sheets.

#### **12. PAYMENT/CUSTOMER'S CREDIT**

(a) Payment terms are Net Thirty (30) days from the date of the invoice from Arclin. If Customer fails to make any payment due hereunder within ten (10) days of due date of such payment, a written notice of default will be provided to Customer. If Customer fails to remedy the situation within five (5) days, then Arclin shall have the exclusive right to withhold or cancel any order or shipment.

(b) If the financial position of Customer becomes impaired or unsatisfactory to Arclin, or Customer is in default to Arclin under these Terms and Conditions or any other agreement, (1) Customer shall, at Arclin's election and specification, give advance cash payment or satisfactory security to Arclin; (2) Arclin may withhold any shipment of product until Arclin receives the specified payment or security; and (3) Customer shall not make any deductions (including but not limited to those for alleged damages) from payments then due Arclin under these Terms and Conditions.

#### **13. TAXES**

Unless specifically stated on the face of the Arclin price sheet and/or invoice to which these Terms and Conditions are attached, prices set out exclude customs duties, sales taxes or other charges levied directly upon the production, sale or transportation of the goods sold hereunder. Any prices that include such customs duties, sales tax and charges will be based on rates in effect on the date hereof and may from time to time be increased or decreased by any increase or decrease in such rates after such date.

#### **14. CONFIDENTIALITY**

All proprietary and confidential information exchanged between Arclin and Customer in connection with the activities contemplated herein, whether in oral, written or other form (including allowing the other party to observe its operations), including but not limited to pricing information, data, trade secrets or know how, processes, methods, concepts, ideas, programs, equipment, technology, apparatus, prototypes, business plans and sales information shall be treated as confidential information of the disclosing party, and the receiving party shall not, during the term of these Terms and Conditions, or for a period of five (5) years after termination of Terms and Conditions, use such information for any purpose other than in furtherance of Terms and Conditions, or disclose such information to any third party without the prior written approval of the disclosing party, unless such information: (i) has become public knowledge through no fault of the party receiving such information; (ii) comes to such party from a third party under no obligation of confidentiality with respect to such information; (iii) was in the possession of the receiving party prior to the date of disclosure; (iv) was independently developed by the receiving party, without reference to any information or materials disclosed by the disclosing party, as evidenced by the receiving party's written records; or (v) is required to be disclosed by law, regulation or legal process, provided that the party so required to disclose information shall give the other party sufficient notice of the proposed disclosure to seek a protective order for such information. The parties agree that a violation by either party of the provisions of this section 14 would cause irreparable injury to the other party, and there is no adequate remedy at law for such violation. Accordingly, the parties



hereto agree that, notwithstanding anything to the contrary herein, each party shall have the right in addition to any and all other remedies available at law or in equity, to equitable relief, including but not limited to the right to specific performance and to enjoin the other party in a court of equity from violating such provisions (without the necessity of the posting of any bond or similar requirement), and the parties hereto hereby waive any and all defenses they may have on the ground of damages as an adequate remedy at law. The existence of this right shall not preclude any other rights and remedies at law or in equity which the parties may have.

#### **15. DOMESTIC SALE OF GOODS LAWS**

Domestic sale of goods laws, and not the United Nations Convention on Contracts for the International Sale of Goods, shall apply to these Terms and Conditions.

#### **16. CHOICE OF LAW**

**THESE TERMS AND CONDITIONS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICT-OF-LAWS PRINCIPLES.**

#### **17. WAIVER**

If either party hereto waives any default by the other under these Terms and Conditions or waives the performance of any provision hereof, such waiver will not constitute a waiver of any other default or of the performance of any other provision of these Terms and Conditions by the other, nor a continuing waiver of the same default or of the subsequent performance of the same provision of these Terms and Conditions, unless the waiver states specifically that it will continue to the completion of these Terms and Conditions.

#### **18. RIGHTS CUMULATIVE**

All rights and remedies of Arclin and Customer under these Terms and Conditions are in addition to other rights and remedies and are cumulative, not alternative.

#### **19. TRANSFER AND ASSIGNMENT**

Customer may not transfer or assign these Terms and Conditions without Arclin's written consent (which consent shall not be unreasonably withheld).

#### **20. HEADINGS**

All headings in these Terms and Conditions are for convenience of reference only and shall not be deemed part of the content of these Terms and Conditions or affect the meaning or interpretation of these Terms and Conditions.

#### **21. TOTAL UNDERSTANDING**

These Terms and Conditions and any price sheets and/or invoices constitute the entire understanding between the Customer and Arclin with respect to the subject matter hereof. Except as set forth in Section 22, these Terms and Conditions will be considered the final agreement between Customer and Arclin, and no other document will supersede, modify or supplement these Terms and Conditions, including but not limited to, a Customer purchase order or other document issued by Customer regarding a purchase from Arclin, unless Customer and Arclin specifically agree in writing that such document supersedes, modifies and/or supplements the terms of these Terms and Conditions.

#### **22. AMENDMENT**

These Terms and Conditions may be modified, superseded or otherwise altered by Arclin at any time, notwithstanding any terms or conditions that may be contained in any purchase order, supply agreement, acknowledgment or other document or instrument received, and such amended terms shall apply to all future orders of products once the amended Terms and Conditions are provided to Customer.

#### **23. LANGUAGE**

The parties hereto have expressly required that these Terms and Conditions and all documents, agreements and notices related hereto be drafted in the English language.

Effective: July 2017