

PRIMEX'S SALES CONFIRMATION FORM

THE SALE OF THE GOODS DESCRIBED ON THE FACE HEREOF OR IN ANY SALES CONFIRMATION FROM PRIMEX (THE "GOODS") IS UPON THE FOLLOWING TERMS AND CONDITIONS, WHICH TOGETHER WITH THE PROVISIONS SPECIFIED ON THE FACE HEREOF SHALL CONSTITUTE THE ENTIRE CONTRACT BETWEEN PRIMEX AS SELLER AND YOU AS BUYER:

1. CONTRACT

- (a) The formation, validity, construction and performance of this Contract shall be governed by and construed under the laws of the State of Indiana, U.S.A., without reference to the conflict law principles thereof. Unless the context otherwise requires, ICC Incoterms as prevailing on the date of this Contract shall govern the trade terms herein.
- (b) This Contract shall become binding and enforceable against Buyer when (i) signed or accepted by Buyer or its agent, (ii) signed and delivered by Seller to Buyer unless Buyer gives Seller written notice of objection to its contents within 10 days after receipt hereof, (iii) any instructions have been given to Seller as to delivery or specifications of the Goods, (iv) the L/C has been opened or (v) Buyer has paid for or accepted delivery of any part of the Goods, whichever is earlier.
- (c) This Contract contains the entire agreement between the parties and supersedes any prior or contemporaneous discussions or agreements (including Buyer's purchase order, terms & conditions or contract) as well as usage of trade or course of dealing.
- (d) All sales are final upon the acknowledgement by Primex and the terms of this Contract (and any order received by Seller) may not be waived, canceled or modified except by a writing executed by an authorized representative of Seller.

2. PRICE; QUANTITY

- (a) Prices and payment terms quoted herein are not subject to any discount, rebate or modification except as specifically stated herein.
- (b) If the Goods are bulk goods, the quantity stipulated on the face hereof shall be subject to a variation of plus or minus 10% at Seller's option.

3. PAYMENT

- (a) Payment from Buyer shall be deemed to be duly made when Seller has actually received such payment in the currency stipulated on the face hereof, without recourse of any party.
- (b) Any payment received from Buyer may be applied by Seller against any obligation owing by Buyer to Seller under this or any other contract, regardless of any statement or condition appearing thereon or referring thereto.
- (c) In case payment for the Goods is to be made by a letter of credit, promptly after the date of this Contract, Buyer shall establish in favor of Seller an irrevocable, confirmed and transferable at sight letter of credit satisfactory to Seller ("L/C").
- (d) The prices stated are exclusive of any federal, state, municipal or other taxes now or hereinafter imposed with respect to the Goods. Such taxes shall be separately itemized on Seller's invoice and paid by Buyer.
- (e) All amounts payable by Buyer shall be made promptly without set-off, counterclaim, recoupment or other withholding.
- (f) In the event Buyer fails to make any payment when due, Buyer shall pay overdue interest to Seller on any overdue amount from the due date until the date of Seller's actual receipt of full payment, at the prime rate of Citibank N.A., New York, U.S.A. plus 5% per annum or the maximum legal rate of interest available in Buyer's country or state, whichever is lower.
- (g) All banking charges including acceptance, payment, confirming and collecting commissions, and stamp fees shall be borne by Buyer.

4. ADJUSTMENT TO PRICE AND TERMS

At any time prior to shipment, Seller may, upon written notice to Buyer, change the price, transportation or payment terms specified herein effective on the date set forth in such notice. Buyer's failure to make written objection of any such change within 10 days of such notice shall be deemed acceptance thereof. If Buyer does make objection within 10 days thereof, Seller shall notify Buyer of Seller's election to either terminate this Contract or to supply Buyer as in effect immediately prior to the announced change. Seller reserves the right, without any liability, to terminate this Contract on written notice if any governmental authority in any way restricts or limits Seller's price or any payment to Seller.

5. INCREASED COSTS

If Seller's costs of performance are increased after the date hereof by reason of any (i) increased or additional taxes or other governmental charges, freight rates (including any freight surcharge), insurance rates (including War Risk) or duty/tariff rates, (ii) unforeseen increase in the cost of the Goods to Seller, (iii) Force Majeure events described herein or (iv) change in exchange rates, Buyer shall compensate Seller for such increased costs immediately upon Seller's demand. The amount of such increase as computed by Seller shall be conclusive.

6. BUYER'S CREDIT

- (a) Sales on credit are subject to final written approval of Seller based on information requested of Buyer and available in the marketplace. Seller may rescind such credit at any time with or without notice to Buyer.
- (b) Seller reserves the right, upon notification to the Buyer, to require from the Buyer, before shipment is made and/or delivered, payment in cash or adequate security from Buyer that is satisfactory to Seller. Buyer's failure to make such payment or provide such security shall allow Seller to utilize any and all rights of a seller under the UCC, including, but not limited to, refusal to deliver the Goods, cancelling the order, selling the Goods elsewhere and holding Buyer liable for any and all costs and deficiencies.
- (c) If Seller believes that any amount due or to become due to Seller will not be duly paid, upon Seller's request, Buyer shall provide adequate security satisfactory to Seller covering such amounts.
- (d) Buyer shall promptly notify Seller of any material changes in Buyer's ownership, creditworthiness and financials.

7. DELIVERY

- (a) Unless specified on the face hereof, Goods are sold EXW Seller's plant and acceptance by a common carrier shall constitute a delivery to Buyer, upon which title and risk of loss shall pass, subject to Seller's rights as an unpaid vendor including stoppage in transit. For security purposes, Seller shall have the option to retain title to the Goods until Seller receives full payment therefor. Goods invoiced and held at Buyer's request at any place, for whatever reason, shall be at Buyer's sole risk and account.
- (b) Delivery of any installment of Goods within 30 days after the date specified therefor shall constitute a timely delivery.
- (c) In case Seller is responsible for arranging transportation hereunder, the timing of the shipment shall be subject to shipping space being available. In other cases, Buyer shall provide necessary shipping space on berth terms and give shipping instructions in a timely manner. Otherwise, Seller may make such shipping arrangements including prepayment of freight for Buyer's risk and account, without prejudice to Seller's other rights.
- (d) Transshipments and partial shipments shall be allowed, at Seller's option. In case of partial shipments, each lot shall be regarded as a separate and independent contract. The date of the Bill of Lading (or the receipt by a common carrier) and the description of the Goods in a Quality Certificate or similar document shall be accepted as conclusive of the date of shipment and of the quantity, weight and quality of Goods.
- (e) All costs, expenses and damage in connection with discharge of the Goods, including demurrage, shall be borne by Buyer.
- (f) Buyer shall furnish Seller with necessary instructions for packing, marking and/or other arrangements, if any, in time for preparation or shipment of the Goods. If Seller has not timely received any particulars relating to the manner of shipment, such particulars shall be arranged by Seller at its sole discretion.

8. INSURANCE

If Seller is required to provide marine insurance, such insurance shall be provided for an amount equivalent to 100% of Seller's invoice amount, covering marine insurance of "Free from Particular Average (F.P.A.);" unless otherwise agreed. Any additional insurance requested by Buyer, if available, shall be for Buyer's account and shall be added to the invoice amount, for which the L/C shall provide accordingly. If Buyer is to provide marine insurance, the L/C shall exempt Seller from providing insurance certificates.

9. WARRANTY; CLAIMS; LIMIT OF SELLER'S LIABILITY

- (a) Seller warrants that Goods are as described on the face hereof and will be free from defects in material and workmanship for a period of 90 days from the respective dates of delivery or such shorter period as is consistent with normal industry practice. Any model or sample which may have been shown to Buyer was used merely to illustrate the general type and quality of the Goods. The aforesaid warranty is only for Buyer's benefit and may be enforced only by Buyer.
- (b) Seller shall not be liable for normal manufacturing defects, customary variations from quantities or specifications, inherent defects or any damage or deterioration in quality or loss in weight during transit or due to natural causes.
- (c) The foregoing warranties shall not apply to Goods which have been modified, misused, neglected or improperly installed or operated, or which fail to meet the warranty as a result of acts or omissions of persons other than Seller.
- (d) Claims of late delivery are barred unless made prior to delivery of Goods. **IN THE EVENT OF LATE DELIVERY OR NON-DELIVERY, SELLER'S LIABILITY SHALL NOT EXCEED THE FAIR MARKET VALUE OF THE GOODS IN QUESTION ON THE CONTRACT DATE OF DELIVERY LESS THE CONTRACT PRICE OF SUCH GOODS.**
- (e) Buyer shall inspect the Goods immediately upon receipt thereof. Any claim for shortage must be made within 10 days after Buyer's receipt of such Goods. **ALL OTHER CLAIMS OF ANY KIND ARE BARRED AND DEEMED WAIVED UNLESS MADE IN WRITING (TOGETHER WITH SUPPORTING EVIDENCE INCLUDING CERTIFICATES OF INDEPENDENT THIRD PARTIES) DELIVERED TO SELLER WITHIN 10 DAYS AFTER BUYER LEARNS OR SHOULD HAVE LEARNED OF THE ALLEGED DEFECT GIVING RISE TO THE CLAIM.** Buyer shall at its cost promptly make such Goods available to Seller for examination at a place convenient to Seller. In no event may Buyer assert a claim for any reason whatsoever after the Goods are used, sold, processed or altered, or if Buyer is in default of any of the terms herein.

(f) Any Goods repaired or replaced hereunder shall be subject to the same warranties, the same conditions and the same remedies as the original Goods, provided that the warranty period therefor shall be limited to the balance of the applicable warranty period relating to the repaired or replaced Goods.

(g) **THE EXPRESS WARRANTIES CONTAINED HEREIN ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(h) **BUYER'S EXCLUSIVE REMEDY SHALL BE FOR ACTUAL DAMAGES DIRECTLY SUSTAINED BY BUYER AND THE TOTAL AGGREGATE LIABILITY OF SELLER AND ITS SUPPLIERS TO BUYER, SUBSEQUENT PURCHASERS AND END-USERS FOR ANY LOSS, DAMAGE OR CLAIM, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND LIABILITY WITHOUT FAULT) OR OTHERWISE ARISING FROM OR RELATING TO ANY GOODS, OR OTHERWISE SHALL NOT, IN ANY EVENT, EXCEED THE LOWER OF (i) THE DIFFERENCE BETWEEN THE CONTRACT PRICE AND THE FAIR MARKET VALUE OF GOODS ACTUALLY DELIVERED OR (ii) THE COST OF THE REPAIR OR REPLACEMENT (AT SELLER'S OPTION) OF SUCH GOODS (OR DEFECTIVE PART THEREOF). IN NO EVENT SHALL SELLER AND ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE DAMAGES. SELLER SHALL NOT BE LIABLE FOR (AND BUYER ASSUMES RESPONSIBILITY FOR AND SHALL INDEMNIFY SELLER AGAINST LIABILITY FOR) ANY PERSONAL INJURY AND/OR PROPERTY DAMAGE ARISING OUT OF THE HANDLING, POSSESSION, USE OR SALE OF GOODS (OR PRODUCTS MADE THEREFROM) BY BUYER OR OTHERS.**

(i) Buyer shall advise its customers in writing of the provisions contained herein with respect to force majeure and the limitations on the liability of Seller, before such customer executes any contract for the purchase of Goods.

10. FORCE MAJEURE

(a) In no event shall Seller be liable for non-delivery, delay in delivery, destruction or deterioration of the Goods, or for any failure or delay in the performance of this Contract arising directly or indirectly from acts of God, war, threat of war, hostilities, civil commotion, governmental laws, orders or regulations, actions by governmental agencies, fire, explosion, accidents, labor disputes, trade and other restrictions, shortage or control of energy supplies or raw materials, inability of Seller to purchase materials or energy at a commercially reasonable price, a default by Seller's supplier, unavailability or delay of transportation or other similar or dissimilar circumstances affecting Seller or any entity directly or indirectly connected with the sale, manufacture or delivery of the Goods or components thereof, and Seller's time for performance shall be extended for a period not less than the period of the delay. Seller may at its option and without liability or loss extend the time of delivery of the Goods or cancel this Contract or the portion so affected. The foregoing provisions shall apply even though such cause may occur after the performance by Seller has been initially delayed for other causes. Notwithstanding the foregoing, Buyer shall not be excused by whatever reason from any obligation to pay money when due.

(b) In the above circumstances, Seller may allocate its available supply of Goods, without obligation to purchase similar goods from other sources, among itself and its customers, including those not under contract, on such basis as it determines to be reasonable. Except to the extent of cancellation of deliveries or allocations of supply hereunder, this Contract shall remain unaffected.

(c) In the event of Buyer's inability to accept the delivery of Goods by reason of any of the foregoing events, Seller at its option may cancel this Contract without liability to Buyer or extend the time for delivery originally specified for a period equal to the period of Buyer's disability.

11. INTELLECTUAL PROPERTY

(a) **SELLER SHALL NOT BE LIABLE FOR ANY ALLEGED INFRINGEMENT OF OR CLAIM IN ANY JURISDICTION RELATING TO ANY PATENTS, MODELS, TRADEMARKS, TRADE NAMES, DESIGNS, COPYRIGHTS OR ANY OTHER INTELLECTUAL PROPERTY RIGHTS IN RELATION TO THE GOODS OR CONTAINERS, AND ANY CONSEQUENCES OF SUCH CLAIM SHALL BE BORNE BY BUYER.** Nothing herein may be construed as passing the ownership or giving the right of use of any intellectual property rights, and such ownership and right is expressly reserved to the lawful owner(s) thereof.

(b) If an infringement claim arises out of compliance with Buyer's designs, specifications, brand names, trade names, patents or labels or out of any addition to or modification of the Goods or any combination thereof with other products after delivery by Seller, or from use of the Goods in a process or system specified by Buyer or any of its customers, Buyer shall indemnify and hold Seller harmless from and against all claims, losses or liabilities arising therefrom.

12. SELLER'S REMEDIES

(a) In the event (i) Buyer or any entity affiliated with Buyer fails to perform any of its obligations under this or any other contract with Seller or any of its affiliates, (ii) of the death or insolvency of Buyer, (iii) of any dissolution, bankruptcy, reorganization or similar proceeding instituted by or against Buyer, (iv) of any other adverse condition affecting Buyer or its affiliates or (v) Seller deems itself insecure with respect to Buyer's performance hereunder, Seller shall have the right to (1) stop and/or suspend without notice the performance of any or all of its obligations under this and/or any other contract with Buyer, (2) extend the time of delivery hereunder, (3) stop the Goods in transit, (4) hold or dispose of any or all of the Goods (including those bearing Buyer's logos or other marks) for Buyer's risk and account and/or (5) cancel forthwith this and/or any other contract with Buyer. In addition, all sums owing to Seller under this and any other contract with Buyer shall immediately become due and payable without notice or demand and Buyer shall be liable to Seller for any loss and damage arising therefrom.

(b) Any property held for Buyer or its affiliates which is in the possession of Seller or any of its affiliates (whether paid for or not) shall be deemed security for Buyer's obligations hereunder.

(c) All of Seller's rights specified herein or available to Seller at law or equity are cumulative. No failure, delay or partial exercise of any right hereunder and no course of dealing shall operate as a waiver of any of Seller's rights.

(d) Seller may at any time set off any amounts payable to Buyer with amounts receivable from Buyer and/or its affiliates.

13. JURISDICTION; ARBITRATION; CERTAIN LIMITATIONS

(a) Any claim or controversy arising out of or relating to this Contract, or any of the transactions contemplated hereby, or any of the Goods ("Controversies"), shall be brought exclusively in the State or Federal Courts located in the counties of Wayne or Marion within the State of Indiana, U.S.A. The parties each hereby submit to the personal jurisdiction of said Courts for that purpose. Service of any process in such suit may be effected by any manner authorized by such court or, in lieu thereof, by certified mail to the party to be served. Any judgments of such courts may be enforced in any court having jurisdiction of the parties or the subject matter. BUYER AND SELLER HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING AND AS TO ANY CONTROVERSIES (WHETHER BASED UPON CONTRACT, TORT, VIOLATION OR LAW OR OTHERWISE).

(b) At Seller's sole and exclusive option, and without waiver of Seller's ability to secure injunctive relief in aid of arbitration and regardless of whether either party shall have previously commenced suit pursuant to subparagraph (a) above, any Controversies shall be settled by an arbitration proceeding to be conducted in the counties of Wayne or Marion within the State of Indiana, U.S.A. in accordance with the commercial arbitration rules of the American Arbitration Association and the award of the arbitrators shall be final, binding and conclusive on the parties. Judgment upon the award may be entered in any court having jurisdiction of the parties or the subject matter. The arbitrators shall not have the power to change, modify or alter any express provision of this Contract or to render an award which has such effect and to that extent the scope of their authority is limited.

(c) **BUYER MAY INSTITUTE A PROCEEDING AGAINST SELLER ONLY WITHIN ONE YEAR AFTER THE SHIPMENT OF THE GOODS, AND FAILURE TO DO SO SHALL CONSTITUTE A WAIVER BY BUYER OF ALL SUCH CLAIMS.**

14. EQUAL CREDIT OPPORTUNITY ACT NOTICE

The Federal Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has, in good faith, exercised any right under the Consumer Protection Act. The federal agency that administers compliance with the law concerning this credit is the Federal Trade Commission, Division of Credit Practices, 6th & Pennsylvania Avenue, NW, Washington, DC, 20580.

15. MISCELLANEOUS

(a) This Contract shall be binding upon and inure to the benefit of the respective successors and assigns of the parties, provided that Buyer shall not assign or transfer any of its rights and obligations hereunder without the prior written consent of Seller.

(b) If any provision hereof is invalid or unenforceable in any jurisdiction, then, to the fullest extent permitted by law (i) the other provisions hereof shall remain in full force and effect in such jurisdiction and shall be liberally construed in favor of Seller in order to carry out the intentions of the parties hereto as nearly as may be possible and (ii) the invalidity or unenforceability of any provision hereof in any jurisdiction shall not affect the validity or enforceability of such provision in any other jurisdiction.

(c) In any action to enforce this Contract, Seller shall be entitled to reasonable attorneys' fees in addition to any other relief to which Seller may be entitled.

(d) The headings in this Contract are for purposes of reference only and shall not affect the meaning hereof.