

Standard Terms and Conditions for Sale of Goods IREKS NORTH AMERICA Ltd.

- 1. Definitions and Interpretation; Application of Terms**
- 1.1 The following words have the following meanings:
- “**Additional Costs**” has the meaning ascribed to it in Section 8.1 hereof.
- “**Approved Description**” has the meaning ascribed to it in Section 2.2.
- “**Business Day**” means a day between Monday and Friday, inclusive, on which banks in the City of Toronto are open for business to the public.
- “**Buyer**” means any person who purchases Goods from the Company.
- “**Company**” means IREKS North America Ltd.
- “**Confirmation**” means a confirmation of an order of the Buyer provided by the Company or its duly authorized representative orally or in writing.
- “**Damage**” has the meaning ascribed to it in Section 5.5 hereof.
- “**Force Majeure**” has the meaning ascribed to it in Section 5.4 hereof.
- “**Goods**” means any goods, including replacements and proprietary products and special order products, agreed in the Sales Agreement to be supplied to the Buyer by the Company.
- “**Promotional Specifications**” has the meaning ascribed to it in Section 2.1 hereof.
- “**Sales Agreement**” means these Terms and any agreement or arrangement between the Company and the Buyer for the purchase and sale of Goods.
- “**Terms**” means these general terms and conditions of sale of the Company.
- “**Warranty Period**” means the period from the receipt of the Goods to the “best before” date marked on each product ingredient, unless expressly extended or varied by the Company.
- 1.2 Use of the singular includes the plural and vice versa.
- 1.3 Use of any gender includes the other genders.
- 1.4 The index and headings are included for convenience only and do not affect the construction of these Terms.
- 1.5 Any reference to persons includes natural persons, partners, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality).
- 1.6 Subject to any variation under Section 1.7, the Buyer acknowledges that these Terms shall govern the sale by the Company to the Buyer of all Goods, as well as all subsequent transactions between the Company and the Buyer, pursuant to a Sales Agreement. In the event of any inconsistency between the terms and conditions contained in any other document and these Terms, these Terms shall prevail unless otherwise agreed upon in writing by the Company or its duly authorized representative. The Company shall not be bound by any terms and conditions affixed to the Buyer’s purchase order or other procurement documents that are in addition to or inconsistent with these Terms unless such terms are consented to in advance by the Company in writing. Neither commencement of performance nor delivery by the Company shall be deemed or constituted as acceptance of the Buyer’s additional or conflicting terms and conditions. These Terms are subject to change at the Company’s sole discretion at any time.
- 1.7 These Terms apply to all the Company’s sales and any variation to these conditions and any representations about the Goods have no effect unless expressly confirmed by the Company in writing. In entering into a Sales Agreement, the Buyer acknowledges that it does not rely on such representations which are not so confirmed.
- 1.8 Each order for Goods by the Buyer from the Company is deemed to be an offer by the Buyer to purchase Goods subject to these Terms.
- 1.9 All Buyer’s orders must include the delivery date(s), the quantity, quality and any other descriptive specifications of the Goods being purchased.
- 1.10 The Buyer must ensure that the terms of its order and any applicable specifications are complete and accurate.
- 1.11 Unless otherwise specified in writing, all written quotations shall be intended for reference purposes only, constituting neither an offer to sell nor imposing any obligations or liability on the Company.
- 1.12 No order placed by the Buyer shall be deemed to be accepted by the Company unless and until the Buyer receives a Confirmation or until the order is delivered by the Company. The Company reserves the right to accept or decline any order in whole or in part within a reasonable time after receipt of the Buyer’s order, during which time the order may be cancelled, rescheduled or modified by the Buyer. For greater certainty, subsequent requirements of the Buyer for Goods not contained in an original offer to sell or the Buyer’s order must be accepted and confirmed in writing by the Company or its duly authorized representative. If there is an issue with the order such as a shortfall in inventory or price discrepancy, the Company will notify the Buyer prior to delivery.
- 1.13 In the case of orders for proprietary products and/or special order products, the Company will provide a purchase order agreement for acceptance by the Buyer. The Buyer must pay 50% of the order price prior to the Company placing the order with its supplier. These Terms continue to apply to such orders.
- 2. Description**
- 2.1 Unless otherwise expressly agreed upon in writing by the Company, any drawings, descriptive matter, specifications, advertising, samples, catalogues, brochures, depictions, photographs, models, designs, promotional materials in print or electronic format or other descriptive specifications relating to the Goods (“**Promotional Specifications**”) are approximations only and shall not be deemed to form part of any Sales Agreement or be treated as constituting any representation, warranty or condition in relation to the Goods. The Company reserves the right to modify these Promotional Specifications at any time. The Company expressly reserves all right, title and interest in any quotation or Promotional Specifications, which may not be disclosed to any third party nor used for any purpose whatsoever by any third party without the prior written consent of the Company.
- 2.2 In the case of a discrepancy between the Goods actually delivered and a description of Goods provided to the Buyer, the description of the Goods in question provided by the Company, an authorized representative of the Company or published in the Company’s sales catalogue or on its website (“**Approved Description**”) at the time the order was placed shall govern.
- 3. Delivery**
- 3.1 Unless otherwise agreed upon in writing, the Company shall deliver Goods FOB the Company’s warehouse (Incoterms® 2010).

- 3.2 In the case of Goods delivered by the Company, delivery will be considered completed when the Buyer signs the Company's form of proof of delivery or when Goods are delivered to the address specified in the purchase order. In the case of Goods delivered by a common carrier, the common carrier will provide its own proof of delivery. The invoice will be given to the Buyer at the time of delivery.
- 3.3 Selection of the common carrier and route of delivery shall be made by the Company unless specified by the Buyer. Delivery of Goods to a common carrier or a registered courier or pickup of Goods by a common carrier or a registered courier shall constitute delivery to the Buyer and risk of loss shall thereupon pass to the Buyer. In no event shall the Company have any liability in connection with shipment if shipment is made by a common carrier. The common carrier shall not be deemed to be an agent of the Company. The Company shall also have the option of delivering Goods by registered mail at the sole risk and expense of the Buyer.
- 3.4 Unless otherwise agreed upon in writing by the parties, the Company reserves the right to deliver Goods in instalments. Each delivery of Goods shall be treated as a separate transaction and payment thereof shall be in proportion to the overall purchase price stipulated in the Sales Agreement.
- 3.5 Any dates specified by the Company for delivery of the Goods are intended to be estimates and time for delivery must not be made of the essence by notice. If no dates are specified, delivery will be made within a reasonable time.
- 3.6 The Buyer undertakes to take delivery of the Goods on the date and at the quantity and price set forth in the Sales Agreement and Confirmation.
- 3.7 Subject to these Terms, the Company is not liable for any direct, indirect or consequential loss (all three of which terms include, without limitation, loss of profits, loss of business and depletion of goodwill), costs, damages, charges or expenses caused directly or indirectly by any delay in the delivery of the Goods (even if caused by the Company's negligence).
- 3.8 Delay in the delivery of the Goods does not entitle the Buyer to terminate or rescind the Sales Agreement unless such delay exceeds thirty (30) days.
- 4. Changes and Cancellations**
- No Sales Agreement which has been accepted by the Company may be cancelled or amended by the Buyer except with the approval in writing of the Company and on the condition that the Buyer shall indemnify the Company in full and on demand against all loss (including loss of profit), costs (including the cost of all labour and materials used, as well as accounting, legal and clerical costs), damages, charges and expenses incurred by the Company as a result of the cancellation or change.
- 5. Non-delivery**
- 5.1 The quantity of any Goods as recorded by the Company upon delivery is deemed to be the quantity received by the Buyer on delivery unless the Buyer provides conclusive evidence proving the contrary within two (2) days of receipt of the Goods.
- 5.2 The Company is not liable for any non-delivery of Goods (even if caused by the Company's negligence) unless written notice is given to the Company within two (2) days after the date and time when the Goods should, in the ordinary course of events, have been received.
- 5.3 Any liability of the Company for non-delivery of Goods is limited to replacing the Goods within a reasonable time or issuing a credit note at the pro rata Sales Agreement rate against any invoice applicable to such Goods.
- 5.4 The Company shall not be liable to Buyer for any delay or failure to deliver Goods including but not limited to any cause beyond the Company's reasonable control, including, without limitation, any Act of God, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, illness or injury to workers, delayed or failed deliveries by subcontractors, power failure, damage or destruction of production facilities, riot, insurrection, transportation delays or defaults, delay in supply or shortages of fuel, components, raw materials or supplies, labour shortage, acts or omissions of third parties, action of any governmental authority, or any other cause beyond the reasonable control of the Company (the "**Force Majeure**"). In such event, the Company must promptly provide Buyer with written notice of the Force Majeure. The Company's time for delivery shall be extended for a period equal to the time lost by reasons of the Force Majeure without subjecting the Company to any liability or penalty. If the Force Majeure event lasts longer than forty-five (45) calendar days, the Company may immediately terminate all or part of the Sales Agreement, without incurring any liability or penalty, by providing written notice of such cancellation to Buyer.
- 5.5 For greater certainty, the Company shall not be liable for any damages, losses, costs or expenses (collectively, the "**Damage**") resulting from the Company's delay in delivery of Goods to Buyer unless such Damage arises from the gross negligence of the Company. Notwithstanding the foregoing, where the gross negligence of the Company causes a delay in the delivery of the Goods, Buyer's sole remedy shall be the payment of compensation equal to half of a percent (0.5%) per week up to a maximum of five percent (5%) of the value of the portion of the delivery which cannot be used on time for its intended purpose as a result of the delay.
- 6. Risk/Title**
- 6.1 The Goods are at the risk of the Buyer from the time of delivery and/or pick-up except where the Goods are delivered by a common carrier in which case the Goods are at the risk of the Buyer from the time the Goods are handed over to the common carrier.
- 6.2 Ownership of the Goods does not pass to the Buyer until the Company receives in full (in cash or cleared funds) all sums due to it in respect of:
- 6.2.1 the Goods; and
- 6.2.2 all other sums which are or become due to the Company from the Buyer on any account.
- 6.3 Until ownership of the Goods passes to the Buyer, the Buyer must:
- 6.3.1 hold the Goods on a fiduciary basis as the Company's bailee;
- 6.3.2 not destroy, deface or obscure any identifying mark or packaging on or relating to the Goods; and
- 6.3.3 maintain the Goods in satisfactory condition and keep them insured on the Company's behalf for their full price against all risks to the reasonable satisfaction of the Company.
- 6.4 The Buyer may resell the Goods before ownership passes to it solely on the basis that any sale is effected in the ordinary course of the Buyer's business at full market value.
- 6.5 The Buyer's right to possession of the Goods terminates immediately if:
- 6.5.1 the Buyer convenes a meeting of its creditors (whether formal or informal);

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- 6.5.2 the Buyer enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation;
- 6.5.3 the Buyer has a receiver and/or manager, administrator or administrative receiver appointed in relation to bankruptcy or liquidation proceedings;
- 6.5.4 documents are filed with the court for the appointment of an administrator of the Buyer;
- 6.5.5 a resolution is passed or an application presented to any court for the winding up of the Buyer;
- 6.5.6 any proceedings are commenced relating to the insolvency or possible insolvency of the Buyer; or
- 6.5.7 the Buyer is unable to pay its debts as they come due.
- 6.6 The Company may recover payment for the Goods notwithstanding that ownership of any of the Goods has not passed to the Buyer.
- 6.7 The Buyer grants the Company, its agents and employees an irrevocable licence upon notice to enter any premises where the Goods are or may be stored in order to inspect them, or, where the Buyer's right to possession has terminated, to recover them.
- 7. Price**
- 7.1 Unless otherwise agreed by the Company in writing:
- 7.1.1 the price payable for Goods shall be price quoted by the Company. Delivery arrangements will be agreed prior to the Sales Agreement. Any alternative delivery arrangements must be agreed to by the Company;
- 7.1.2 in the case of an order for delivery by instalments the price payable for each instalment shall be the price quoted by the Company current at the date of dispatch of such instalment; and
- 7.1.3 the Company reserves the right to adjust its prices at any time to take account of any variation in the Company's costs since the date of the Company's quotation or (if no quotation is issued) the Buyer's order. The Company accordingly reserves the right to adjust the invoice price by the amount of any increase or decrease in such costs after the price is quoted and the invoice so adjusted shall be payable as if the price set out therein were the original Sales Agreement price.
- 7.2 All prices are exclusive of tax and this will be charged by the Company and will be payable by the Buyer at the appropriate rate.
- 8. Payment**
- 8.1 Unless otherwise stated in writing by the Company, the price of Goods shall be exclusive applicable sale, use or other taxes payable to any governmental authority, as well as any other ancillary costs in respect of which the Company shall be entitled to make additional charges ("**Additional Costs**"). The Company shall not take back packaging for Goods sold to the Buyer.
- 8.2 Until the Company approves the Buyer's credit application, all orders must be paid for on delivery. Following credit approval by the Company, full payment shall be due net thirty (30) days after the date of the Company's invoice or such greater period which may be agreed upon in writing between the Buyer and the Company. Cash discounts for early payment will not be granted without the prior written consent of the Company. Unless otherwise agreed upon in writing by the Company, all payments shall be in the currency of the country of the Buyer and must be made directly to the Company in accordance with the payment options described in the Company's invoice. Freight carrier collection charges will be applied on COD shipments.
- 8.3 Time for payment is of the essence.
- 8.4 No payment is deemed to have been received until the Company receives cleared funds.
- 8.5 The Buyer must make all payments due under the Sales Agreement without any deduction whether by way of set-off, counterclaim, discount or otherwise.
- 8.6 If the Buyer fails to make payment for the Goods and Additional Costs or any part thereof by the due date, without prejudice to any other right or remedy available to the Company, the Company reserves the right to charge interest on the outstanding balance of any overdue accounts at a rate of twenty-four percent (24%) per annum, accruing daily and payable monthly. Where the invoice is payable in instalments, the Company reserves the right to charge interest on overdue instalments at the said rate from the date payment is due to the date of payment. If at any time the Company determines in good faith that Buyer's financial condition or credit rating does not justify a sale on credit or if the Buyer is at any time in default of any undelivered indebtedness or obligation owed to the Company, then the Company may: (i) suspend further delivery of Goods until payment is received in full; and/or (ii) require cash payment in advance of delivery of Goods and/or (iii) refuse to deliver any undelivered Goods whether ordered under the Sales Agreement or not, without incurring any liability to the Company for non-delivery or any delay in delivery; and/or (iv) terminate the Sales Agreement. The Buyer agrees to submit such financial information from time to time as may be reasonably requested by the Company for the establishment and/or continuation of credit terms. Buyer agrees to pay any and all legal fees associated with payment collection.
- 9. Limited Warranty**
- 9.1 For the length of the Warranty Period, except as otherwise specified herein, the Company warrants that: (i) all Goods purchased hereunder are free from defects in material and workmanship; (ii) the Company has good title to Goods and the right to sell them to Buyer; and (iii) Goods shall conform to the written specifications, if any, described in the Company's Approved Description. Upon request and at the expense of the Buyer, the Company shall provide a Certificate of Analysis of the Goods.
- 9.2 The Buyer undertakes to examine the Goods upon receipt, if necessary by a test examination, to check whether the Goods are free of defects and suitable for their intended use (including their mixing with other products not supplied by the Company) and correspond to the ordered description and quantity. The Buyer must notify the Company of any discrepancies immediately.
- 9.3 The Company is not liable for a breach of the warranty in condition 9.1 unless:
- 9.3.1 in the case of obvious or patent defects, the Buyer gives written notice of the defective Goods to the Company and return the Goods within two (2) days of receipt of the Goods and only after receiving written authorization from the Company beforehand;
- 9.3.2 In the case of latent defects, the Buyer gives written notice of the defective Goods to the Company within two (2) days of discovery of such defects but in any event not later than one (1) week after receipt of the Goods by the Buyer; and
- 9.3.3 The Company is given a reasonable opportunity after receiving such written notice of examining such Goods and the Buyer (if asked to do so by the Company) returns such Goods to the Company's place of business at the Company's cost for the examination to take place there.
- 9.4 The Company is not liable for a breach of the warranty in Section 9.1 if the defect arises because the Buyer failed to properly store, handle or use the Goods.

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- 9.5 The returned Goods will only be accepted if they are unopened and in sale-ready condition. Returned Goods may also be subject to a twenty-five percent (25%) restocking fee. No Goods will be accepted for return which are not authorized in advance by the Company.
- 9.6 There are no returns on proprietary products or special orders.
- 9.7 Freight charges for Goods being returned which are not due to the Company's fault or error will be the responsibility of the Buyer.
- 9.8 If the Buyer discovers any defects in the Goods during the manufacturing process, it shall immediately cease such manufacturing and secure the Goods which have not yet been processed in their original packaging which shall be made available for inspection by the Company.
- 9.9 Subject to Section 9.3, if any of the Goods do not conform with the warranty in Section 9.1 the Company will, at its option, make good any defect in the Goods or replace them or refund the price of those Goods at the pro rata Sales Agreement rate. The Buyer acknowledges that these remedies are exclusive and meet their essential purpose and waives any claim to the contrary.
- 9.10 If the Company complies with Section 9.9 it shall have no further liability for a breach of the warranty in Section 9.1 in respect of any defective Goods.
- 9.11 Buyer shall not be entitled to withhold payments on account of warranty claims or other counter-claims not recognized by the Company.
- 9.12 This warranty excludes normal wear and tear and ordinary deviations in size, weight or quality. This warranty also excludes coverage for Goods not manufactured by the Company or its affiliates. Repair or replacement of Goods and/or re-performance or correction of services due to: (i) misuse or abuse; (ii) improper use or maintenance; (iii) failure to observe instructions from the Company; (iv) mishandling or testing by Buyer, its affiliates and agents; (v) negligence; (vi) alteration; (vii) excessive stress; (viii) accident; (ix) improper storage; (x) use of incompatible supplies or cleaning agents; (xi) an event of Force Majeure; (xii) chemical influences; (xiii) foreign object damage; or (xiv) damage in transit, are excluded from the Company's warranty obligations. For greater certainty, the Company shall not be liable to Buyer for consequences arising out of, connected with or resulting from any work undertaken by third parties, Buyer or Buyer's employees without the prior approval of the Company.
- 9.13 The preceding sections set forth the exclusive remedy for all claims based on failure of, or defect in, Goods sold hereunder, whether the failure or defect arises before or during the Warranty Period, and whether a claim, however instituted, is based on the Sales Agreement, indemnity, warranty, tort (including negligence), strict liability or otherwise. Upon the expiration of the Warranty Period, all such liability shall terminate. Unless otherwise agreed in writing by the Company, this warranty shall not be assigned to any third party. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, IMPLIED OR STATUTORY. NO IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE SHALL APPLY. THE COMPANY DOES NOT WARRANT ANY GOODS OR SERVICES OF OTHERS, WHICH BUYER HAS DESIGNATED. THE COMPANY EXPRESSLY EXCLUDES THE IMPLIED CONDITIONS AND WARRANTIES OF FITNESS FOR PURPOSE AND MERCHANTABILITY UNDER APPLICABLE SALE OF GOODS LEGISLATION.
- 10. Limitation of Liability**
- 10.1 The Buyer is deemed to have full knowledge of the nature of the Goods and the Company shall not be liable for any loss or damage arising from the storage, handling, mixing, processing, or use of the Goods, any failure by the Buyer to obtain any permissions, consents, or licenses which may be necessary for the use of, or possession of, the Goods or products incorporating the Goods or from wilful damage, negligence or abnormal working conditions.
- 10.2 THE COMPANY'S LIABILITY WITH RESPECT TO ALL CLAIMS OF ANY KIND, WHETHER BASED ON THE SALES AGREEMENT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, FOR ALL LOSSES OR DAMAGES ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM THE SALES AGREEMENT, OR THESE TERMS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM ANY GOODS FURNISHED UNDER THE SALES AGREEMENT OR ANY EXTENSION OR EXPANSION THEREOF (INCLUDING REMEDIAL WARRANTY EFFORTS), SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE SPECIFIC GOODS THAT GIVES RISE TO THE CLAIM. ALL SUCH LIABILITY SHALL TERMINATE UPON THE EXPIRATION OF THE WARRANTY PERIOD.
- 10.3 IN NO EVENT, WHETHER BASED ON THE SALES AGREEMENT, INDEMNITY, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, SHALL THE COMPANY, ITS EMPLOYEES, AGENTS, SUPPLIERS AND AFFILIATES BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUE, LOSS OF USE OF ANY PROPERTY, COST OF CAPITAL, COST OF PURCHASED POWER OR ENERGY, COST OF SUBSTITUTE EQUIPMENT, FACILITIES OR SERVICES, BUSINESS INTERRUPTION COSTS, DOWNTIME COSTS, INJURY TO PERSON OR PROPERTY OR DEATH, OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES OR LOSSES, AND BUYER WILL INDEMNIFY THE COMPANY, ITS SHAREHOLDER(S), DIRECTOR(S), OFFICER(S), EMPLOYEES, AGENTS, SUPPLIERS AND AFFILIATES AGAINST ANY SUCH CLAIMS FROM BUYER'S CUSTOMERS. IF BUYER RESELLS GOODS SOLD HEREUNDER TO ANY THIRD PARTY WHO IS NOT A CONSUMER OF THE COMPANY'S GOODS, BUYER SHALL OBTAIN FROM SUCH THIRD PARTY A PROVISION AFFORDING THE COMPANY AND ITS SUPPLIERS THE PROTECTION OF THE PRECEDING SENTENCE. Any action or suit by Buyer against the Company relating to the Sales Agreement or the Goods covered hereby must be brought within six (6) months of the date of invoice for such Goods. The parties hereto acknowledge and agree that this is a "business agreement" within the meaning of the Ontario *Limitations Act, 2002*.
- 10.4 If the Company furnishes Buyer with advice or assistance concerning any Goods which are not required pursuant to the Sales Agreement, the furnishing of such advice or assistance will not subject the Company to any liability, whether in the Sales Agreement, warranty, tort (including negligence), strict liability or otherwise.
- 10.5 The provisions of this Section 10 set out the entire financial liability of the Company (including any liability for the acts or omissions of its employees, agents and subcontractors) to the Buyer in respect of:
- 10.5.1 any breach of these Terms; and
- 10.5.2 any representation, statement or tortious act or omission including negligence arising under or in connection with the Sales Agreement.
- 10.6 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Sales Agreement.
- 10.7 Nothing in these Terms excludes or limits the liability of the Company for death or personal injury caused by the Company's gross negligence or fraudulent misrepresentation.

11. Buyer's warranties and indemnity

- 11.1 The Buyer warrants that:
- 11.1.1 it will store the Goods under conditions appropriate to the specific Goods and in compliance with all food and hygiene laws and regulations applicable to the Goods;
- 11.1.2 it will comply with all health and safety laws and regulations applicable to the Goods; and
- 11.1.3 it will comply with all labelling laws and regulations applicable to the Goods.
- 11.2 Buyer shall defend, indemnify and hold Company and its affiliates, and its and their shareholders, partners, members, directors, managers, officers, employees, agents and representatives harmless from any and all liabilities, claims, damages, demands, lawsuits, proceedings and costs (including legal fees) arising out of, pertaining to, relating to, or connected with, directly or indirectly, (i) Buyer's breach of these Terms, (ii) Buyer's or its agents' or representatives' negligence or wilful misconduct, (iii) Buyer's handling, possession, marketing, or distribution of Goods or use of Goods as an ingredient or component of any other item, including by way of example only and not limited to death, personal injury, property damage, or otherwise, to the extent based on, arising out of, or in any way related to Buyer's, or any of its officers', directors', employees', agents', contractors', successors', assigns', or buyers', possession, use or control of the Goods in its manufacturing, production, labelling, marketing or distribution processes and the subsequent marketing and/or sale of products which used or contained the Goods into the retail or wholesale market and/or distribution channels, to the extent the same was not caused by Company's breach of its representation and warranties regarding the compliance of the Goods with all applicable rules, regulations and laws, (iv) claims or demands that the Goods or associated materials, including any trademarks, infringe on any patents, copyrights, trademarks or other intellectual property rights of any third party, (v) claims related to or arising from any formula or labelling supplied by or obtained at the direction of Buyer, including any nutrition facts labelling, or (vi) any documentation requirements, testing, product quality matters that are not specifically set forth in these Terms.

12. Export and Import Requirements

Company shall prepare, maintain and, to the extent that applicable law, regulation or customs authority requires it to do so, submit to the applicable customs authorities, all information and documentation that is necessary to comply with the applicable customs and export and import requirements of each country from which the Goods will be exported and each country into which they will be imported, and Company shall comply with all other applicable customs requirements.

13. Training

In the event that the Company provides the Buyer, its employees, contractors or agents with any training, the Company shall have no responsibility whatsoever for any losses or damage caused to the Buyer, its employees, contractors or agents during or as a result of such training.

14. Assignment

- 14.1 The Buyer may not assign the Sales Agreement or any part of it without the prior written consent of the Company.
- 14.2 The Company may assign the Sales Agreement or any part of it to any person without prior consent of the Buyer.

15. General

- 15.1 Each right or remedy of the Company under the Sales Agreement is without prejudice to any other right or remedy of the Company whether under the Sales Agreement or not.
- 15.2 If any provision of the Sales Agreement is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it will to the extent of the illegality, invalidity, voidness, voidability, unenforceability or unreasonableness be deemed severable and the remaining provisions of the Sales Agreement and the remainder of such provision will continue in full force and effect.
- 15.3 Failure or delay by the Company in enforcing or partially enforcing any provision of the Sales Agreement will not be construed as a waiver of any of its rights under the Sales Agreement.
- 15.4 Any waiver by the Company of any breach of, or any default under, any provision of the Sales Agreement by the Buyer will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of the Sales Agreement.
- 15.5 These Terms and any document relating thereto contain the entire agreement between Buyer and the Company and shall not be altered or amended except by written instrument signed by both parties.
- 15.6 These Terms and any document relating thereto shall be governed by and interpreted according to the laws of the Province of Ontario and applicable federal laws of Canada, without reference to its choice of law rules and excluding the United Nations *Convention on the International Sale of Goods*, and either party shall bring any action that arises out of or relates the Sales Agreement and/or these Terms in any court in Toronto, Ontario, that has jurisdiction over the subject matter.
- 15.7 These Terms and any document relating thereto have been prepared in the English language at the express request of the parties. Les parties exigent, et par les présentes confirment leur demande, que ce contrat et tous les documents y afférents soient rédigés en anglais seulement.

16. Notice

- 16.1 All communications between the Company and the Buyer about the Sales Agreement must be in writing and delivered by hand or sent by email or by prepaid first class post or by facsimile transmission to either party's email address or principal place of business or facsimile number or such changed address or number as is notified to either party by the other.
- 16.2 Communications will be deemed to have been received:
- 16.2.1 if sent by email, at the time stated on the emails;
- 16.2.2 if sent by prepaid first class post, two clear Business Days after the date of posting;
- 16.2.3 if delivered by hand, on the day of delivery; or
- 16.2.4 if sent by facsimile transmission, at the completion of transmission during business hours at its destination or, if not within business hours, at the opening of the next period of business hours. For this purpose business hours means between 8.00 a.m. and 5.00 p.m. Eastern Time on a Business Day.