

WATKINS & ASSOCIATES
TERMS AND CONDITIONS OF SALE

1. GENERAL

- A. Parties. "Seller" means *Watkins & Associates, Inc.* ("Watkins"), selling "Products" and "Buyer" means Watkins' extremes and/or any, end user or owner as the case may be.
- B. These Terms and Conditions of Sale (hereinafter referred to as "Terms and Conditions") supersede all prior representations or arrangements and contain the entire agreement between the parties in connection with Watkins' Products.
- C. All sales and transfer of materials as set forth in the quote and/or invoice attached hereto ("Materials") between Watkins and/or its affiliates ("Seller") and buyer ("Buyer") are subject to and expressly conditioned upon the terms and conditions contained herein, except to the extent varied by express agreement accepted in writing and signed by the parties and referencing the amendment of these Terms and Conditions. By accepting the Materials, Buyer expressly agrees to all of the terms and conditions set forth in these Terms and Conditions, and acknowledges and agrees that the transfer of the Materials to Buyer is expressly conditioned upon such acceptance and shall be solely governed by the terms and conditions set forth in these Terms and Conditions. Notwithstanding the foregoing, to the extent Seller and Buyer have executed a separate written agreement (excluding any Buyer-issued purchase order or similar document) to govern the provision of the Materials (a "Written Agreement"), the terms of the Written Agreement shall take precedence followed by these Terms & Conditions. In the event of a conflict between the Written Agreement and these Terms & Conditions, the Written Agreement shall govern.
- D. The Buyer fully acknowledges and agrees that the terms and conditions of any Buyer-issued purchase order or similar document are hereby null and void. In the event that Seller signs and returns an acknowledgement copy of a Buyer-issued purchase order or similar document or confirms Seller's acceptance of Buyer's purchase order or similar document via email, the parties expressly agree that Seller's signature thereon is being provided solely as an accommodation to Buyer for Buyer's internal purposes, and does not signify Seller's agreement to any terms or conditions contained therein which vary, conflict with, or impose additional obligations to the provisions set forth in these Terms and Conditions. If these Terms and Conditions are considered an offer or part of an offer, acceptance is expressly limited to these Terms and Conditions. Watkins hereby expressly objects to and rejects any and all additional or different terms contained in any other documents submitted by Buyer in connection with the sale of the products. Any conduct by Buyer which recognizes the existence of a contract between Seller and Buyer, including without limitation, acceptance of delivery of or payment for the Products, shall be conclusive evidence of Buyer's assent to these Terms and Conditions.
- E. No subsequent document, purchase order, or conduct, including acts or verbal statements of any Buyer shall purport to modify these Terms and Conditions.

2. DELIVERY

- A. Shipping and delivery dates are approximate and are given by Seller in good faith. Shipping and delivery dates are conditional upon availability of the Products. Buyer shall be responsible for all storage and other costs relating to Buyer's failure to accept delivery pursuant hereto. Watkins shall not be responsible or liable for delays beyond the control of Watkins, including sub-tier supplier delays.

- B. Unless otherwise expressly agreed, in writing, delivery will be made F.O.B. point of shipping. All risk of loss shall pass to Buyer upon delivery of the Products by Seller to a carrier. The method and agency of transportation, unless otherwise agreed to in writing, will be selected by Seller and Seller reserves the right to ship collect. Seller's receipt from the carrier shall be conclusive evidence of delivery.
- C. The weight or quantity stated on Seller's carrier's receipt shall be conclusive evidence of the amount delivered, except in cases of manifest error.
- D. Except for purposes of Sections 3(B) and 7, each delivery shall be treated as a separate contract, and partial deliveries are permitted, unless otherwise specifically agreed to in writing. Failure to make any particular delivery, or any breach of contract by Seller relating thereto, shall not affect any remaining deliveries.
- E. Buyer shall promptly supply all information and assistance required for Seller to execute Buyer's order.
- F. All shipments are FOB Origin. Seller is not responsible for material lost or damaged during transit.

3. PRICE

- A. Except where it is specified that a price stated is "firm", all prices are subject to change without notice and orders will be invoiced at Seller's prices prevailing at the time of the acceptance of the order by Seller. All accounts are payable in U.S. funds, free of exchange, collections or other charges. In cases where price for Products include delivery costs, any increase in such delivery costs shall be for Buyer's account and Buyer agrees to pay Seller such increases. Seller may require payment in advance or at the time of delivery of the Products or any part thereof. Seller reserves the right to cancel Buyer's order in the event that Government regulations prohibit selling the Products at the price or prices indicated to Buyer.
- B. All applicable sales and use taxes, import duties, excises, or any other taxes or charges (except net income and equity franchise taxes) imposed now or in the future by any federal, state, foreign or local authority upon the production, sale, or transportation of the Products shall be for the account of the Buyer. Buyer shall reimburse Seller for any such taxes, import duties, excises, or charges which Seller may be required to pay in addition to the price payable by Buyer for the Products. Buyer may, at its option and where legally permissible, elect to file a proper exemption certificate with Seller and Buyer shall be fully responsible for paying taxes direct to the taxing authority.
- C. Credit terms, if any, both as to time and amount, may be limited or revoked by Seller at any time without prior notice and thereafter the price of all or any part of Products delivered or to be delivered shall be payable in accordance with such, limited credit terms, or, at Seller's option, in cash before shipment or on or after acceptance of delivery ("COD"). In circumstances described in Section 7(a), all unpaid balances owing to Seller from Buyer shall become immediately due and payable, irrespective of whether title to the products has passed to Buyer.
- D. Watkins & Associates requires a fee to be added to the purchase order for custom labeling of any order.
- E. Time of payment is of the essence. Any amounts not paid in accordance with invoiced terms shall bear interest at a rate of one and one-half percent (1.5%) per month or such maximum lesser rate permissible by applicable law.

4. WARRANTY

- A. SELLER MAKES NO WARRANTIES OR REPRESENTATIONS AND HEREBY DISCLAIMS ANY SUCH WARRANTIES OR REPRESENTATIONS, EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Certification by Seller by separate writing as to compliance with specifications, blue prints, part numbers, quantity, tests or otherwise will not create any other warranty by or other obligation of Seller.

- B. SELLER'S LIABILITY WITH RESPECT TO THE PRODUCTS, WHETHER BASED ON CONTRACT, WARRANTY, TORT (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, AND BUYER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT THERETO, SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, THE REPLACEMENT BY SELLER OF ANY NONCONFORMING PRODUCT FOR WHICH CLAIM IS MADE BY BUYER IN ACCORDANCE WITH (c), BELOW OF THESE TERMS AND CONDITIONS, OR TO THE REFUND OF THE PORTION OF THE PURCHASE PRICE PAID BY THE BUYER ATTRIBUTABLE TO SUCH NONCONFORMING PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY OTHER DAMAGES, WHETHER DIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHERWISE. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE PURCHASE PRICE FOR ANY NONCONFORMING PRODUCTS. Seller shall not be liable for buyer's lost profits, anticipated profits or for incidental or consequential damages.
- C. Buyer shall notify Seller at 5395 Webb Parkway, Lilburn, Georgia 30047, Attention: Quality Manager, of any Product which does not conform to Seller's Warranty within a reasonable time after delivery of such Products, but in no event later than thirty (30) days following such delivery. Failure to notify Seller of such nonconformance shall constitute a waiver by Buyer of any claims with respect to such nonconforming Products.
- D. If Products are purchased for resale by Buyer, including incorporation into products owned by a third party, Buyer shall not make any representations or warranties with respect to the Products inconsistent with these Terms and Conditions and shall include in the terms and conditions such resale disclaimers of warranties and limitations of liabilities at least as restrictive as contained in these Terms and Conditions.
- E. Seller's Warranty does not apply to any Products identified as samples, surplus, obsolete or substandard, which are sold "as is, where is."
- F. Seller's recommendations or instructions as to use of any product (including its use alone or in combination with other products) are based upon information believed to be reliable, but Seller makes no warranty or guarantee of results and assumes no obligations or liability with respect thereto. Seller assumes no responsibility for any assembly into which Seller's product is incorporated as a component product or part. Buyer shall be responsible for designing and conducting all testing to determine whether any product is appropriate for its application.
- G. Buyer understands that Seller is not the manufacturer of the products purchased by buyer and the only warranties offered are those of the manufacturer, not Watkins & Associates. Seller provides no warranty for products sold, except that they have been handled in conformance with manufacturer or specification guidelines to preserve conformance. Buyer receives warranty on the products, if any, directly from the manufacturer.

5. FORCE MAJEURE

Seller shall not be liable for any failure to ship and/or deliver Products or to otherwise comply with the contract related thereto (the "**Contract**") as a result of any circumstances whatsoever (whether or not involving Seller's negligence) which are beyond Sellers reasonable control and which prevent or restrict Seller from complying with such Contract.

6. TERMINATION OF OBLIGATIONS

Without limiting the generality of the foregoing, Seller may without liability suspend or terminate (in whole or in part) its obligations under the Contract if Seller's ability to supply, deliver or acquire materials for the production of the Products by Seller's normal means is materially impaired.

7. TERMINATION AND SUSPENSION

- A. Seller may (without prejudice to its other rights or remedies) terminate or suspend Seller's performance of the whole or any outstanding part of any contract while investigating any claim relating to prior shipments (under any contract) of Products or in the event of any of the following circumstances:

- i. Buyer fails to take delivery of or to timely pay for the Products as required herein, or breaches including any threatened breach of any other term of the Contract or any other contract between Buyer and Seller;
 - ii. Buyer becomes bankrupt or insolvent or if a receiver takes possession of any material part of Buyer's assets, or Buyer suffers any foreign equivalent of the foregoing; or
 - iii. Reasonable grounds for insecurity arise with respect to the performance by Buyer of its obligations under the Contract, and Seller so notifies Buyer.
- B. If Buyer provides Seller with security for the Contract price, reasonably acceptable to Seller, within three (3) working days after a notice has been given under Section 7(a)(iii), above, Seller may at Seller's option withdraw the notice.

8. INTELLECTUAL PROPERTY

- A. **Trademarks, etc.:** Buyer shall not use in any manner any trade names or trademarks applied for or used by Seller with respect to the Products, unless permitted by Seller in writing.
- B. **Patents:** Buyer understands that the discussion herein of various processes or compositions is not to be interpreted as representation that they are free from domination of patents owned by others or as a license under any other Corporation's patents that may cover such processes or compositions. Seller recommends that each prospective buyer or user test his proposed application before repetitive use. The products sold by seller may be covered by one or more United States or foreign patents or patent applications.

9. ADVICE OR ASSISTANCE

Recommendations and advice by Seller for the use of Products are furnished gratuitously and are based upon information believed to be reliable. Buyer's use of or reliance upon the same shall be Buyer's risk. Buyer shall not rely on recommendations of seller, and should determine suitability for use through qualification for the intended applications.

SELLER'S SOLE WARRANTY AND LIABILITY WITH RESPECT TO THE SALE OF THE PRODUCTS TO BUYER AND USE OF THE PRODUCTS BY BUYER IS HEREIN SET FORTH IN ITS ENTIRETY.

Any agreement between Buyer and Seller concerning advice assistance given to Buyer by Seller for a separate fee would be contained only in a separate written agreement.

10. HEALTH AND SAFETY AT WORK

- A. Buyer shall ensure that all Products are safely and lawfully received, stored, maintained, used or applied by Buyer, and that Buyer obtains relevant information in Seller's possession relating thereto. Seller maintains and makes freely available to Buyer product safety data information. If such information has not been previously received by Buyer, Buyer should request it.
- B. Buyer shall insure that all appropriate safety information (whether supplied by Seller, Buyer or others) is distributed and drawn to the attention of customers and all others (including Buyer's employees) who require it for the safe handling, installation, use or disposal of the Products.

11. INSTALLATION WARNINGS AND CAUTIONS

Buyer is solely responsible for evaluation, selection and retention of a qualified installer. Installation services are not provided by Seller as part of this sale. Seller expressly disclaims any liability, responsibility, agency, or express or implied warranty with respect thereto including but not limited to the installation of the Products by any such installer.

12. COMPLIANCE WITH THE LAW

- A. To the best of Seller's knowledge and belief the Products that are manufactured in the USA are produced in compliance with the requirements of the Fair Labor Standards Act of 1938, as amended. To the best of Seller's knowledge and belief the Products that are manufactured in

the USA comply as applicable with the Occupational Safety and Health Act of 1970 and the Toxic Substances Control Act of 1976 currently in effect.

- B. Buyer is solely responsible for compliance with all foreign and domestic, federal, state and local statutes, ordinances and regulations applicable to use of the Materials.

13. MISCELLANEOUS

- A. Buyer may not assign its rights under the Contract without Seller's Prior written consent.
- B. All notices required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given (a) on the date of personal delivery, or (b) three (3) days after the date of deposit in either the United States mail or Canada Post, postage prepaid, by certified mail, return receipt requested, or (c) on the date of delivery to an internationally recognized courier service, in each case addressed to Buyer's or Seller's address.
- C. Failure by Seller at any time or times to require strict performance of any provision hereof shall not be considered to be a waiver of Seller's rights with respect to such breach or any succeeding breach of such provision or any other provision of these Terms and Conditions.
- D. If any provision of these Terms and Conditions or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of such Terms and Conditions or the application of such provision to person or circumstances other than those to which it was held to be invalid or unenforceable shall not be affected thereby and shall be valid and be enforceable to the fullest extent permitted by law.
- E. Seller maintains all Quality Records for the warranty period of the product or ten years, whichever is greater.
- F. Any return or order cancellation for Customer Convenience must be approved by a Senior Manager. A restocking fee may apply. The customer is responsible for the original freight charge and the freight back to Watkins & Associates.

14. GOVERNING LAW

The Contract, including, without limitation, these Terms and Conditions, shall be governed by and construed in accordance with laws of the State of Georgia without reference to its conflict of laws provisions. Buyer hereby submits to the exclusive jurisdiction of courts of competent jurisdiction in Gwinnett County, Georgia with respect to any claim or controversy arising out of or relating to this Agreement, or the breach of non-performance of any provision hereof. The United Nations Convention for the International Sale of Goods shall not be applicable to this Agreement and is hereby expressly excluded.

15. ENTIRE AGREEMENT

These Terms and Conditions, together with any Written Agreement(s), constitute and contain the entire understanding and agreement of Seller and Buyer with respect to the subject matter hereof. These Terms & Conditions and any Written Agreement(s) cancel and supersede (a) any and all prior and contemporaneous oral negotiations, understandings and agreements between the parties, and (b) any purchase order or similar document issued by Buyer to Seller, regarding such subject matter. In the event these Terms and Conditions, together with any Written Agreements, is subject to contract interpretation, UCC §2-207 and the knock-out rule shall not apply and Buyer shall be deemed to have assented to such waiver of UCC §2-207 upon acceptance of the Materials. The Section headings herein are for convenience only; they form no part of these Terms and Conditions and shall not affect their interpretation.

16. ATTORNEYS' FEES

In the event of any litigation arising from or related to the Buyer's failure to pay for the materials or the services provided under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred, including staff time, court costs, attorneys' fees and all other related expenses in such litigation. In the event of a non-adjudicative settlement of litigation between the parties or a resolution of dispute by arbitration, the term "prevailing party" shall be determined by that same process.