



## STANDARD TERMS AND CONDITIONS OF SALE AND QUOTATION AGREEMENT

### 1. COMPLETE TERMS.

Unless otherwise provided for in a Supply Agreement, which in case of a conflict will govern, sales and quotations by Powdertech International Corp. (PTI), a Delaware Corporation, are governed by these Standard Terms and Conditions of Quotation and Sale ("Terms and Conditions"). This is an offer conditioned on PTI's customers' ("Buyers") acceptance of all, and only, these Terms and Conditions. This is the final and complete expression of all Terms and Conditions of the agreement. Any representations, promises, warranties, or statements that are not contained here are void. By the action of the submittal of an order, the Buyer acknowledges their terms and conditions associated with their order are not applicable to this order. These Terms and Conditions can be modified, waived, or amended only by a written instrument signed by officers of both Buyer and PTI.

### 2. ORDERS.

Orders will be initiated by Buyer issuing a purchase order ("Order") to PTI. Orders will identify product ("Products"), quantity, description, applicable prices and requested delivery dates. Orders can be submitted via mail, fax, email or off PTI's website.

### 3. QUOTATION OF PRICE.

All written quotations of price ("Quote") made by PTI will be valid for a period of thirty calendar (30) days, unless stated otherwise in the quote, from time Quote has been generated by PTI. The price in Quote shall be on an ex-work manufacturing plant basis. The term, ex-work, shall be interpreted in accordance with INCOTERMS 2010, as amended. PTI reserves the right to amend, or withdraw, a Quote if there is a change in the cost of raw material(s), energy sources or labor. PTI will make every reasonable effort for timely delivery of Quote to customer; however PTI does not assume responsibility for delays in receipt of quotations to Buyer unless otherwise stated hereunder in these Terms and Conditions. PTI under any circumstance will not honor or provide verbal quotations of price.

### 4. TERMS OF PAYMENT.

Terms of payment shall be as set forth on PTI's documentation acknowledging Buyer's Order or documentation provided to Buyer upon Buyer's receipt of Products ("Invoice"). If Buyer fails to pay any sum owed hereunder when due, late charges shall accrue on such sum at the rate of 1% compounded per month, but in no case greater than the highest rate allowed by law. If PTI, in its sole discretion, finds it necessary to employ an attorney to collect any past due sum owed hereunder, it may collect, in addition to any other sum owed hereunder, all reasonable attorney's fees and costs.

### 5. CANCELLATION.

Buyer may, without charge, cancel an Order for products provided such order has not begun production, which includes the ordering of raw material. Buyer requests to cancel an order for products already in process may be accepted by PTI in its sole discretion, which acceptance will be subject to Buyer's payment of reasonable termination charges as determined by PTI.

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**6. RETURNS.**

Buyer may not return Product to PTI.

**7. FINANCIAL RESPONSIBILITY.**

Any credit terms offered by PTI are available only for so long as Buyer complies with all of its obligations under these Terms and Conditions, including, without limitation, the provisions requiring timely payment of Invoices within stated terms. If credit terms are no longer available, Buyer shall pay cash in advance for all purchases. If PTI shall have any doubt at any time as to Buyer's financial responsibility, PTI, at its option and its sole discretion, either may (a) decline to make further shipments except upon receipt of cash in advance or upon giving of other security satisfactory to PTI, or (b) terminate the sale pursuant to the terms of the Cancellation section. Nothing in this paragraph is intended to affect the obligation of Buyer to accept and pay for the Products.

**8. NO DEDUCTION.**

Buyer shall not be entitled to deduct from the price invoiced to it by PTI the amount of any claim asserted by Buyer against PTI, unless such claim shall have been allowed, in writing, by PTI. The provisions of the preceding sentence are of the essence of any transaction.

**9. LIMITED WARRANTY AND LIABILITY:**

Until the Product is further processed by Buyer, PTI warrants that the Products conform to the product's specifications developed by PTI, and to any samples of the Products used by Buyer to determine that Products would be fit for Buyer's intended use. PTI warrants that it has good and marketable title to the Products free of any liens and encumbrances. PTI also warrants that Products were produced in compliance with all labor, health, safety, environmental and similar federal, state, and local laws and regulations applicable to the Products and PTI's manufacture and sale and Products. If PTI notifies Buyer of a known environmental risk associated with the Products and following delivery of the Products there is a change in environmental laws or regulations related to such potential environmental risk then PTI shall have no obligations to Buyer for claims arising out of the changed law or regulations which are based upon the potential environmental risk previously disclosed by PTI to Buyer. This warranty shall continue in force notwithstanding acceptance or rejection by customer.

- 9.1 Buyers shall notify PTI in writing of any warranty claims within one hundred twenty (120) calendar days of the date of delivery to Buyers. Absent timely notice, any claim is barred.
- 9.2 Buyers' sole remedies for breach of warranty shall be, at PTI's sole option, either credit for or replacement of defective Products, together with reimbursement for all costs incurred in any return shipment of defective Products to PTI and in shipment of any replacement Products to Buyers. PTI's obligations under this Section 9 shall survive the expiration of this Agreement.
- 9.3 EXCEPT AS PROVIDED IN THIS AGREEMENT, PTI MAKES NO EXPRESS OR IMPLIED WARRANTIES WHETHER THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR OTHERWISE AND NEITHER PARTY SHALL BE LIABLE FOR ANY INCIDENTAL, SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF THIS AGREEMENT OR FOR ANY OBLIGATIONS ARISING IN CONNECTION THEREWITH, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF ANTICIPATED PROFITS OR LOSS OF USE OR OTHER ECONOMIC LOSS.

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(CONTINUED)

- 9.4 With the exception of claims subject to Section 9.1, any claim made against PTI in connection with this Agreement or the transactions contemplated hereby shall be made within one year of the date the claim arose in order to be valid.
- 9.5 This limited warranty and remedy shall apply to a claim of any kind including, but not limited to, a claim in contract, negligence, strict liability, or otherwise.
- 9.6 Buyers agree to hold harmless, indemnify, and defend PTI and any of its employees, directors, officers, agents, affiliates, or successors from any and all fault, liabilities, costs, expenses, claims, demands or lawsuits asserted by any person or entity by reason of any warranty, express or implied, or remedy for breach of warranty extended by Buyer, which are more favorable than the warranties and remedies set forth herein.

### 10. PRODUCT APPLICATION INDEMNIFICATION.

Buyer agrees to indemnify and hold harmless PTI and any of its employees, directors, officers, agents, affiliates or successors from any and all fault, liabilities, costs, expenses, claims, demands or lawsuits, whether arising in tort or contract, against Buyer and/or PTI, including Attorney's fees, expenses and costs, arising out of the modification or application of PTI's Products to Buyer's designs and/or Products, or PTI's assistance in the application of PTI's Products.

### 11. INTELLECTUAL PROPERTY.

The Parties agree that all Intellectual Property Rights ("IPR") developed by PTI pursuant to this Agreement shall be owned by PTI. IPR shall include but not be limited to, any rights with respect to patents, patent applications and certificates of invention; trade secrets and trademarks, service marks, logos, and trade dress; and similar rights under any laws of a sovereign country or international convention throughout the world which includes Japan and the United States, including the right to apply for registrations, certificates, or renewals with respect thereto, and the rights to prosecute, enforce and obtain damages.

### 12. DELIVERY.

Delivery shall be ex-works manufacturing plant (unless otherwise specified on documentation acknowledging Buyer's order), whereupon title, except for PTI's unpaid lien to the Products, and risk of loss shall pass to Buyer. Selection of routing and carrier is reserved to the Buyer. Any increase in delivery costs resulting from Buyer's instructions to the carrier and any extra costs of utilizing substitute methods of delivery, when the intended type of carrier or loading or unloading facilities become unavailable, shall be for Buyer's account and at Buyers' expense. Every effort will be made to effect delivery at the desired time, but delivery dates are not guaranteed. Notwithstanding the provisions of Section 9.4 to the contrary, claims for shortages or incorrect or damaged Products must be made in writing to PTI within seven (7) calendar days after receipt of shipment. Failure to give such notice shall constitute an unqualified acceptance and waiver by Buyer of all claims for such shortages or incorrect Products.

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### 13. DELAYS, CONTINGENCIES AND FORCE MAJURE.

In the event PTI is forced to shut down or curtail production of the Product or is unable to ship at the time specified because of fire, flood, windstorm, or other act of God, accident, fire, explosion, labor disturbance, act of any government or any agency or subdivision thereof, judicial action, sabotage, insurrection, riot or other act of civil disobedience, act of a public enemy, technical failure, shortage of raw materials, labor, machinery, energy, or transportation, including, but not limited to, railcar shortages or any cause whether or not similar to the causes listed above, beyond PTI's reasonable control, PTI reserves the right, at its option, to cancel this order (in either case without any liability to PTI or Buyer whatsoever). In no event shall PTI be obligated to purchase material from others to enable PTI to deliver Products to Buyer hereunder. During the period of such contingency, PTI shall have the right to allocate its available supply among its buyers in PTI's sole discretion.

### 14. DEFAULT.

Buyer will be in default if (a) Buyer fails to pay to PTI any amount when due under this agreement, (b) Buyer fails for a period of five days after receiving written notice from PTI to fulfill or perform any provisions of this agreement (other than the prior provision relating to due date of payments), (c) Buyer becomes insolvent or bankrupt, or a petition therefore is filed voluntarily or involuntarily and not dismissed within thirty calendar days from filing, or (d) Buyer makes a general assignment for the benefit of its creditors, or a receiver is appointed, or a substantial part of Buyer's assets are attached or seized under legal process and not released within thirty calendar days thereafter. Upon Buyer's default, PTI may, at its option, without prejudice to any of its other rights and remedies, and without demand for payments past due, (a) make shipments subject to receipt of cash in advance, (b) terminate this agreement and declare immediately due and payable the obligations of Buyer for Products previously shipped, notwithstanding any other provision in these terms and conditions, (c) demand reclamation of unpaid Product, or (d) suspend any further deliveries until the default is corrected, without releasing Buyer from its obligations under this agreement. In any event, Buyer shall remain liable for all loss and damage sustained by PTI because of Buyer's default.

### 15. TAXES.

All sales tax, excise taxes, or other forms of taxes levied against this transaction shall be paid by Buyer over and above all other sums Buyer is or may become obligated to pay hereunder. These taxes are in addition to the purchase price of the Products subject to an order. If Buyer is exempt from tax, an original signed tax exemption certificate must be sent to PTI. Without a valid signed tax exemption certificate on file at PTI, all applicable taxes will be charged to the Buyer.

### 16. GOVERNING LAW. VENUE AND JURISDICTION.

All issues concerning the formation, performance, or interpretation of any contract regarding this sale shall be governed by the laws of the State of Indiana, and any dispute between PTI and Buyer will be resolved in the State Courts in Porter County, Indiana, and/or the United States District Court, Northern District, Hammond Division, the prevailing party in that dispute entitled to its costs and reasonable attorneys' fees.

### 17. SEVERABILITY OF TERMS.

If any phrase, clause or provision shall be declared void, the validity of any other provisions shall not be affected thereby.