

## GENERAL TERMS AND CONDITIONS OF SALES SULZER MIXPAC USA INC. (USA)

These terms and conditions can be found at [www.medmix.swiss](http://www.medmix.swiss)

### **1. The Contract**

The following terms and conditions, together with such terms as are set forth on the face of Sulzer Mixpac USA Inc.'s ("Seller") Quotation or Order Confirmation, such plans, specifications or other documents as are incorporated by reference on the face of Seller's Quotation or Order Confirmation and such additional terms as are approved in writing by Seller, shall constitute the entire contract between the parties, and all prior negotiations, proposals, and writing pertaining to this contract are superseded hereby. Herein, Seller and Customer may be individually referred to as the "Party" or collectively as the "Parties" as required by context.

### **2. Title & Delivery**

Title and right of possession to Products remains with the Customer, subject to applicable lien rights of Seller. All orders will be shipped by Seller's preferred shipping method/carrier unless otherwise specified by Customer. Unless otherwise mutually agreed, all orders will be shipped ex-works Seller's facility. Customer shall acquire title to the Products upon shipment from Seller's shipping location/facility and Customer shall bear the risk of loss or damage to the Products upon delivery. The term "delivery" shall be construed in accordance with INCOTERMS 2020.

### **3. Prices & Taxes**

Except as otherwise agreed in writing Seller's prices are net prices and are exclusive of any associated additional costs, including (but not limited to) charges for freight, packing, carriage, customs duties or taxes. Customer and Seller shall each be responsible for the payment of their own respective foreign, federal, state, and local taxes, license fees, tariffs or other governmental charges (collectively "Charges") assessed or payable by law by such Party in connection with an Order. Any such Charges attributable to Customer which Seller may be obligated to collect shall be added to the Seller invoice as a separate charge. To the extent applicable, Customer may provide a valid sales or other tax exemption certificates, which will be accepted by Seller.

### **4. Order Acceptance**

Upon receipt of all shipments, Customer shall inspect the shipment and confirm quantities and kind of Products enclosed. All shipments of orders shall be deemed to include the correct quantity of the Product ordered and the correct type of Product unless the Customer delivers written notice to Seller of any deficiencies or missing items within ten (10) days of receipt of the shipment.

### **5. Terms of Payment**

Except as otherwise agreed, payment shall be due to Seller net thirty (30) days after Customer's receipt of an invoice. Visa and MasterCard are acceptable forms of payment only if the payment is received when the order is shipped. Credit cards may not be used to pay an account balance.

In the event of Customer's bankruptcy or insolvency or in the event any proceeding is brought against Customer, voluntarily or involuntarily, under the bankruptcy or any insolvency laws, Seller shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the Customer and shall receive reimbursement for its proper cancellation charges and expenses. Seller's rights under this paragraph are in addition to all rights available to it at law or in equity. If a customer fails to pay any charges when due or otherwise defaults on its obligations, then Customer shall pay all costs and attorneys' fees incurred by Seller and Seller shall have the right to terminate this Contract immediately upon such nonpayment or default.

### **6. Force Majeure**

Customer and Seller shall each be excused from the performance of their respective obligations under this Contract when and to the extent that such performance is delayed or prevented by any circumstances reasonably beyond its control, including, but not limited to, fire, explosion, acts of terrorism, strike or labor dispute, transport difficulties, raw material shortages or any act or omission of any governmental authority or any group purporting to have authority (separately and collectively referred to as "Force Majeure"). To be so excused, the affected Party must provide

prompt written notice of such Force Majeure to the other party and promptly undertake reasonable efforts to mitigate the conditions giving rise to a claim of Force Majeure.

In the event of an act of force majeure, the delivery date shall be extended for the duration of the delay caused by said act of force majeure. Should the condition of force majeure exceed ninety (90) continuous days, both Customer and Seller may terminate the affected order or part thereof upon (7) seven days prior written notice.

### **7. Compatibility & Functional Application Testing**

It shall be the sole responsibility of the Customer to test the Products for compatibility with the chemical contents that the Customer intends to use and for fitness for the Customer's intended purpose and application. Such testing by the Customer shall include mechanical suitability, chemical compatibility, shelf life and mixing performance with relevant two-component adhesives, coatings and pastes.

Customer is to make all preparations and incur all expenses for said compatibility and functional application testing. Seller will have the right of representation at said inspection and testing but will make no charge for the expense of such representation. Customer's failure to make such compatibility and functional application testing shall be deemed to be a waiver of Customer's right of compatibility and functional application testing.

If Products are integrated as a part or an accessory to another product within the meaning of the applicable law, it shall be Customer's sole responsibility to ensure compliance with any and all regulatory and legal requirements applicable thereto.

### **8. Product Repurchase Returns**

Customer may return unsold, standard (not custom) Products to Seller for repurchase. In order to be eligible for repurchase, the Products must be:

- i. unused;
- ii. in the original box, unopened or tampered with;
- iii. in resalable condition; &
- iv. the Product(s) must be returned within ninety (90) days from the date the Product was shipped by Seller.

Prior to returning any Products, Customer must contact Seller and receive shipping instructions and a return authorization number necessary to facilitate the return. Seller shall provide Customer with credit for returned Products within sixty (60) days of receipt of the Product at Seller's warehouse, less a 15% restocking fee.

The costs of shipping, packaging & handling fees associated with the original order pursuant to which the Products were obtained shall not be reimbursable as part of the repurchase program.

### **9. Ownership of Intellectual Property**

Customer and Seller each acknowledge and agree that nothing in this Contract is intended to give it any rights to the intellectual property or technology of the other Party in existence as of the date of this Contract, and neither Customer, nor Seller, shall acquire any right, title or interest in or to any existing intellectual property (including, without limitation, patents, copyrights and trade secrets) of the other Party.

All discoveries, inventions, developments, improvements and techniques pertaining to Seller's Products (whether capable of patent or like protection or not) which Seller, or employees, agents or subcontractors of Seller may conceive or make, alone or with others, and which may directly or indirectly result from or in the performance of the work by Seller, shall be the sole and absolute property of Seller.

Notwithstanding the preceding, Customer is hereby granted the worldwide right to use such discoveries, inventions, developments, improvements, and techniques for the operation, maintenance, and repair of the Products sold to Customer by Seller.

#### **10. Warranty**

Seller warrants that Seller Products will be free from defects in material, workmanship and design (if of Seller's design) for a period of one (1) year from the date of sale. Seller shall replace and/or repair (whichever remedy is appropriate) any nonconformity or defect in the Seller Products which occurs during the warranty period. Any repaired or replacement Products shall be warranted for a period of one (1) year from the date that the repair is completed or the replacement is provided.

The warranties contained herein will terminate if Customer or a third party undertake inappropriate or improper modifications or repairs of the Products. Excluded from Seller's warranty are deficiencies resulting from normal wear and tear, improper maintenance, failure to observe the operating instructions, or deficiencies resulting from other reasons beyond Seller's control.

SELLER MAKES NO OTHER WARRANTIES OR REPRESENTATIONS OTHER THAN AS SPECIFIED IN THIS CONTRACT. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.

#### **11. Indemnification**

Seller shall indemnify and hold harmless Customer from losses, damages, claims, suits, demands, judgments, and liabilities, including Customer's reasonable attorney fees and expenses (hereinafter individually and collectively referred to as a "Claim"), arising out of this Contract or any Purchase Order issued pursuant hereto. Seller's indemnity obligations shall be to the extent that a Claim is attributable to Seller's negligence or willful misconduct. Any request for contribution or indemnity between Seller and Customer shall be resolved on the basis of each Party's respective percentage of negligence after resolution of the third party Claim on which such request is based

#### **12. Consequential Damages**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, CUSTOMER AND SELLER SHALL NOT HAVE ANY LIABILITY TO EACH OTHER FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE FOR

ANY MATTER WHATSOEVER ASSOCIATED WITH THIS CONTRACT OR ANY PURCHASE ORDER ISSUED PURSUANT TO THIS CONTRACT, REGARDLESS OF WHETHER SUCH LOSS OR DAMAGE IS A RESULT OF BREACH OF CONTRACT, NEGLIGENCE, BREACH OF WARRANTY, STRICT LIABILITY OR OTHERWISE.

#### **13. Limitation of Liability**

EXCEPT FOR EACH PARTY'S THIRD PARTY INDEMNITY OBLIGATIONS INCLUDING CLAIMS BASED ON VIOLATIONS OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS, CUSTOMER'S AND SELLER'S RESPECTIVE LIABILITY TO EACH OTHER WITH RESPECT TO ANY CLAIM WHETHER CLAIMS BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), UNDER ANY WARRANTY, STRICT LIABILITY OR OTHERWISE SHALL NOT EXCEED THE GREATER OF: A) THE PURCHASE ORDER VALUE OF THE PURCHASE ORDER A CLAIM ARISES IN CONNECTION WITH; OR B) TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00). THE PRECEDING LIMITATION OF LIABILITY SHALL NOT APPLY TO DAMAGES WHICH ARE INCURRED DUE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF A PARTY FROM WHOM LIABILITY IS SOUGHT.

#### **14. Miscellaneous**

**Subcontractors:** Seller retains the right to subcontract all or any portion of the work outlined hereunder.

**Assignment:** Neither Party shall assign this Contract without the express written consent of the other Party.

**Severability:** If any provision in this Contract is found to be unenforceable, all other remaining provisions shall remain in full force and effect unless deletion or change of the provision which is invalid or unenforceable would substantially alter the economic effect of this Contract.

**Waiver:** Any delay or failure of Seller to enforce any of the provisions of this Contract or to require compliance with any of its terms at any time shall in no way affect the validity of this contract, or any part, and shall not constitute a waiver of the right of Seller thereafter to enforce any and each such provision.

**Notice:** All notices, demands or other communications between the parties shall be given in writing.

**Governing Law:** This contract shall be governed by and construed in accordance with the laws of the State of New Hampshire.

**Entire Contract:** This Contract, together with the exhibits, schedules and attachments specifically referenced herein, embodies the entire agreement and understanding between Seller and Customer and, except as otherwise specifically stated herein, there are no other contracts, agreements, and understandings either oral or written.