



## TERMS AND CONDITIONS FOR PURCHASE OF PRODUCTS

### DEFINITIONS

The term "Contract" means the written purchase order, contract or agreement which attaches, incorporates or otherwise references these terms and conditions. The term "Company" means Almex USA Inc., or its subsidiary(ies) or affiliate(s) executing this Contract. The term "Seller" means any individual, corporation or other entity who is to supply Products or services purchased by the Company pursuant to this Contract. The term "Products" means the goods, materials, or services sold by Seller and purchased by Company under this Contract.

### PRICE & TERMS

Seller warrants that the prices set forth in this Contract are complete and that no additional charge of any type will be added without Company's express written consent in advance. Seller further warrants that the prices set forth in this Contract are the lowest prices charged for the Products, or substantially similar products, sold by Seller to its other customers. If, after execution of this Contract, but prior to payment by the Company for Products purchased hereunder, Seller (i) sells, or offers to sell, Products, or substantially similar products or services, to another customer at a lower price, (ii) offers a reduction in price to any customer already purchasing Products, or substantially similar products, or (iii) sells, or offers to sell, Products, or substantially similar Products, on commercial terms that are, in Company's reasonable judgment, more favorable than those set forth in this Contract, such lower price or more favorable terms will be applicable to all purchases of Products by Company hereunder. If, at any time during the term of this Contract, Company receives a *bona fide* offer from a third party to supply Products to Company on similar commercial terms, but at a lower price, Company will notify, without providing the necessary particulars of such offer to, Seller, and Seller will, within, fifteen (15) days thereafter, inform Company whether it will match such price for Products purchased hereunder. If Seller does not agree to match such price, Company may, in its sole discretion, elect to purchase Products from such third party, and any obligation of Company to purchase Products from Seller pursuant to the terms of this Contract will be deemed to be waived by Seller to the extent of any such purchases. Upon request of Company, Seller will be required to certify that it is in compliance with the requirements of this paragraph. In addition, Company will have the right to examine and audit, during normal business hours, any and all records, data and documents, in whatever shape or form, including, but not limited to, electronic media, that may contain information relating to Seller's obligations as set forth in this paragraph. Such records will be kept in a form that is clear and accurate and containing content sufficient and adequate to permit the aforementioned audit.

### TAXES

**Seller will bear and pay all applicable taxes of the United States or any state or any foreign government including political subdivisions of any of them, which are based on or measured by net income, gross income or gross receipts including any withholding taxes levied against Seller for the privilege of doing business in a jurisdiction.** If Seller is required by law to collect sales and use tax (including any gross receipts tax imposed similar to a sales and use tax) from the Company on behalf of any taxing jurisdiction, Seller will provide to Company invoices which separately state and clearly indicate the amount of tax and Company will remit any such tax to Seller. Seller will have the responsibility of complying with all applicable foreign, national, state or local laws regarding value added tax and sales and use tax or substitutes therefore including registration, collection of taxes and the filing of returns where applicable. Notwithstanding whether Seller must collect sales and use tax from Company, Seller will state on every invoice the taxing jurisdiction (e.g. country, state and local jurisdiction) in which Products were provided. If applicable, in lieu of payment for any sales and use tax, Seller will accept a properly executed exemption or direct pay certificate from Company. The determination of whether an exemption or direct pay certificate will be submitted to Seller in lieu of payment for any sales and use tax will be made by Company on a location by location basis. With the exception of sales and use tax as described above, all other taxes, however denominated or measured, imposed upon the Seller, or the price or compensation under this contract, or upon the product provided hereunder, shall be the responsibility and liability of Seller.

### INSPECTION AND QUALITY ASSURANCE

All Products will, before delivery, be subject to inspection, tests, and audits by Company or its agent at reasonable times and places. Seller agrees to provide access for Company to its facilities at all reasonable times for such inspection, tests, and audits, and, at no additional cost, to provide all assistance and facilities reasonably necessary to perform the same. Neither the inspection, testing, or auditing of any Products, nor the failure to do so, before delivery to Company shall constitute acceptance of any Products, or relieve Seller from exclusive responsibility for furnishing Products in strict conformance with the Company's specifications. Seller warrants that it has and will maintain an adequate quality control/assurance program with respect to the production and delivery of Products and that it creates and maintains adequate quality control/assurance reports, certificates, affidavits, and other such records relating to the Products. Seller agrees that, upon request and at no additional charge, it will promptly furnish authenticated copies thereof, as well as applicable certificates of conformance and/or compliance acceptable to Company, at the time of, or promptly after, delivery.

### REJECTION

Products will be received subject to inspection and approval by Company after delivery. Upon inspection, Company may give Seller notice of rejection or revocation of acceptance, notwithstanding any payment, passage of title, approval, prior test or inspection. No inspection, approval, test, delay or failure to inspect or test, or failure to discover any defect or other nonconformance, will relieve Seller of any obligations under this Contract or impair or waive any right or remedy of Company with respect to Seller's performance hereunder. If, in Company's judgment, the Products do not conform with the requirements of this Contract, Company will have the right to reject the Products and, in addition to any other rights and remedies it may have, Company may, in its sole discretion: (1) return any or all nonconforming Products to Seller for reimbursement, credit, replacement, or repair as Company may direct; (2) correct, rework, and/or repair the Products with all costs associated therewith to be charged to and paid by Seller; or (3) hold any or all nonconforming Products, at Seller's risk and expense, for disposal or correction according to Seller's instructions. Any Products rejected by Company and returned to Seller will be returned, at Seller's risk and expense, with the cost of packaging, handling, inspection, examination, transportation and any other costs incidental thereto to be charged to and paid by Seller. Such Products will not thereafter be tendered to Company for acceptance unless the previous rejection and requirement of correction are disclosed to Company in writing. All such nonconforming Products that are so remedied will have the same warranty as stated in Section 5 from the date of re-delivery.

### WARRANTY

Seller warrants that all Products will conform to all applicable specifications, drawings, instructions, data, samples, standards and regulations, and will be merchantable, free from defects in design, material and workmanship, will be as described and advertised, of good quality, fit for the intended purposes, and will be free from all liens and encumbrances. These warranties are in addition to all other warranties, express, implied or statutory, which may be applicable. Seller will indemnify, defend and hold Company harmless from any breach of these warranties without prejudice to any other rights or remedies of Company. Limitations on Company's remedies (or disclaimers of warranties) in documents of Seller, or otherwise, will not be effective and are hereby objected to and rejected. All warranties and other provisions of this paragraph will survive inspection or acceptance of, payment for, and use of the Products and completion, termination, or cancellation of this Contract, and will run to Company, its customers, successors, and assigns, and to users of the Products. This transaction will be governed by the Uniform Commercial Code, latest revision, as enacted by the state of California, including all warranty protections (express or implied) and all buyer remedies set forth therein.

### PATENTS

Seller will indemnify, protect, defend and hold harmless Company, its successors and assigns, its customers and the users of Seller's Products from all claims, demands, judgments, settlements, costs, losses, damages and attorney fees incurred as a result of actual or alleged infringement of any patent, copyright, trademark, trade secret, or other actual or alleged intellectual property right of any third party arising from Company's purchase, use or sale of Products supplied under this Contract, and to defend at Seller's expense, including reasonable attorney's fees, any and all suits or actions, based on such claims. All such obligations of Seller to indemnify, hold harmless, protect and defend Company are in addition to Seller's warranty obligations and all other rights or remedies of Company and will survive acceptance and use of, and payment for, the Products, and completion, termination, or cancellation of this Contract.



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**SELLER'S LIABILITY AND INDEMNIFICATION**

Seller will indemnify, protect, defend and hold harmless Company, its successors and assigns from and against all claims, demands, judgments, settlements, costs, losses, damages and attorney fees arising from personal injury, including death, or property loss or damage to Company or to others (including Seller and employees and invitees of Seller and of Company) arising out of or in any manner connected with the production and delivery of, or any defect in, Products supplied hereunder, whether caused by Seller, or a supplier of Seller, or employees or invitees of either of them, and to defend at Seller's expense, including reasonable attorney's fees, any and all suits or actions, based on such claims. WITH RESPECT TO CLAIMS AGAINST COMPANY BY SELLER'S EMPLOYEES, SELLER AGREES TO, AND HEREIN DOES, EXPRESSLY WAIVE ITS IMMUNITY, AS A COMPLYING EMPLOYER UNDER WORKERS' COMPENSATION LAW, FOR ANY AND ALL ACTS OF NEGLIGENCE, WHETHER PASSIVE OR ACTIVE, BUT ONLY TO THE EXTENT THAT SUCH IMMUNITY WOULD BAR OR AFFECT RECOVERY UNDER OR ENFORCEMENT OF THIS INDEMNIFICATION OBLIGATION. This waiver will apply to any immunity conferred upon an employer by any state's constitution or workers' compensation laws with respect to liability for claims asserted against a third party by a seller's employee. The obligations in this Section are in addition to Seller's duty to provide insurance and will not be altered by any limitation on the amount or type of damages, compensation, or benefits payable by Seller under any Workers' Compensation Act, U.S. Longshoremen's and Harbor Workers' Act, or any other employee benefit act.

**INSURANCE**

Seller agrees to maintain the following types of insurance coverage: (a) Workers' Compensation Insurance or qualification as a self-insurer to satisfy the laws of the states which have jurisdiction over Seller's employees. To the extent permitted by law, Seller's Workers' Compensation Insurer or Seller, if self-insured, agrees to waive rights of subrogation against Company; (b) Employers' Liability Insurance for Bodily Injury per accident with limits of not less than \$2,000,000 and Bodily Injury by Disease with limits of not less than \$2,000,000 per policy; and (c) Commercial General Liability Insurance for bodily injury, personal injury and property damage, including coverage for products/completed operations and contractual liability, with combined limits of not less than \$10,000,000 per occurrence. Upon Company's request, Seller will provide Company with written certification, reasonably acceptable to Company, of Seller's compliance with the requirements listed in this paragraph. Seller may satisfy the limits of insurance required herein with any combination of primary and umbrella/excess insurance policies. The insurance requirements in this paragraph are separate and distinct from any other obligations of Seller contained herein, and neither the issuance of any insurance policy nor the minimum limits specified herein will be deemed to limit or restrict in any way Seller's liability arising under this Contract.

**TERMINATION**

Unless otherwise expressly set forth in this Contract, Company may terminate this Contract, in whole or in part, at any time by giving written notice to Seller. After receiving written notice of termination, Seller will immediately cease production and delivery of all Products indicated in the notice of termination. Unless such termination is due to default of Seller or failure of Seller to assure adequate performance, Company will pay Seller, on a *pro rata* basis, for Products delivered as of the date of termination, and for actual, reasonable expenses incurred by Seller for work-in-process up to and including the date of termination, but only to the extent that such expenses do not exceed the prices set forth in this Contract after presentation of relevant documents by the Seller and Company's review and acceptance of the same. Upon such payment, all work-in-process and finished goods for which Company has paid will, at Company's option, become the property of Company and will be released by Seller to Company for pick-up and removal, upon demand. The provisions of this clause are without prejudice to any other rights or remedies of Company, including those resulting from default by Seller hereunder.

**CANCELLATION**

Company will have the right to cancel this Contract, in whole or in part, if the Products are, in Company's judgment, non-conforming or defective or not delivered as scheduled, or if Seller fails to comply with or fulfill any of the terms and conditions of this Contract, or with Company's shipping and billing instructions, or if, in Company's opinion, the credit or ability of Seller to perform this Contract becomes impaired, whereupon Company will have the continuing right to obtain Products from another source with any resulting increase in cost thereof charged to and paid by Seller, all without prejudice to any other rights or remedies of Company and in addition thereto.

**PAYMENTS**

Unless otherwise expressly set forth in this Contract, the terms of payment are net 60 days after Company's receipt of either Seller's valid invoice, or the Products, whichever is later. Payment by Company of an invoice from Seller does not constitute acceptance of the Products covered by the invoice. If the production or delivery of Products covered by this Contract may give rise to mechanics' or other similar liens, payment will not be due and the cash discount period will not commence until Seller has delivered to Company a complete release of all liens arising out of the production or delivery of such Products or receipt in full covering all labor and materials for which a lien could be filed or a bond satisfactory to the Company indemnifying it against any lien. If payments are required to be made under this Contract by Company in a currency other than USD, Seller will provide Electronic Funds Transfer (EFT) instructions to Company and Company will make such payments to Seller electronically, to the extent permitted by law. Company will have the right, at any time, to set off and apply against any monetary obligations that Company owes to Seller hereunder, any obligations that Seller, or any of its parents, subsidiaries or affiliates, may owe to Company.

**CONFIDENTIALITY AND TITLE TO JOINTLY DEVELOPED INTELLECTUAL PROPERTY**

Seller agrees not to disclose or publicize the fact that Company has contracted with Seller, and not to disclose any details, specifications, designs, drawings or other information contained in this Contract, without Company's prior written permission. Unless otherwise generally known to the public, all information disclosed by Company to Seller is confidential and proprietary and Seller agrees that it will not disclose or use such information except for the purpose of performing its obligations under this Contract. All things (such as drawings, documents, etc.) containing such information are the property of Company and are to be delivered to Company upon demand. If the Company participates with the Seller, voluntarily or at the request of the Seller, in the co-development of any product, process, materials, designs, specifications, drawings, features, configurations, sub-systems, etc. for the benefit of the Seller, Company, or Company's customer, the intellectual property generated during such co-development activities will exclusively belong to the Company.

**LIENS**

Seller guarantees that no lien, encumbrance or security interest will be filed by anyone against Company, Company's property or the Products with respect to the Products furnished under this Contract, and Seller agrees to indemnify, protect, defend and hold harmless Company, its successors and assigns from and against all claims, demands, judgments, settlements, costs, losses and damages and attorney fees arising from any such liens, encumbrances or security interests and defend, at Seller's expense, including reasonable attorney's fees, any and all suits or actions, based on such claims.

**INDEPENDENT CONTRACTOR/SAFETY**

Seller is and will remain an independent contractor of the Company. No employee, agent, or representative of Seller or its subcontractors will be deemed to be an employee of Company or in any form of joint venture with the Company. Seller will provide all safeguards, and take all precautions, necessary in connection with the production and delivery of the Products sold hereunder to prevent the occurrence of any accident, injury, death, loss, or damage to any person or property, and will be solely responsible therefor. Seller warrants that all Products delivered hereunder will be produced and delivered in a safe, proper, and workmanlike manner and in compliance with all applicable codes, regulations, laws, standards, specifications and Company requirements concerning safety, performance and otherwise, including, without limitation, any work or services related thereto performed on or off premises controlled by Company. Seller will



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indemnify, protect, defend and hold harmless Company, its successors and assigns from and against all claims, demands, judgments, settlements, costs, losses, damages and attorney fees arising from injury to or by Seller's employees, agents, or representatives or those of its subcontractors in performing any such work or services.

### ASSIGNMENT

Neither this Contract, nor Seller's rights and obligations hereunder, are assignable by Seller without the prior written consent of Company. No such consent or assignment shall release Seller or change Seller's liability to perform all of its obligations under this Contract.

### NO VIOLATION OF LAW

Seller warrants that it will comply with all applicable foreign, federal, state and local laws and regulations in producing and delivering Products hereunder. Upon request, Seller will furnish Company with certificates of compliance therewith. Unless this Contract is otherwise exempted by law, Seller will comply with Executive Order 11246, as amended by Executive Order 11375 (Equal Employment Opportunity) the Rehabilitation Act of 1973, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, the Americans with Disabilities Act, as they have been or may be amended from time to time, and regulations implementing such statutes; and any similar state and local laws and ordinances and the regulations implementing such statutes. If requested by Company, Seller will furnish to Company an executed Certificate of Nonsegregated Facilities. Seller warrants that the Products delivered hereunder were produced at Company facilities complying with all applicable provisions of the Occupational Safety and Health Act and applicable regulations under that Act and agrees to, upon request, provide Company with all explanatory and factual information needed to verify such compliance and to enable Company to comply therewith, and with any other laws and regulations applicable hereto. Seller further warrants that it will comply, where applicable, and without limitation, with all orders, standards, and regulations of the National Highway & Transportation Safety Administration, Federal Aviation Administration, Environmental Protection Administration, Food and Drug Administration, Consumer Product Commission, and Occupational Safety & Health Act Administration.

### ENVIRONMENT, HEALTH, SAFETY AND SECURITY

If Seller, either as principal or by agent or employee, enters upon the property of Company, Seller agrees to comply with Company's rules and regulations, including its environmental, health, safety and security rules and regulations.

### HAZARDOUS AND DANGEROUS GOODS AND MATERIALS

Seller warrants: (1) that any chemical substance or mixture delivered to Company pursuant to this Contract if on the Toxic Substance Control Act inventory, then the premanufacture notice requirements thereof have been satisfied and such chemical substance or mixture is lawfully available for sale and use; (2) that chemical substances or mixtures delivered hereunder will be properly packaged with all appropriate warning labels, instructions for use, and notices, and that, if such chemical substances or mixtures are supplied in bulk, Seller will provide Company with an adequate supply of such warning labels, instructions, and notices for use in Company's facilities; (3) that Seller will supply with, or before, delivery, and at any other time upon Company's request, all information known to Seller with respect to potential hazards, including possible toxic or harmful effects, related to the handling, use, storage, disposal, or transportation of any chemical substances or mixtures delivered hereunder, and any precautions that should be taken to eliminate or reduce to a minimum such hazards; and (4) that Seller will ascertain and furnish all information about Products required by Company to comply with all safety-related laws and regulations (including, without limitation, those relating to applicable right-to-know laws and occupational safety and health acts), and with laws and regulations regarding composition, ingredients, or otherwise, including promptly furnishing to Company upon written request a list of all ingredients therein and the amounts thereof and information concerning any changes in such ingredients thereafter. Seller agrees that it will, upon Company's request, accept the return of unused toxic or hazardous chemical substances or mixtures delivered to Company pursuant to this Contract.

### IMPORT/EXPORT COMPLIANCE

If any Products are to be delivered into any other country, the Seller will be responsible for strict compliance with all legal, regulatory and administrative requirements associated with any importation or exportation of such Products, including obtaining any required licenses or approvals and, unless otherwise agreed between the parties elsewhere in this Contract, the payment of all associated duties, taxes and fees.

### DUTY DRAWBACK

Upon request of Company, Seller will cooperate with Company in seeking any duty drawback available to Company in connection with export by Company of any Products imported by Seller and provided to Company under this Order, or incorporating, or manufactured by Company from, such Products. Without limitation, Seller will (i) provide all information with respect to such imported Products necessary to complete any such drawback claims to be filed by Customs, including U.S. Customs Service entry numbers, dates of entry, quantities and description of goods, customs values, and rates and amounts of customs duties paid by Seller, and (ii) execute applicable certificates of delivery and other documents as necessary in connection with Company's drawback claims.

### CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES

In no event will Company be liable for consequential, incidental, or special damages of any kind. Any action on any claim against Company must commence within one year after the cause of action has accrued or the right to bring such action will be deemed to have been waived by Seller.

### LIMITATION OF DAMAGES

In the event of breach of the Contract by Company, Company will be liable to Seller only for actual monetary damages and in no event will Company be liable for any amount greater than the amount of the Order under which Company has failed to perform or is in breach thereof.

### CHANGES

Company may, at any time, in writing, make changes to the general scope of this Contract, and Seller will continue performance of this Contract as so changed. If any such change causes an increase or decrease in the cost of, or time required for, the performance of Seller's obligations under this Contract, an equitable adjustment will be made to the price or delivery schedule, or both, and this Contract will be modified in writing accordingly.

### ELECTRONIC COMMERCE

Upon Company's request, Company and Seller will facilitate business transactions by electronically transmitting data. Any data electronically transmitted pursuant to this section will be as legally sufficient, binding and enforceable upon the parties as a written, signed, paper document exchanged between the parties, notwithstanding any legal requirement that the data be in writing or signed. To the extent required by Company, each authorized representative of a party will adopt a unique, verifiable digital identification consisting of symbols or codes to be transmitted with each electronic transmission, and use of such digital identification will be deemed for all purposes to constitute a "signature" and will have the same effect as a signature on a written document.

### NOTIFICATIONS

Seller agrees to immediately notify Company of any actual or possible safety problems relating to the Products or Services delivered hereunder. Seller also agrees to give Company reasonable advance notice of potential material shortages, labor disputes, insolvency or other matters that might delay or interfere with its performance of this Contract.

### COMPANY'S PROPERTY AND PARTS



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All property of any kind supplied to Seller, or paid for, by Company will be and remain Company's property, and Seller will maintain such property in good condition and repair, except to the extent that such property is integrated into Products delivered hereunder. Materials or parts provided by, or on behalf of, Company which have been, or are to be, processed by Seller are consigned to Seller solely for purposes of such processing and remain Company's property. All Company property, while in Seller's custody or control, will be held at Seller's risk, free of all liens, encumbrances or security interests of Seller or third parties, and will be kept insured by Seller at Seller's expense in an amount equal to replacement cost with loss payable to Company. Seller will indemnify, protect, defend and hold harmless Company, its successors and assigns from and against all loss or damage to such property occurring while in Seller's custody or control. All property of the Company is subject to removal by Company at any time, and to return upon Company's request.

**FORCE MAJEURE**

Company reserves the right to cancel this Contract, in whole or in part, or to delay payment for, or acceptance of, Products for causes beyond Company's control.

**ATTORNEYS FEES**

In case of any dispute arising between the Company and the Seller which may give rise to attorney's fees including without limitation a lawsuit in a court of law, the prevailing party will be entitled to receive reasonable attorney's fees from the other party.

**ACKNOWLEDGEMENT OF TITLE TO INTELLECTUAL PROPERTY:**

Should Company submit any information, know-how, data, drawings, specifications, etc. to Seller and should Seller have to put that information in a drawing, document, manual, diagram, report, etc., for a Company approved reason, then Seller will properly acknowledge at such location of Company's information with Company's name, address, intellectual property ownership, and confidentiality mark. For this purpose, the Seller will use the block mark in print and electronic media as provided to it by the Company. Seller will not release any information that is proprietary to the Company without being stamped by the above referred mark of notice. Seller acknowledges that failure of Seller to adhere to this requirement can result in substantial financial damage to Company and any negligence of Seller in this regard may immediately result into termination of the Contract for cause.

**EXTENSION IN DELIVERY TIME**

Company reserves the right to request up to 3 months extension to delay an shipment of Products or Services by the Seller without incurring any penalty.

**ENTIRE AGREEMENT**

These terms and conditions, and any Contract which attaches, incorporates or otherwise references these terms and conditions, together set forth the entire agreement between Company and Seller with respect to the subject matter hereof and supersede all other prior negotiations, commitments and writings between the Parties with respect hereto. All Products supplied pursuant to this Contract will be provided pursuant to the terms and conditions hereof, which will supersede and override any and all preprinted terms and conditions contained on any documents provided by Seller in connection with its obligations hereunder, including, but not limited to, sales order acknowledgment forms, packing slips, bills of lading and invoices. This Contract will become legally enforceable on the earlier of delivery of a signed acknowledgment, acceptance of advance payment by Seller, commencement of performance, or shipment according to schedule of all or any portion of the Products covered under this Contract, by Seller. This Contract expressly limits Company's acceptance of Products delivered hereunder to the terms and conditions stated in this Contract. Any additional, different or conflicting terms proposed by the Seller are hereby objected to and rejected unless expressly accepted in writing by Company.

**OTHER PROVISIONS**

This purchase order is governed by the laws of the State of California, USA, excluding its laws related to choice or conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods is expressly disclaimed and does not apply. Any and all disputes between the parties that may arise pursuant to this order will be heard and determined before an appropriate arbitrator, federal, or state court located in Los Angeles, California. The Seller acknowledges and agrees that any such court will have the jurisdiction to interpret and enforce the provisions hereof and/or an arbitrator's judgment, and the Seller waives any and all objections that it might otherwise have as to personal jurisdiction or venue in any of the above tribunals. Company's failure to assert any right is not a waiver of such right or any other right. Time is of the essence with respect to Seller's performance hereunder. Any remedies provided herein to Company are cumulative and in addition to any other remedies provided in law or equity or by statute.

Additional Terms and Conditions of Purchase, if any, will be those as specifically mentioned in the Purchase Order issued by the Company.

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