**aquion INC. TERMS OF SALE**

**PLEASE READ THESE TERMS CAREFULLY. THEY MATERIALLY AFFECT THE PARTIES’ OBLIGATIONS.**

1. **ENTIRE AGREEMENT.** This document contains all of the terms and conditions of the agreement between Seller and the buyer (“Buyer”) of the goods (“Products”) to be sold or provided to Buyer, to the exclusion of any other statements and agreements, and to the exclusion of any terms and conditions incorporated in Buyer’s order or other documents of Buyer. Seller’s acceptance of Buyer’s order is expressly conditioned on Buyer’s acceptance of the terms and conditions contained herein, and Buyer, upon placing an order, accepts all the terms and conditions without modification. No alteration, waiver, modification of or addition to these terms and conditions will be binding on Seller unless set forth in writing and specifically agreed to by an officer of Seller. No course of dealing, usage of trade or course of performance will be relevant to supplement or explain any terms used in these terms and conditions.
2. **SHIPMENT AND PAYMENTS.** Shipment is F.O.B. Point of Shipment Freight Collect, unless otherwise specified. The risk of loss or damage to the Products passes to Buyer upon shipment. If shipping arrangements are not specified by Buyer, Buyer authorizes Seller to make arrangements for shipment. Shipments and deliveries hereunder will at all times be subject to the approval of Seller’s Credit Department. If Buyer fails to make any payments in accordance with these terms and provisions or is otherwise in default with respect to any non-monetary obligation to Seller, Seller may at its sole option: (a) defer further shipments until Buyer reestablishes satisfactory credit, (b) cancel the unshipped portion of the order and invoice Buyer for incurred costs and reasonable profit without any liability on the part of Seller for failure to ship, or (c) make shipment to Buyer on a C.O.D. or cash in advance basis. Each of the foregoing remedies will be in addition to any other rights and remedies available to Seller.
3. **DELIVERY.** Seller will use reasonable commercial efforts to fill orders within the time stated, but the stated delivery date is approximate only and Seller reserves the right to readjust shipment schedules without liability. Acceptance by Buyer of the Products waives any claim for loss or damage resulting from a delay, regardless of the cause of the delay. Except as otherwise specified, Seller will not be responsible for freight, transportation, insurance, shipping, storage, handling, demurrage or similar charges. Weights and quantities as determined at Seller’s plant or other source of supply will be conclusive in the absence of manifest error.
4. **CANCELLATION.** Buyer may not cancel orders placed with Seller, except with Seller’s written consent and then only if Buyer makes payment to Seller to indemnify it against expenses incurred and binding commitments made by Seller. Seller may cancel any agreement with Buyer or order from Buyer on at least 30 days’ written notice to Buyer.
5. **PAYMENT TERMS.** Unless specifically held open for a length of time on Seller’s quotation form, all prices are subject to change in the event of an increase or decrease in average market price. Any unshipped balances on purchase orders will be invoiced to and paid by Buyer at prices in effect at the time of delivery. Prices are stated and payable in U.S. dollars. Unless otherwise specified, payment terms are net thirty (30) days from invoice date, no cash discount. A late payment charge of 1% per month on invoices thirty (30) days or more past due ($5.00 minimum charge) may be imposed. No deductions shall be allowed from invoices unless authorized by Seller in writing. Where Seller has extended credit to Buyer, terms of payment will be stated in invoice. The amount of credit may by changed or credit withdrawn by Seller at any time.
6. **TAXES AND FEES.** Buyer will pay all present and future sales, excise, privilege, use or other taxes, customs duties, and all other fees or other costs, imposed by any federal, state, foreign or local authorities arising from the sale, purchase, transportation, delivery, storage, use or consumption of the Products or will, if applicable, provide Seller with an appropriate exemption certificate. Seller will be under no obligation to contest the validity of any such taxes or to prosecute any claims for refunds or returns.
7. **WARRANTY.** Seller warrants and guarantees that all Products produced or delivered to Buyer shall be free from defects in workmanship and materials at the time of shipment. Any advice or assistance provided by Seller to Buyer is provided only as a courtesy and Seller makes no warranty, express or implied, as to its accuracy or completeness, or the results to be obtained from such advice or assistance. Buyer is solely responsible for determining whether the Product(s) are suitable for Buyer’s intended use, and for obtaining any necessary governmental registrations and approvals for Buyer’s production, marketing, sale, use and/or transportation of finished goods using or incorporating the Product(s). THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL OF THE GUARANTEES, WARRANTIES, CONDITIONS AND REPRESENTATIONS, EITHER EXPRESSED OR IMPLIED, WHETHER ARISING OUT OF ANY STATUTE, LAW, COMMERCIAL USAGE OR OTHERWISE, ARE HEREBY EXCLUDED. THIS WARRANTY IS VOIDED IF BUYER COMBINES THE PRODUCTS WITH ANY THIRD PARTY PRODUCT. [NTD: we can insert your standard warranty here, if that is preferable.]
8. **LIMITATION OF LIABILITY**. IN NO EVENT WILL SELLER BE LIABLE UNDER ANY CIRCUMSTANCES: FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR LABOR COSTS) ARISING FROM (a) THE SALE OR USE OF THE PRODUCTS; (b) PRODUCTS THAT HAVE BEEN INCORPORATED INTO ANOTHER PRODUCT; (c) ANY BREACH OF THESE TERMS AND CONDITIONS; OR (d) FOR ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, TORT OR OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE DESIGN, MANUFACTURE, SALE, OR USE OF THE PRODUCTS. Any action for breach of this contract must be commenced within two (2) years after the cause of action has accrued.
9. **NOTIFICATION OF CLAIMS; SHORTAGE; ACCEPTANCE.** Buyer must notify the carrier and Seller within five (5) days of the receipt of Products of any damage to, or loss of, the Products in transit. Buyer must notify Seller of any shortage within five (5) days of the receipt of Products. Failure by Buyer to give such notification will result in a waiver of all claims that Buyer may otherwise have against the carrier for loss or damage resulting from, or occurring during, transit or against Seller. As to loss or damage that is apparent upon delivery, Buyer will: (a) mark the delivery receipt with appropriate exceptions describing the damage before signing, (b) request the carrier to inspect the loss or damage, and (c) promptly and separately notify Seller of such loss or damage. If delivery is made in installments, claims which Buyer may have as to any one installment do not relieve Buyer of the obligation to accept delivery of the remaining installments, or permit Buyer to cancel or rescind the remaining installments. Any rightful rejection of the Products by Buyer will be made within a commercially reasonable time by written notice to Seller, but in any event within ten (10) days following the date of receipt of the Products.
10. **DESCRIPTIONS.** All weights, measurements, dimensions, drawings, samples, specifications and other particulars of the Products provided by Seller, whether contained in photographs, catalogs, product data sheets, specifications, price lists, advertising material or otherwise, are only approximate and are included solely for Buyer’s guidance. Such particulars do not form part of the contract, and deviations are not grounds for non-acceptance of the Products and do not constitute a breach of these terms and conditions.
11. **INTELLECTUAL PROPERTY.** Any and all intellectual property owned or developed by Seller, including the Product specifications, formulas, recipes, processes, art work and design work, independent of any information provided by Buyer, are and will remain the exclusive property of Seller.
12. **CONFIDENTIALITY.** All documentation supplied by Seller to Buyer is for internal use between them. Buyer will not disclose such documentation or any part thereof to any person, other than such of Buyer’s employees and agents who need to know the information contained therein, unless prior written consent is obtained from Seller. Buyer will require such employees and agents to keep confidential such information, and will indemnify Seller in the event of a breach of this provision by its employees or agents.
13. **FORCE MAJEURE**. Seller will not be liable for any loss, damage or expense arising or relating to any failure or delay (including without limitation any failure to supply or delay in supplying Products to Buyer) caused by strikes or labor difficulties, lockouts, acts or omissions of any governmental authority or of Buyer, insurrection, riot, war, fires, floods, Acts of God, breakdown of essential machinery, accidents, embargoes, cargo or material shortages, delays in transportation, lack of plant capacity, inability to obtain labor, materials or parts from usual sources or otherwise due to causes beyond Seller’s reasonable control. In the event of any such delay, performance will be postponed by such length of time as may be reasonably necessary to compensate for the delay.
14. **GENERAL.** No modification or waiver of these terms and conditions or any of its provisions is valid unless expressly agreed to by Seller in writing. No waiver by Seller of any default under these terms and conditions is a waiver of any other or subsequent default.
    1. The unenforceability or invalidity of one or more of the provisions of these terms and conditions will not affect the enforceability or validity of any other provision of these terms and conditions.
    2. These terms and conditions are governed by and will be construed in accordance with the laws of the State of Illinois, without giving effect to its conflict of laws principles and by the Uniform Commercial Code (as adopted in Illinois) where not in conflict or variance with the above Terms and Conditions. Seller and Purchaser will have all remedies afforded by such Uniform Commercial Code. Venue with respect to any dispute arising out of or related to Buyer's orders shall reside solely and exclusively in the state or federal courts located in Illinois. This choice of venue is intended by the parties to be mandatory and not permissive in nature. Buyer shall be responsible to Seller for all costs, including its reasonable attorney fees, incurred in enforcing these Terms and Conditions.
    3. Buyer will not delegate or assign its rights or obligations hereunder, in whole or in part, without Seller’s prior written consent. Any attempted delegation or assignment by Buyer without such consent will be void.