



# General Terms and Conditions for the Purchase of Direct Materials - English

## RAW MATERIALS PURCHASE AGREEMENT TERMS AND CONDITIONS

**1. GENERAL.** In these printed Raw Materials Purchase Agreement Terms & Conditions (the "Standard T&Cs"), "Arxada" shall mean the respective Arxada entity referenced on the first page of the Agreement. In the event of a conflict between the terms written on the first page of the Agreement and these Standard T&Cs, the terms written on the first page of the Agreement shall prevail. Each shipment received by Arxada from Seller shall be deemed to be only upon the terms, including these Standard T&Cs, in this Agreement, except as they may be added to, modified, superseded, or otherwise altered by Arxada, notwithstanding any terms and conditions that may be contained in any acknowledgment, invoice or other form of Seller and notwithstanding Arxada's act of accepting or paying for any shipment or any similar act of Arxada, and Arxada hereby rejects any different or additional terms and conditions proposed by Seller.

**2. COMPLIANCE WARRANTY.** Seller warrants that the Product(s) shall be adequately contained, packaged, marked, labeled and registered in compliance with, and that the Product(s) and any services provided in connection therewith shall conform to, the requirements of all applicable federal, state and local laws, regulations, rules and orders. Additionally, and without limiting the foregoing, it is specifically understood that Arxada is an Equal Opportunity Employer and Seller warrants that it complies with the Fair Labor Standard Act of 1938, as amended.

The foregoing representation shall be a continuing representation and shall apply to each shipment. Seller shall defend, indemnify and save harmless Arxada from and against any claims, liabilities, expenses (including attorneys' fees), fines, penalties, damages and/or economic losses arising out of or resulting from the failure of Seller and/or the Product(s) to comply with the requirements of this Paragraph 2.

**3. PRICE; DELIVERY; AND RISK OF LOSS.** Price shall cover the net weight of the Product(s). No extra charge of any kind, including without limitation, charges for boxing, packing or crating, shall be allowed without Arxada's prior written consent. If, at any time during the term of this Agreement, Arxada can purchase goods of a like quantity at a price or on terms which will result in a delivered cost to Arxada that is lower than the delivered cost of the Product(s), Arxada may notify Seller of such lower delivered cost. Seller shall, within fifteen (15) days after such notice, advise Arxada in writing whether or not Seller will meet such price or such terms. If Seller elects not to meet such price or such terms, or fails to advise Arxada within such fifteen (15) day period, Arxada may purchase the lower delivered cost goods, and the quantity of any purchase so made shall correspondingly reduce the purchase and sales obligations of Arxada and Seller, respectively, hereunder.

The Product delivered shall correspond precisely to the order in terms of quantity and quality. If the Seller diverges from the order, it shall notify Arxada thereof. Unless Arxada specifically agrees to these divergences, Arxada shall no longer be bound by its order. On all dispatch documents and delivery notes, the Seller shall indicate Arxada's order number and also details of the gross and net weight and dimensions. Unless otherwise provided in this Agreement, delivery of the Product(s) shall be at a Arxada facility. Delivery of Product shall be governed by INCOTERMS® 2010. In the absence of any differently worded delivery terms in the Agreement, the Product ordered shall be delivered on the basis "DDP place of destination (INCOTERMS® 2010)".

Risk of loss, liability and/or damage shall remain with Seller until the Product(s) are physically delivered to and accepted by a Arxada representative at a Arxada facility.

**4. PRICE PROTECTION.** Seller warrants that the prices for the Product(s) are not less favorable than those currently extended to any other customer for the same or like goods in equal or less quantities. In the event Seller reduces its price for such Product(s) during the term of this Agreement, Seller agrees to reduce the price of the Product(s) correspondingly.

**5. ACCEPTANCE AND REJECTION.** All Product(s) shall be accepted subject to Arxada's rights of inspection, rejection, and revocation of acceptance (pursuant to the provisions of this Section 5). Payment for or use of Product(s) prior to inspection shall not constitute acceptance thereof. Moreover, any payments made shall not be deemed to prejudice any and all rights and claims that Arxada may have against Seller. Any signature of a Arxada representative on any shipping/receiving document shall not constitute acceptance of Product(s) or any different terms or conditions, or acknowledge

condition of Product(s), but shall merely acknowledge receipt of a shipment of Product(s).

**5.1 Rejection.** Arxada may return to the Seller any Product that, in its reasonable discretion, does not conform to the representations and warranties in Section 2 or in Section 9. Any such Product shall be returned to the Seller. The Seller will, at its cost, and as soon as reasonably practicable replace the returned Product with Product that conforms with the warranty, and will deliver the replacement Product as soon as possible, but in any event within thirty (30) days, after receipt of the non-conforming or defective Product, at Seller's expense (including all transportation and insurance). If the Seller is unable to replace the Product within thirty (30) days, the Seller shall at Arxada's request provide Arxada a refund as defined in Section 5.3 below.

**5.2 Complaints.** Any complaint shall be regarded as having been timely lodged if Arxada notifies the Seller of the fault at any time during the warranty period. Within two weeks after any complaint lodged by Arxada concerning a defective Product the Seller shall make a reasonably detailed report to Arxada on the corrective and preventive action that has been initiated according to the Seller's standard operating procedure.

**5.3 Credits/Refunds; Set-Off.** In accordance with this Section 5, the Seller shall promptly refund Arxada by wire transfer or check for any payment Arxada made with respect to such Product. Arxada may elect, at its sole discretion, to take such credit on any open invoices of the Seller in the place of such refund. Arxada may set-off any amount owed from the Seller or any of Seller's affiliates against any amount payable at any time by Arxada.

**5.4 Remedies.** The remedies contained in this Section 5 are in addition to all other remedies available at law, in equity or otherwise.

**5.5 Recalls and Field Corrections.** If any recall, product withdrawal or field correction of any Product is required by a governmental agency or for safety or efficacy reasons resulting from (a) the supply by the Seller of any Product not complying with the terms and conditions of the Agreement (including all warranties included in the Agreement) or (b) the negligent or intentionally wrongful act or omission of the Seller or its affiliates or their representatives, then the Seller shall bear all costs and expenses, including but not limited to the costs and expenses related to such recall or field correction, communications and meetings with all required regulatory agencies, replacement stock, service labor, installation, travel, notifying customers of such recall and any replacement product to be delivered to those same customers, including shipping costs. To the extent that any such recall or field correction is due in part to the negligent or intentional acts or omissions of Arxada, Arxada shall be responsible for such costs and expenses equitably in proportion to its fault.

**6. TAXES.** This Agreement shall not include sales or use taxes, nor shall such taxes be added to the price of Product(s), provided that Arxada has indicated in the space provided that the purchase of Product(s) is exempt from such taxes. Seller agrees to pay any other taxes imposed by federal, state, or local law upon the Product(s) (and/or any services provided in connection therewith) sold to Arxada hereunder unless otherwise agreed.

Seller shall, upon request of Arxada, inform Arxada whether the Product(s) are imported or manufactured with imported materials and furnish Arxada with all documentation required for duty drawback for product or imported materials contained in the Product purchased by Arxada hereunder.

**7. INTELLECTUAL PROPERTY.** Seller agrees to defend, indemnify and hold harmless Arxada, its successors, customer and users, from and against all liability, economic loss, damage, and expense (including attorneys' fees) resulting from any actual or alleged infringement of any intellectual property right, or any litigation based thereon, with respect to the Product(s) (or any part thereof and including Seller's process of manufacturing Product(s)), and any such obligation shall survive acceptance of such Product(s) and payment therefor by Arxada.

**8. INDEMNIFICATION.** Seller shall assume the sole responsibility for any and all actual or alleged damage or injury (including death) to any and all persons (including, but not limited to employees of Seller or Arxada) and to all property arising out of or resulting from (i) the performance of its obligations under this Agreement or any act or omission of Seller, (ii) the use or sale of the Product(s), or (iii) the negligence or willful misconduct on the part of Seller or its affiliates, and shall defend, indemnify and save harmless Arxada from and against any and all claims, liabilities, expenses (including reasonable attorneys' fees), fines, penalties, damages and/or economic losses of



whatsoever nature arising therefrom except to the extent caused by the sole gross negligence of Arxada.

**9. WARRANTIES.** Seller warrants good title to all Product(s). Seller warrants that the Product(s) are new, merchantable, safe, fit for intended use, free from defects in workmanship and materials and conform to the Specifications and any drawings, samples, or other descriptions referenced herein or applicable thereto.

Seller further warrants that any services provided in connection therewith shall be performed in accordance with the highest standards, in a workmanlike manner, free from defects in workmanship and materials and in conformance with all specifications, plans, or drawings referenced herein or applicable thereto. Product(s) or services found to be defective in material or workmanship or nonconforming with specifications within eighteen months from the date of shipment (or performance) or twelve months from the date of putting same into service, whichever date occurs first, shall, at Arxada's option, be corrected or repaired in place by Seller, or be replaced at a Arxada facility by Seller, or be returned to Seller at Seller's expense (including transportation and handling costs) for repair, replacement or full refund.

Seller further warrants that it shall comply with the latest version of Arxada's Supplier Code of Conduct which may be accessed via Arxada's webpage.

**10. RELEASE OF LIENS.** Seller shall, at its sole cost and expense, obtain from all its subcontractors and materialmen waivers and releases of all liens which may be imposed by them against the premises of Arxada or the improvements thereon, in connection with any Product(s), and Seller shall defend, indemnify and hold harmless Arxada with respect thereto.

**11. DELIVERIES.** Time is of the essence of this Agreement. The agreed delivery dates are fixed dates. Product ordered shall be delivered on the date stipulated in the Agreement or within the agreed time period. When this date or period expires, the Seller is in arrears without any subsequent deadline being set. The Seller may rely upon the omission of necessary documents or parts to be supplied by Arxada only if it requested them in due time. The delivery period shall then be appropriately extended. Notice shall be given in due time of the delivery of ordered Product prior to the agreed delivery date. Arxada specifically reserves the right to refuse to accept a premature supply of Product ordered, without this constituting delay in acceptance. Unless otherwise agreed, Arxada specifically reserves the right to refuse or to store a non-agreed under- or over-supply of Product ordered, at the Seller's cost and risk. In addition to all its other legal remedies, Arxada reserves the right to cancel all or any part of the undelivered Product(s) if Seller does not make deliveries as specified, or if Seller breaches any of the terms hereof.

**12. FORCE MAJEURE.** A party shall have no liability for any act, omission or circumstance occasioned by any cause not within its control and which it could not, by reasonable diligence, have foreseen or avoided. Such acts, omissions or circumstances, however, shall not relieve a party of liability in the event of its failure to use reasonable diligence to remedy the situation and remove the cause with all reasonable dispatch and to give notice (including all details of the situation) in writing to the other party as soon as possible after the occurrence thereof.

**13. CONFIDENTIALITY.** Seller agrees not to make any use of writings, data, designs, drawings, specifications or any other information furnished to it by Arxada or observed or developed by Seller in the performance hereof and to not disclose any of the foregoing to third parties, except as required in the performance of this Agreement and then only after first obtaining a written agreement from such third parties to be bound by similar secrecy and use restrictions. Upon completion, cancellation or termination of this Agreement, Seller shall return to Arxada all of the foregoing, including all copies, extracts or derivatives of tangible materials containing any of the foregoing made by Seller or third parties employed by Seller, together with Seller's certification of such return. Arxada shall at all times have title to all drawings, specifications, writings or other documents prepared or furnished by Seller hereunder. All Product(s) produced for Arxada

hereunder which are subject to or may be copyrighted under the Federal Copyright Act shall be deemed to be "works made for hire" and title to and ownership of such Product(s) shall at all times be in Arxada.

**14. PRODUCT STEWARDSHIP.** Seller shall furnish Arxada, prior to the first delivery, Seller's current Material Safety Data Sheet and other literature pertaining to the hazards associated therewith and the precautions which should be observed with respect thereto. Seller shall promptly furnish Arxada copies of any revisions to any of the same issued by Seller during the term of this Agreement.

**15. CONTINUOUS IMPROVEMENT.** Seller acknowledges and agrees commit itself to continuous quality improvement. For example, Seller specifically acknowledges its commitment to attempt to attain 100% conformance with all of its obligations pursuant to this Agreement, including the goals of 100% on-time delivery and 100% conformance with warranty obligations. Arxada may note in writing to Seller any non-conformance by Seller to the contract requirements. Seller agrees to review and provide written response, within the time period specified on such writing, to all such writings issued and agrees to put corrective actions in place to correct any non-conformance listed on such writings.

In the event that the composition, packaging or sourcing of raw materials used in the production of Product(s) is altered, or the manufacturing process, quality tests, or quality test methods used in the manufacture of the Product(s) is altered, Seller agrees to promptly notify Arxada in writing of the alteration. Upon its request, Arxada or its customer may inspect and verify Product(s) at Seller's facilities. Seller agrees to promptly notify Arxada in writing of loss of any third party certification (such as ISO9000 Series, QS9000) that occurs during the Term of this Agreement.

**16. MISCELLANEOUS.** No transfer or assignment of this Agreement or any of its rights or obligations shall be made by either party without the written consent of the other party which consent shall not be unreasonably withheld or delayed. The failure of either party to insist in any instance upon strict performance by the other party of any provision of this Agreement shall not be construed as a continuing waiver of such item, or waiver of any other provision of this Agreement. If any part of this Agreement shall be found to be invalid or unenforceable under applicable law in any jurisdiction, such part shall be ineffective only to the extent of such invalidity or unenforceability in such jurisdiction, without in any way affecting the remaining parts of this Agreement in that jurisdiction or the validity or enforceability of the Agreement as a whole in any other jurisdiction. In addition, the part that is ineffective shall be reformed in a mutually agreeable manner so as to as nearly approximate the intent of the Parties as possible. This Agreement shall be governed by and construed in accordance with the laws of the state of Arxada's domicile without reference to its conflicts of law principles. The United Nations Convention on Contracts for International Sales of Goods shall not apply to this Agreement. Any disputes under this Agreement that cannot be resolved by the Parties through good faith negotiation shall be resolved in the courts of the state of Arxada's domicile, and the Parties hereby consent to the exclusive jurisdiction of such courts.

**17. CORPORATE RESPONSIBILITY.** Seller warrants that Seller has not and will not, directly or indirectly, enter into any agreement, participate in a collusion or otherwise take any action in restraint of free or competitive bidding, including, but not limited to, any offer or promise of future employment or business opportunity by or for any contractor or subcontractor, or any personnel of Arxada or its contractors or subcontractors associated with this transaction. When Seller has reasonable grounds to believe that a Arxada or Seller employee, subcontractor or subcontractor employee, directly or indirectly, solicited, accepted or attempted to accept any money, fee, gratuity, offer or promise of future employment or business opportunity, or thing of value of any kind for the purpose of improperly obtaining or rewarding favorable treatment in connection with a contract or subcontract associated with Arxada, Seller shall promptly notify Arxada's General Counsel of the possible misconduct.