

TERMS AND CONDITIONS OF SALE

1. **Terms of Sale.**

- 1.1** These Standard Terms and Conditions ("Terms") govern all sales of products, equipment and services (the "Products") by Rath LLC ("Seller") to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders or electronic orders via EDI (collectively, "Purchase Orders"). Upon receipt by Buyer of Seller's express acceptance or order acknowledgment, a binding contract is formed between Buyer and Seller on the terms reflected below (the "Sales Agreement"). In case of a conflict between these Terms and the Purchase Order, these Terms prevail except where Seller has expressly agreed, in writing, to the conflicting term in the Purchase Order in its acceptance or order acknowledgment. Absent such express agreement, Rath hereby rejects any additional or different terms and conditions, in any forms tendered by Buyer or any third party.
- 1.2** Notwithstanding the foregoing, Seller reserves the right to make amendments to drawings and descriptions of the Products, where such amendments are caused by manufacturing considerations or by improvements, experience, any progress in technology or standard industry weight and measure changes related to the Products, provided that such changes are accepted by the Buyer within five days of written notice from Seller. If the Buyer rejects such changes or does not respond to Seller within the time period specified in this Section 1.2, acceptance of the affected Purchase Order shall be revoked.
- 1.3** Buyer shall have sole obligation to obtain all required approvals, permissions, and licenses in order to purchase, import, and use the Products, at its own cost.

2. **Price.**

- 2.1** Price quotations are non-binding and without obligation unless and until a Purchase Order is accepted by Seller. Such quotations, and all information contained therein, are subject to change in Seller's sole discretion unless and until a Purchase Order is accepted by Seller.
- 2.2** Seller may accept or reject a Purchase Order for a period of four weeks after Buyer's submission of such Purchase Order. If the aforementioned four week period expires before Seller accepts such Purchase Order, the Purchase Order shall be deemed rejected.
- 2.3** The price of the Products, as set forth in the Purchase Order, does not include sales, use, excise or any other taxes or assessments levied by any federal, state, municipal or other government authority, which shall be paid by Buyer.

3. **Payment.**

- 3.1** Payment terms will be stated on Seller's Purchase Order acceptance. Payments not received when due shall bear interest at the lower of eighteen percent (18%) per annum or the maximum rate allowed by applicable law whichever is lower. Seller may require payment or adequate assurance of performance from Buyer prior to taking any preparatory steps for performing the Sales Agreement or beginning the manufacture of the Products. Buyer shall execute, at Seller's request, one or more security agreements, financing statements and other documents necessary to secure Seller's interest in the Products and payment therefore.
- 3.2** In addition, Seller, without waiving any other rights or remedies to which it may be entitled, shall have the right to suspend or terminate any or all services and refuse additional Purchase Orders from Buyer until Seller's receipt of all overdue amounts. Seller shall have no liability to Buyer for any such suspension or termination of services or for its refusal of additional Purchase Orders.

- 4. **Security Interest.**** Buyer hereby grants a security interest in the Collateral (defined below) to Seller to secure the payment and performance of the Obligations listed below. The Collateral shall consist of all now owned and hereafter acquired and wherever located Goods, as defined in Article 9 of the Uniform Commercial Code enacted in Delaware, which are Products acquired by the Buyer from Seller, and all proceeds (cash and non-cash) and products of the foregoing. The Obligations shall consist of: (i) all of Buyer's present and future indebtedness and obligations to Seller (ii) all amounts owed under any modifications, additional advances, renewals, extensions or substitutions of any of the foregoing obligations; (iii) all costs associated with Seller's exercise of its rights hereunder; and (iv) any of the foregoing that may arise after the filing of a petition by or against Buyer under the Bankruptcy Code, even if the obligations do not accrue because of the automatic stay under Bankruptcy Code § 362 or otherwise. Any capitalized term used in this Section 4, and not otherwise defined in these Terms, shall have the meaning given to it in Article 9 of the Delaware Uniform Commercial Code. Buyer agrees to execute and deliver to Seller any and all documents necessary to perfect Seller's security interest, including all financing statements.

- 5. **Specifications.**** Seller will manufacture the Products in the substantial conformity with its Product specifications as well as any additional or modified product specifications agreed to in writing between Buyer and Seller. All product and product-related specifications are subject to applicable freight classification, Seller's customary manufacturing processes, and generally accepted industry practices.

- 6. **Packaging.**** Seller will endeavor to comply with Buyer's packaging specifications, if any, including without limitation, unitizing, palletizing, boxing and bundling, but Seller reserves the right to substitute any other method of packaging that is reasonably comparable to Buyer's specifications, both with respect to costs and to the risk to which the Products are subject. Seller, at its option, may charge additional material, labor, and overhead for non-standard packaging.

- 7. **Shipment.**** For all U.S. Shipments Seller will deliver the Products FOB Seller's Plant. For all International shipments, Seller will deliver the Products Ex Works Seller's plant or other facility. Buyer shall pay all transportation costs for the Products. Seller may make partial shipments at Seller's sole discretion. Seller will

Rath LLC

300 Ruthar Drive Suite 1 Newark, DE 19711 USA T +1 302 294 44 46 F +1 302 294 44 51	405 East Peach Avenue Owensville, MO 65066 USA T +1 573 437 21 32 F +1 573 437 31 46
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www.rath-group.com
info@rath-group.com

endeavor to meet the shipping date(s) specified by Buyer. If Seller is unable to meet such date(s), Buyer has no claim for damages resulting from any such delay in delivery.

- 8. Title and Risk of Loss.** Title to the Products passes to Buyer when the Products are fully paid for. All risk of loss to the Products passes to Buyer when the Products are loaded onto a carrier for delivery.
- 9. Warranty.** Seller warrants that the Products shall be free from defects in material and workmanship and will substantially conform to the specifications t as noted above, upon shipment.
- 10. Warranty Disclaimer.**
- 10.1** THE FOREGOING NOTWITHSTANDING, SELLER IS NOT LIABLE FOR MINOR MANUFACTURING DEFECTS OR FOR MINOR CUSTOMARY VARIATIONS FROM QUANTITIES OR SPECIFICATIONS. SELLER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND (WHETHER ARISING BY IMPLICATION OR BY OPERATION OF LAW) WITH RESPECT TO THE PRODUCTS, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OR REPRESENTATIONS AS TO MERCHANTABILITY, FITNESS FOR PARTICULAR PURPOSE OR ANY OTHER MATTER. THIS SECTION SURVIVES THE TERMINATION OR CANCELLATION OF THE SALES AGREEMENT.
- 10.2** SELLER'S WARRANTY SHALL NOT APPLY IF (I) THE PRODUCT IS NOT STORED OR HANDLED APPROPRIATELY BY BUYER, (II) THE DEFECT RESULTED FROM DAMAGES OCCURRING AFTER DELIVERY OF THE PRODUCT, OR (III) THE DEFECT WAS NOT REPORTED TO SELLER WITHIN THIRTY (30) DAYS AFTER DELIVERY OF THE PRODUCT. IF A PRODUCT DOES NOT CONFORM TO THE WARRANTY ABOVE AND THE WARRANTY IS NOT OTHERWISE EXCLUDED, THEN BUYER SHALL PROMPTLY NOTIFY SELLER OF THE DEFECT. SELLER, AT ITS OPTION, SHALL EITHER (I) REPAIR OR REPLACE THE DEFECTIVE PRODUCT OR SERVICE, OR (II) REFUND THE PURCHASE PRICE. THE FOREGOING ARE BUYER'S SOLE AND EXCLUSIVE REMEDIES FOR ANY BREACH OF THE WARRANTY PROVIDED BY SELLER ABOVE.
- 11. Limitation of Liability.** IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SUMS IN EXCESS OF THOSE PAID BY BUYER HEREUNDER, OR FOR ANY INCIDENTAL SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, REGARDLESS OF WHETHER THOSE DAMAGES WERE FORESEEABLE. SELLER HEREBY DISCLAIMS ANY LIABILITY, WHETHER IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), FOR ANY INJURY TO OR DEATH OF PERSONS OR DAMAGE TO PROPERTY ARISING OUT OF OR CAUSED BY BUYER'S USE OF SELLER'S PRODUCTS, SERVICES, EQUIPMENT, TOOLS OR FIXTURES.
- 12. Termination.** In the event of a breach by Buyer, including any insolvency or bankruptcy of Buyer, Seller may terminate the Sales Agreement upon giving thirty (30) days written notice of termination. If the Sales Agreement is terminated by Seller for Buyer's breach, Seller is entitled to reasonable reimbursement from Buyer for any labor, material or other expenses incurred in connection with the Sales Agreement, plus Seller's normal overhead, and to payment for Products and services in process or already completed but not yet paid for.
- 13. Indemnification.** Buyer shall defend, indemnify and hold harmless Seller and its employees and agents against all sums, costs, liabilities, losses, obligations, suits, actions, damages, penalties, fines, interest and other expenses (including investigation expenses and attorney's fees) that Seller may incur or be obligated to pay as a result of (i) Buyer's negligence, use, ownership, maintenance, transfer, transportation or disposal of the Products; (ii) any infringement or alleged infringement of the intellectual property rights of others arising from Buyer's plans, specifications (including Buyer's trademarks and brand names) or production of the Products ordered by Buyer where such plans or specifications caused Seller to deviate from its normal product specifications; (iii) Buyer's violation or alleged violation of any federal, state, county or local laws or regulations including, without limitation, the laws and regulations governing product safety, labeling, packaging and labor practices; and (iv) Buyer's breach of the Sales Agreement.
- 14. Entire Agreement/Reformation.**
- 14.1** The Sales Agreement comprises the complete and final agreement between Seller and Buyer and supercedes all prior negotiations, proposals, representations, commitments, understandings or agreements between Seller and Buyer, either written or oral, on its subject. The Sales Agreement may not be altered or modified except by written agreement of Seller and Buyer.
- 14.2** If any provision of these Terms shall be held by any court of competent jurisdiction to be invalid, illegal or unenforceable under applicable law, then such provision shall be deemed reformed or omitted to the extent determined by such court. In any event, the remainder of these Terms shall remain valid and enforceable.
- 15. Governing Law.** The validity, construction and performance of the Sales Agreement is governed by and shall be construed in accordance with the law of the State of Delaware. Buyer hereby irrevocably submits and agrees to the jurisdiction and venue of the state and federal courts of the State of Delaware in any action, suit or proceeding related to, or in connection with, the Sales Agreement.

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Rath LLC

300 Ruthar Drive Suite 1 Newark, DE 19711 USA T +1 302 294 44 46 F +1 302 294 44 51	405 East Peach Avenue Owensville, MO 65066 USA T +1 573 437 21 32 F +1 573 437 31 46
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info@rath-group.com