

## General Terms and Conditions of Sale and Delivery of Reiloy USA Corporation

*These General Terms and Conditions ("Terms and Conditions"), plus any purchase order ("Order") for goods or services which expressly refers to these Terms and Conditions, are intended to collectively constitute one agreement ("Agreement"). By executing any Order, or otherwise receiving any purchased goods or services, Buyer ("Buyer") and Reiloy USA Corporation ("Seller") each hereby agrees to be bound by the Terms and Conditions of this Agreement.*

### **I. General Conditions**

1. This Agreement shall apply to all existing and future business relationships between Seller and Buyer and, in particular, to all quotations, contracts, deliveries and other services provided by Seller. In the case of an existing business relationship, this Agreement shall also constitute an integral part of the parties' contract, even where no express reference hereto has been made. This Agreement shall be deemed accepted when Seller issues an Order Confirmation.

2. Seller hereby rejects any of Buyer's terms and conditions which contradict these Terms and Conditions. If there is any inconsistency between this Agreement and any other agreement included with or relating to the goods or services, this Agreement shall govern unless such agreement is a document produced by Seller and specifically states that it supersedes these Terms and Conditions. This Agreement may not be modified, altered or amended without the written agreement of Seller. Any additional or altered terms attached hereto or submitted by Buyer shall be null and void, unless expressly agreed to in writing by Seller. If any term of this Agreement is illegal or unenforceable, the legality and enforceability of the remaining provisions shall not be affected or impaired.

3. In order to be effective and legally binding, any oral agreement, affirmation, representation, or warranty concerning any goods or services that vary from these Terms and Conditions must be expressly confirmed in writing by Seller. The same shall apply to additional agreements and commitments made by Seller's representatives, employees or agents which will also only become binding if and when Buyer receives written confirmation from Seller. Further, Buyer expressly acknowledges that Seller shall not be liable for any such additional agreements or commitments made by Seller's representatives, employees or agents unless Seller confirms such items to Buyer in writing. No Order may be changed or modified orally.

4. This Agreement shall supersede any provisions, terms or conditions contained on any confirmation order or other writing Buyer may give or receive, and the rights of the parties shall be governed exclusively by the provisions of this Agreement.

### **II. Offer and Acceptance of Agreement**

1. Quotations or Orders issued by Seller shall always be non-binding and without obligation, i.e. they are to be understood merely as an invitation to submit an offer. Acceptances and all Orders shall be legally effective only if confirmed by Seller in writing or if Seller actually performs the delivery. After Seller has issued the Order confirmation Buyer shall no longer be entitled to cancel the Order.

2. Additional agreements, amendments or additions to these Terms and Conditions shall only be valid if expressly confirmed in writing by Seller.

3. All Orders are accepted with the understanding that the Orders are subject to Seller's ability to obtain the necessary goods, and the shipment of all Orders are subject to Seller's current schedules, and any government regulations, orders, directives and restrictions that may be in effect from time to time.

4. All specifications, including illustrations, drawings, weights and dimensions furnished by Seller in response to an Order are understood to be approximate only, unless explicitly stated otherwise in the Order. Seller retains title and copyright in and to all such specifications. Buyer agrees to keep all such specifications in strict confidence. Seller agrees not to disclose any of Buyer's specifications which Buyer has indicated to be confidential.

### **III. Price and Payment**

1. In consideration of the goods or services, Buyer shall pay Seller the amounts set forth on any Order for the goods or services. Unless otherwise expressly stated in the Order, the purchase price stated in any Order is F.O.B. Maize, Kansas. All packaging, shipping and freight costs will be added to the invoice price set forth in the Order.

2. The purchase price does not include any federal, state, municipal or other government taxes however designated, levied on the goods or services, such as sales, value added, use, transaction or similar taxes. All such taxes arising from any Order will be added to the invoice as a separate charge to be paid by Buyer.

**3. ALL PURCHASE PRICES ARE BASED ON CUSTOMS DUTIES AND SUBJECT TO RATES OF EXCHANGE IN EFFECT AT THE TIME OF PROPOSAL, BUT THE SAME SHALL AUTOMATICALLY BE REVISED TO REFLECT THOSE DUTIES**

**ACTUALLY INCURRED BY SELLER AND RATES ACTUALLY IN EFFECT AT THE TIME OF PAYMENT.**

4. Unless otherwise expressly stated in the Order, terms of payment are net cash 30 days from the date the goods are ready for shipment. Buyer is not entitled to offset or withhold payments on the grounds of any claims against Seller.

5. Any payments not received by the due date indicated above shall be considered overdue and will incur interest at a rate at the lesser of one and one-half percent (1.5%) per month on the outstanding balance until paid or the highest applicable lawful rate. No reminder or notification of default is required. In addition, Seller shall have the right to pursue any remedies available at law or as provided herein and shall be entitled to reimbursement from Buyer for Seller's costs of collection, including legal fees and disbursements.

### **IV. Delivery of Goods**

1. The terms and conditions of delivery and any specified delivery date is governed by the written Order confirmation of Seller.

2. The delivery period begins on the date when the Order confirmation is sent by Seller. Notwithstanding the foregoing, the delivery period will not commence before Seller has received all necessary documents, permissions or releases to be procured by Buyer. Seller's obligation to comply with the term of delivery is contingent upon the performance of the contractual duties of Buyer as set forth in this Agreement.

3. The goods shall be considered delivered on the date when the goods are physically delivered to their common carrier, or on the date when Buyer is notified that the goods are ready for shipment, whichever occurs first. Seller's shipment of any goods which are made within forty-five (45) days after the specified delivery date on any Order shall constitute a good delivery. Buyer shall pay for any goods delivered to Buyer without set-off or demand regardless of other controversies relating to other delivered or undelivered goods.

4. If Seller is in default of fulfilling the specified delivery date on any Order through no fault of Buyer, following the expiration of a grace period of forty-five (45) days following the specified delivery date, upon demand Buyer may be entitled to receive liquidated damages at the rate of 0.25% for each additional complete calendar week, but no more than 5% of total net invoice purchase price of the goods which are not received by Buyer within forty-five (45) days following the specified delivery date. Any further claims or liability in connection with untimely performance shall be excluded. The parties agree that such sum represents a reasonable estimation of damages anticipated by the parties arising from such delivery failure by Seller. Provided, Seller's obligation to pay liquidated damages is conditional on Buyer's submittal of evidence proving that damages have actually occurred as a result of such delay. If the maximum amount of liquidated damages has accrued, Buyer may determine a reasonable extension of time for the delivery. If Seller fails to deliver the goods within the extension of time for reasons Seller is solely responsible for, Buyer may declare the contract voided and demand the refund of all payments upon return of the goods already delivered.

5. Seller shall not be liable, even in the event of agreed upon delivery periods and deadlines, for delays to deliveries caused by force majeure or due to events that make it significantly more difficult or impossible for Seller to make the delivery (these include war (declared or otherwise), war-like situations, civil unrest, revolutions, rebellions, military or civilian coups, revolt, tumult, riots, blockades, embargoes, governmental orders, sabotage, strikes, go-slow actions, lockouts, epidemics, fire, flooding, storm surges, typhoons, hurricanes or other severe weather conditions equal to the level of a disaster, earthquakes, landslides, lightning strikes, general shortages in materials, piracy, shipwrecks, lack of port and unloading capacities, serious transport accidents, rejections and new production of significant plant parts for reasons outside of Seller's control insofar as the latter situation results in a prolongation of the delivery periods). Such delays shall entitle Seller to postpone the delivery for the period of the impediment plus a reasonable additional lead time, or to partially or wholly rescind the Order in relation to

the non-performed part of the Order. This applies equally if Seller is already in default. Buyer shall be promptly informed of any non-availability of goods or services. In addition to the rights granted to Buyer under Article IX, Buyer is entitled to unilaterally rescind the as-yet unfulfilled portion of any Order if the force majeure event continues for longer than six (6) months.

6. If shipment is delayed on the instruction of Buyer, then beginning thirty (30) days from the date when the goods were otherwise ready for shipment, Buyer shall be responsible for any storage costs incurred by Seller as a result of such delivery delay. If the goods are stored on Seller's premises, the storage costs will be at least one percent (1%) of the invoice purchase price per month for the stored goods.

7. Seller may execute partial deliveries at all times and may invoice each such partial delivery separately.

#### **V. Transfer of Risk of Loss**

1. All deliveries of goods are F.O.B. Maize, Kansas and unless otherwise expressly agreed upon in an Order, the risk of loss shall be transferred to Buyer when Seller places the goods into the possession of the common carrier.

2. Upon Buyer's request received prior to shipment and at Buyer's expense, Seller will insure the shipment against breakage, fire, water, theft, and transport risks.

3. In the event that any shipment is delayed for reasons beyond the control of Seller, the risk of loss is transferred to Buyer on the day when the goods are otherwise ready for shipment by Seller. Further, Buyer shall be responsible for any storage costs incurred by Seller as a result of such delay as set forth in Paragraph IV(6) above.

4. Without prejudice to Buyer's rights under any applicable warranty, Buyer is not entitled to reject any delivery on account of minor defects in the delivered goods.

#### **VI. Reservation of Title**

1. Notwithstanding Paragraph V(1), all goods shall remain the property of Seller as legal and equitable owner and no property interest in, or title to, the goods shall pass to Buyer until all payments under the applicable Order have been fully received by Seller. Seller hereby reserves a purchase money security interest in the goods (including all accessions, accessories, parts, supplies and replacements thereof) and the proceeds thereof until all obligations of Buyer to Seller from time to time are satisfied in full. Buyer hereby appoints Seller as its attorney-in-fact to prepare, sign and file in Buyer's name any financing statement or other document necessary to perfect Seller's security interest and also agrees that Seller may take any action necessary to perfect the security interest of Seller in the goods.

2. At any time prior to receipt of all payments due under this Agreement, Seller may demand Buyer furnish without delay satisfactory proof that insurance is in effect covering the goods against set fire, water, theft, and other casualty. If such proof is not provided, Seller is entitled to insure the goods at Buyer's expense, and the cost of insurance shall be due and payable upon demand.

3. Buyer shall not pledge or transfer as security any delivered goods in which Seller has reserved title until the goods are fully paid for by Buyer. Buyer shall not dispose of such goods in any way outside its normal course of business. Buyer will notify Seller without delay if any attachment, seizure or other act prejudicial to the rights of Seller is effected by a third party. Buyer will provide Seller with all information and documentation required by Seller to safeguard its rights. Buyer will, without delay, notify the person executing such attachments or seizure that Seller has title in the goods.

4. In the event that Buyer sells any goods which have been delivered by Seller but have not been paid for in full, Buyer assigns to Seller all claims against the subsequent Buyers of said goods, until all amounts due Seller are paid in full.

5. Seller shall have the right, in addition to all other rights it may possess, at any time, for credit reasons or because of Buyer's current or prior default or defaults, to withhold shipments in whole or in part, to recall goods in transit, retake same and repossess all goods which may be stored with Seller for Buyer's account, without the necessity of taking any formal or other proceedings. Buyer expressly agrees that all goods so recalled, retaken or repossessed shall become the absolute property of Seller provided that Buyer is given full credit therefor, less a reasonable restocking charge. The foregoing shall not be construed as limiting in any manner any other of the rights or remedies available to Seller because of any default of Buyer.

6. If Buyer is in default of payments, Seller is entitled to demand the immediate surrender of all delivered goods in which Seller has reserved title. Buyer waives any right of retention in this circumstance. Seller has the right to recover the value of the goods by resale in any commercially reasonable manner.

7. If Buyer is in default of payment, and has sold to a third party any goods in which Seller has reserved title, Seller is entitled to notify the third party of the assignment pursuant to paragraph 4 above and to unilaterally take any necessary action to realize the claim and collect such sums from the third party.

#### **VII. Acceptance of Goods and Services**

1. Buyer shall inspect the goods upon delivery without undue delay. Written notice of any defects shall be submitted to Seller within five (5) calendar days following receipt of the goods, and Buyer's failure to provide notice of the defects within such time period shall constitute Buyer's acceptance of the goods. The required notice shall also apply if the defects could not be identified upon the ordinary inspection but is subsequently identified. A late notice of defects in the goods shall exclude Seller's liability. The timely dispatch of the notice shall constitute compliance with the deadline. Following the date when goods have been accepted by Buyer, any further claims, if any, are limited to any manufacturer's warranties on the applicable goods as set forth in Paragraph VIII below. Buyer's acceptance shall be deemed a complete discharge of all of Seller's obligations, and after such acceptance, Buyer shall have no right to revoke such acceptance for any reason.

2. Buyer shall be obliged to make available to Seller the rejected goods or a sample thereof for the purpose of assessing the rejection. In the case of a refusal, Seller shall be exempted from its liability for a lack of conformity in the goods.

3. In the case of a lack of conformity, Buyer may initially require Seller to remedy by repair. Seller shall be entitled, at its discretion, to provide a substitute delivery instead and to reclaim the non-conforming goods. If the subsequent delivery does not conform to the Order or if Seller fails to remedy by repair, Buyer shall likewise have only the right to require Seller to remedy by repair and Seller may likewise make a substitute delivery instead.

4. If this latter attempt to remedy by repair or to substitute delivery is also unsuccessful and Buyer gives timely notice thereof, Buyer shall then only be entitled to a reduction of the agreed contract price to the extent of the reduction in value. If, however, the reduction in value equals or exceeds the agreed purchase price, Buyer shall only be entitled to declare the Order voided.

5. In all other cases Buyer shall not be entitled to declare the Order voided on account of a lack of conformity of the goods.

#### **VIII. Warranty**

1. With respect to any services to be performed by Seller, Seller represents and warrants that all services will be performed in a workmanlike manner consistent with industry standards. Buyer's sole and exclusive remedy for any defective service will be Seller's re-performance of such defective services or replacement of the damaged goods with a comparable substitute at no additional cost to Buyer.

2. For a period of six (6) months following the date when the goods are physically delivered to their common carrier, or on the date when Buyer is notified that the goods are ready for shipment, whichever occurs first, Seller hereby provides a limited warranty to the original Buyer thereof that all products manufactured or rebuilt by Seller will be free of material defects in materials or workmanship. If Buyer delivers to Seller any drawings or blueprints for the purpose of manufacturing a custom product, Seller warrants that such product will be manufactured substantially to the specifications set forth in the drawing or blueprint provided by Buyer. Notwithstanding anything to the contrary herein, Seller is not responsible for any machinery components which are not manufactured or rebuilt by Seller, nor is Seller responsible for any of Buyer's machinery operation, resins used, temperatures, pressures or other variables in the Buyer's molding, blow molding or extruding process. Accordingly, Seller and Buyer expressly agree that no warranty of any kind or nature is provided by Seller for the successful molding, blow molding or extruding of products performed by the Buyer.

3. Seller's liability is limited to the terms of the express warranties contained herein. Seller and Buyer agree that Buyer's sole and exclusive remedy against Seller shall be for the repair or replacement of the products determined to be defective by Seller. Buyer agrees that no other remedy (including, but not limited to, incidental or consequential damages for lost profits, lost sales, injury to property, or any other incident of consequential loss) shall be available to Buyer.

4. The foregoing express warranties will remain in effect only if the goods manufactured or rebuilt by Seller are used in accordance with sound accepted industry practices and procedures. No warranty shall apply to any goods manufactured or rebuilt by Seller which are subjected to unusual wear and tear, including for example any of the following: (i) unsuitable or improper use or abuse, (ii) operating machinery beyond stated capacities or contrary to manufacturer specifications, (iii) volume limitations or tolerances, (iv) defective installation or improper operation, (v) normal wear and tear, (vi) failure to maintain or provide routine repair and maintenance, (vii) improper tools or working conditions, (viii) excessive workload, (ix) defective construction work, (x) un-suitable building site, or (xi) chemical, electrochemical or electrical conditions.

5. Buyer must notify Seller by registered or certified mail, return receipt requested, of any alleged breach of warranty within ten (10) days after discovery thereof, but with respect to any goods, in any event by not later than the expiration of Seller's warranty period as set forth in Section VIII(2) above.

6. Buyer shall return all defective goods upon Seller's request, and delivery of the same upon Seller's request is a condition to Buyer's rights under any manufacturer's warranty.

7. EXCEPT AS EXPRESSLY SET FORTH HEREIN, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EITHER EXPRESSED OR IMPLIED, OR ARISING BY OPERATION OF LAW, CUSTOM OR OTHERWISE, INCLUDING BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, CONDITION OR QUALITY OF THE GOODS OR SERVICES, OR ANY TRADE USAGE OR DEALING ALL OF WHICH ARE EXPRESSLY DISCLAIMED. BUYER ACKNOWLEDGES THAT NO OTHER REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE TO BUYER OR RELIED UPON BY BUYER WITH RESPECT TO THE QUALITY AND FUNCTION OF THE GOODS OR SERVICES HEREIN SOLD. ANY DETERMINATION OF THE SUITABILITY OF THE GOODS OR SERVICES FOR THE USE CONTEMPLATED BY BUYER IS BUYER'S SOLE RESPONSIBILITY.

#### **IX. Rights of Buyer**

1. Buyer may cancel this Agreement prior to the passing of title or passing of risk to Buyer if delivery of the goods by Seller can in good faith be reasonably proven to be permanently impossible.

2. If Seller fails to timely deliver, but Buyer grants an extension period with the express statement that it will not accept the goods after expiration of the extended term, Buyer may cancel this Agreement, if Seller does not perform within the extension period, provided the non-performance is solely the fault of Seller.

3. In the event of a repudiation of any Order by Seller, Buyer shall not be entitled to recover any damages, including any costs for materials expended or used in trials or tests. The sole and exclusive remedy of Buyer in the event of a repudiation of any Order shall be limited to the return of all funds of Buyer advanced to Seller in payment of the purchase price for such goods.

#### **X. Indemnification of Seller**

Buyer shall indemnify, save and hold harmless Seller and all Seller Affiliates from any and all claims, damages, suits, actions, causes of action, losses, damages, fines, and liabilities, including reasonable attorneys' fees, arising directly or indirectly out of the acts or omissions of Buyer or its representatives, employees or agents. Buyer shall at all times maintain adequate commercial liability coverage consistent with industry norms sufficient to insure itself against such damages and risks and meet the foregoing indemnification obligation.

#### **XI. Limitation of liability**

IN NO EVENT SHALL SELLER OR ITS SUBSIDIARIES, AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR SUBCONTRACTORS ("SELLER AFFILIATES") BE LIABLE TO BUYER FOR ANY LOST OR PROSPECTIVE PROFITS, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION, LOST EARNINGS, LOST PROFITS OR BUSINESS INTERRUPTION, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE GOODS OR SERVICES OR OTHERWISE EVEN IF SELLER OR ANY SELLER AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY WHETHER ANY CLAIM IS BASED UPON PRINCIPLES OF CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR OTHER TORT, NONCOMFORMING GOODS, BREACH OF ANY STATUTORY DUTY, PRINCIPLES OF INDEMNITY OR CONTRIBUTION, THE FAILURE OF ANY LIMITED OR EXCLUSIVE REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE. IN NO EVENT SHALL SELLER'S CUMULATIVE LIABILITY EXCEED (A) THE GREATER OF \$USD500.00 OR 10% OF THE NET PURCHASE PRICE INVOICED TO, AND PAID BY BUYER FOR THE GOODS DELIVERED OR SERVICES PROVIDED UPON WHICH THE CLAIM IS BASED, IS LESS THAN \$20,000.00; OR (B) THE GREATER OF \$USD2,000.00 OR 5% OF THE NET PURCHASE PRICE INVOICED TO, AND PAID BY BUYER FOR THE GOODS DELIVERED OR SERVICES PROVIDED UPON WHICH THE CLAIM IS BASED, IS \$USD20,000.00 OR MORE.

#### **XII. Place of Performance; Jurisdiction**

1. The domestic substantive and internal laws (including the Uniform Commercial Code) of the State of Kansas, but without reference to its conflict of laws rules or principles, to whose jurisdiction the parties hereto submit, shall govern this Agreement as to any claim or dispute. The United Nation's Convention on Contracts for the International Sale of Goods shall neither govern nor apply to this Agreement.

2. In the event of any dispute or controversy arising out of or related to this Agreement, including the interpretation of any provision of this Agreement, or the relationship between the parties, which cannot be informally resolved by the parties, shall be resolved by binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules then in effect, except as such rules may be modified by this Agreement or by the mutual consent of the parties. The number of arbitrators shall be one. Any arbitration proceeding conducted hereunder will be held in Wichita, Kansas USA or such other locale as they may mutually agree and the arbitrator's ruling shall be enforceable in any court of competent jurisdiction. Specifically, Buyer irrevocably submits and agrees to the jurisdiction of the state and federal courts of the state of Kansas in any action, suit or proceeding related to, or in connection with, this Agreement or the goods and services provided by Seller herein and, to the extent permitted

by applicable law, Buyer waives and agrees not to assert as a defense in any such action, suit or proceeding any claim (i) that Buyer is not personally subject to the jurisdiction of the state and federal courts of Kansas; (ii) that the venue of the action, suit or proceeding is improper; (iii) that the action, suit or proceeding is brought in an inconvenient forum; or (iv) that the subject matter of the Sales Agreement may not be enforced in or by the state or federal courts of the state of Kansas. All arbitration proceedings shall be conducted in the English language. No actions, regardless of form or basis, arising out of or related to this Agreement may be brought by either party more than two (2) years after the cause of action has first accrued except that an action for nonpayment may still be brought within two (2) years after the date of last payment owed by Buyer under this Agreement.

#### **XIII. Severability clause**

If any provision of this Agreement is held to be illegal, invalid or unenforceable, in whole or in part, such illegality, invalidity or unenforceability shall not affect the remainder of this Agreement, and the parties shall in good faith attempt to substitute a legal, valid and enforceable provision which achieves to the nearest extent possible the same economic effect as would have been achieved by the illegal, invalid or unenforceable provision. The same shall apply mutatis mutandis in case of any gap in this Agreement.

#### **XIV. Notices**

Any notice required under this Agreement or related to a dispute must be submitted in writing to the appropriate party's address as shown on the most recent Order unless and until a different address is provided by written notice. All notices shall require delivery by registered or certified mail, overnight courier or confirmed facsimile unless electronic transmission is expressly provided for in the Order and an email address for a specifically authorized representative is provided. Each notice will be deemed to have been given on the day when actually physically delivered, two (2) business days if mailed, the same day if faxed or electronic transmission or the next business day if sent via courier.

#### **XV. Entire Agreement**

As to each Order, this Agreement and such Order constitutes the entire agreement between the parties and expressly supersedes any prior dealings, understandings or arrangements, oral or written, between the parties regarding the same.