

## Terms and Conditions of Sale

### 1. Applicability.

- (a) These Terms and Conditions of Sale (“Terms”) are the only terms which govern the sale of goods (also referred to herein as materials) by M. Holland Company, LLC dba M. Holland Company, and its subsidiaries and affiliated companies including M. Holland Canada Company, a Canadian unlimited liability corporation; M. Holland Latinoamérica, S. de R.L. de C.V. in Mexico; M. Holland Export Services LLC, a Puerto Rico LLC; M. Holland Puerto Rico LLC, a Puerto Rico LLC; and M Holland Europe B.V., organized in the Netherlands, (individually or collectively “Seller”), to a buyer (“Buyer”) singularly referred to herein as a “Party” and collectively as the “Parties.”
- (b) Any accompanying order acknowledgement, confirmation of sale and/or invoice from Seller (the “Confirmation”) and these Terms (collectively, the “Agreement”) comprise the entire agreement between the Parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. Notwithstanding anything herein to the contrary, if a written contract signed by both Parties is in existence covering the sale of the goods covered hereby or with regard to the provision of credit/payment terms to Buyer, the terms and conditions of said contract shall prevail to the extent they are inconsistent with these Terms. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Fulfilment and/or acceptance of Buyer's order does not constitute acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms.
- (c) None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of these Terms, nor shall same add any term not contained herein.

### 2. Purchase Orders; Pricing; Credit.

- (a) **Purchase Orders.** Each purchase order shall specify (i) the quantity of goods (also may be referred to as products) being ordered, (ii) goods prices, (iii) payment terms granted by Seller, and (iv) a receipt date (“Purchase Order.”) Any Purchase Order that purports to require Seller to deliver goods with a set price over a specified period of time (e.g. blanket or bulk purchase order, “Blanket Purchase Order”) **is hereby rejected**, and shall be deemed to be a forecast as to Buyer’s need for goods over such period of time. If Buyer issues a Blanket Purchase Order, each request by Buyer for Seller to release or ship goods (a “Release Order”) under such rejected Blanket Purchase Order will be treated as a Purchase Order subject to the Terms hereof.
- (b) **Cancellation of Order.** Orders cannot be cancelled once Buyer’s Purchase Order is accepted by Seller.
- (c) **Acceptance of Purchase Order by Seller.** A Purchase Order and/or Release Order may only be accepted by Seller providing a Confirmation to Buyer and/or by Seller actually shipping goods (and, in such case, solely with regard to the portion actually shipped.) Seller reserves the unconditional right to reject for any reason any Purchase Order and/or Release Order, in whole or in part. Any automatic or computer-generated response to a Purchase Order and/or Release Order shall not be deemed acceptance of such Purchase Order and/or Release Order.
- (d) **Payment Terms.** All sums are due and payable in accordance with the terms invoiced and if delinquent, Seller maintains the right to withhold and/or seize shipments; to reduce or eliminate the credit line or place a credit hold until Buyer pays the account in full; to require advance cash payment for future shipments; and/or to terminate the Agreement.
- (e) **Credit Terms.**
  - (i) If open credit terms are granted, standard payment terms are Net 30 days or as otherwise agreed upon with the credit department.
  - (ii) Purchases made pursuant to this Agreement can only be made by Buyer and not a separate entity unless Buyer provides a corporate guarantee. Separate entities, for example an affiliate or sub-molder of Buyer, may be able to obtain credit from Seller separately if no corporate guarantee is in place. If Buyer’s name or legal structure changes including new ownership, required credit documentation will need to be completed and submitted for a creditworthiness analysis.
  - (iii) If Buyer (a) is 15 days or greater past due on payment of an invoice(s) even if the goods were paid for but Buyer did not pay other amounts due such as taxes, surcharges, demurrage, the superfund excise tax, etc.; (b) consistently does not pay Seller within the credit terms extended to Buyer; or (c) files for bankruptcy, is adjudged as bankrupt, makes a general assignment for the benefit of creditors, has a receiver appointed or becomes insolvent, then Buyer will be in default of its credit terms.
  - (iv) If Buyer defaulted under Section 2(e)(iii), all sums owed by Buyer shall become immediately due and payable regardless of the payment terms set forth elsewhere in these Terms or in any other written agreement between the Parties. If Buyer defaults on payment under this Agreement, Seller will have the right to seek payment in full by whatever means necessary or appropriate. Buyer agrees to pay reasonable costs of collection, including, without limitation, agency fees and attorney’s fees. Seller reserves the right, in its sole discretion to require Buyer to go through the process of determining if it is creditworthy again; deny, reduce or eliminate the credit limit then in effect; place a credit hold; to restrict or alter the terms of payment or to require payment prior to shipment, either generally or with respect to a particular Purchase Order; to decline to deliver goods; to cancel any outstanding Purchase Orders, stop goods in transit; to apply any rebate or refund otherwise due to Buyer to an outstanding balance on Buyer’s account; or any other right or remedy reserved to Seller.
- (f) **Offset Rights.** Buyer will have no right of offset or withholding under these Terms.
- (g) **Pricing.** All prices of goods sold to Buyer are quoted based on current prices at the time of the Purchase Order and/or Release Order. Seller reserves the right in its sole discretion to increase or decrease the price per pound of goods sold pursuant to a Purchase Order and/or Release Order in accordance with current prices in effect at the time of shipment to Buyer or to reflect

adverse market changes occurring prior to shipment. The price increase or decrease will be deemed effective upon notice to Buyer and will apply to all Purchase Orders and/or Release Orders submitted after such notice has been provided and the Purchase Orders and/or Release Orders that were already submitted by Buyer but not yet accepted by Seller. Buyer will have the right to cancel any Purchase Order and/or Release Order if Buyer does not accept said price increase quoted by Seller provided that it notifies Seller in writing within two (2) days from the time it receives notice of the price increase. The price does not include the cost of delivery, taxes and other charges, etc.

- (h) **Cost of Delivery, Taxes and Other Charges.** Buyer shall be responsible for all costs, demurrage, detention charges, fees, and charges of any nature applicable to Buyer's purchase of goods including but not limited to port fees, customs, cost of freight, insurance, equipment fees, any national, state, or local sales, use, value added or other tax, tariff, duty, import or export fee, excise tax, or assessment levied or imposed by the United States or any foreign governmental authority arising out of or related to any of the transactions contemplated by these Terms, other than taxes based upon Seller's income, and must pay directly or reimburse Seller. Buyer is subject to Seller's surcharges (e.g. fuel, logistics, excise, personal property, and other taxes, etc.) as may be adjusted from time to time. The superfund excise tax will be invoiced as a separate line item.
- (i) **Past Audit Claims.** Buyer shall, at Seller's request, provide full and complete records which fully support any discrepancies Buyer may claim exist between any amounts the Seller claims are due for Buyer and the amounts Buyer claims are owed to or are due from Seller. Any claim of discrepancies raised by Buyer shall be waived by Buyer if such claim is not made within sixty (60) days from the date of invoice on which claim is based.
- (j) **Purchase Money Security Interest.** Buyer agrees to execute any financing statement requested by Seller to perfect its security interest in the goods.

### 3. Shipment and Delivery of Goods.

- (a) **Transfer of Title; Risk of Loss.** All goods sold by Seller to Buyer will be shipped origin freight prepaid (OFF) shipping point where the transfer of custody of such goods from Seller to Buyer will occur ("Point of Delivery"), freight prepaid and added to invoice. Buyer shall reimburse Seller for extra freight charges, special packaging, and incidental costs incurred for goods shipped at Buyer's request by means other than Seller's customary shipping methods. Title and risk of loss will pass to Buyer at the Point of Delivery irrespective of whether Seller has sold the goods "freight prepaid" and notwithstanding any right of Buyer to cancel or return goods. If Seller is forced to delay delivery of goods to the initial carrier due to any action or request of Buyer, risk of loss or damage will pass upon the date Seller would have otherwise delivered the goods to the Point of Delivery; and Buyer agrees to pay all reasonable storage and insurance charges specified by Seller. The time of delivery is not of the essence, and Seller shall not be liable or responsible for any costs, charges, expenses, damages or for any penalty, liquidated or otherwise, for late or delayed delivery. All shipping dates are approximate.
- (b) **Demurrage.** Where goods are delivered in bulk by railcar, bulk truck, or any other bulk medium, Buyer will pay Seller for demurrage charges in accordance with Seller's [Demurrage Policy](#).
- (c) **Detention.** Where (1) goods have been released to Buyer; (2) goods are available for pick up or placement by Buyer; (3) Buyer does not take delivery on the goods as ordered in its Purchase Order; or (4) Buyer does not provide access for any mode of delivery to unload, Buyer will reimburse Seller for all detention, storage, or other charges incurred.
- (d) **Allocation.** If Seller is unable for any reason to fill Buyer's entire order for goods, then Seller may allocate its available supply among any or all of Seller's existing or prospective customers and/or its own departments, divisions and affiliates on such basis as Seller deems convenient and practical, without liability for any failure of performance which may result from such determination.
- (e) **Claims for Shortage, Damaged, or Nonconforming Goods.**
  - (i) **Inspection.** Buyer will inspect (weight and visual) the goods immediately upon receipt to ensure there is not a shortage, there is no damage, the goods are conforming, and will observe the goods in connection with the item/product/part number and description on each package and all documentation to ensure receipt of the correct goods. If it is observable that there is a problem with the goods, Buyer may refuse the defective, damaged, or incorrect goods. Regardless of whether the goods are refused or accepted from the carrier, Buyer must note any shortage, defect or damage on the waybill or bill of lading and sign upon such delivery and obtain the signature of the carrier on the waybill or bill of lading at that time. If Buyer accepts the goods, and then discovers observable damage or nonconformity, Buyer has two (2) days to notify Seller in writing from receipt of the goods or Buyer waives any claims for damaged goods or observable nonconforming goods.
  - (ii) **Documentation.** For Buyer claims under this Section, Buyer agrees to cooperate with Seller to provide any documentation requested by Seller to prove such a claim (e.g. resin name, lot number, invoice number, shipping quantities, rejected quantities, overview of the problem, reports, photographs, freight bills, bill of lading, proof of delivery receipt, certified scale tickets, maintenance logs, lab reports, etc.)
  - (iii) **Buyer Claim.** If Buyer desires to make a claim for a shortage, damaged or defective goods, Buyer will notify Seller in writing as required herein, and will provide proof of its inspection and all documentation as requested by Seller, the carrier, or the manufacturer. If Buyer's claim is against a carrier, Seller will assist Buyer in accordance with carrier claims. If Buyer's claim will be directed to the manufacturer, Seller will comply with the manufacturer's requirements and limitations and assist Buyer with its claim. Defective or damaged goods may not be returned or disposed of without the prior express written consent of Seller. Goods so returned will be, at Seller's option, replaced with that portion of goods affected or a credit to Buyer in the amount of the invoice for such affected goods. If Buyer is returning goods pursuant to an approved claim for damaged or defective goods, Seller or the manufacturer will arrange and pay for the costs of return shipping and shipping for replacement goods. If Buyer did not provide written notice within the time limitations herein as applicable to the type of claim, Seller will attempt to assist Buyer with a claim against the manufacturer but if it is time barred by manufacturer,

Buyer will have no recourse or remedy. Buyer acknowledges that its duties to inspect, provide notice timely, and provide documentation are integral to Buyer's claim being successful.

- (A) Seller's liability is conditioned on Buyer's proper use, handling, and storage of the damaged or defective goods and if Buyer fails to protect the goods, Seller reserves the right to deduct from any credit due to Buyer any costs or expenses incurred because of Buyer's failure to comply.
- (iv) **Carrier Fault.** Buyer must notify Seller within two (2) days of receipt of any claims for goods delivered short, damaged or defective as a result of the fault of the carrier. If properly notified, Seller will handle any claims directly with the carrier.
- (v) **Shortage.** A shortage must be reported to Seller within forty-eight (48) hours of receipt of delivery or Buyer waives any claims for shortage. If Buyer has made a proper claim, its exclusive remedy is receiving the balance of the goods due to Buyer.
- (A) If the condition, weight or quantity of any goods indicated on the certified scale tickets or on the carrier's freight bills signed by the carrier upon loading of any goods by Seller at the Point of Delivery differs from that indicated on the certified scale tickets or on the carrier's freight bills signed by the carrier upon physical delivery to Buyer, Seller will file such claims for damages with the carrier as may be appropriate.
- (vi) **Concealed Nonconforming Goods.** If Buyer discovers a concealed nonconformance of the material specifications of the goods that could not be discovered upon inspection, Buyer must notify Seller within ten (10) days of its discovery of the concealed nonconformance and provide any documentation it has in Section 3(e)(ii). Seller will contact its supplier and assist Buyer with its claim.
- (vii) **Return of Conforming Goods.** Conforming goods may not be returned for credit except with Seller's prior written agreement which may be withheld at its sole discretion, and then only in strict compliance with Seller's instructions. Any returned goods may be subject to a restocking fee to be determined by Seller. Under no circumstances will Seller accept for return any special order, non-standard goods or any goods that are in a non-saleable condition. If conforming goods are returned pursuant to this Section, risk of loss or damage will remain upon Buyer until the goods are delivered to Seller's original Point of Delivery and accepted by Seller. Buyer agrees to indemnify and hold harmless Seller from any loss of or damage to the goods or consequence thereof sustained while the risk of such loss or damage remains with Buyer.
- (viii) **Delivery to Buyer's Designee.** Buyer acknowledges and agrees that its duties in these Terms including, but not limited to, the duties to inspect, document and provide notice remain in full force and effect regardless of where or to whom the shipment is directed by Buyer ("Buyer's Designee.") Buyer must inform Buyer's Designee (e.g. its molder, warehouse, etc.) of these Terms and the requirement of compliance thereto. If Buyer's Designee fails to comply with the Terms, Buyer waives any and all claims.
- (ix) **Acceptance.** If Buyer fails to provide notice to Seller as required in this Section, then such goods shall conclusively be deemed to conform to their respective specifications and to have been irrevocably accepted by Buyer.
- (f) **Patents.** Seller reserves the right to discontinue deliveries of any goods, the manufacture, sale or use of which would, in Seller's opinion, infringe upon any U.S. patent, trademark or design now or hereinafter issued, registered, or existing and under which Seller is not licensed.
- 4. Insurance.** Buyer shall maintain during the term of this Agreement, Commercial General Liability Insurance with insurance companies with an AM rating of A- or better or that is otherwise acceptable to the Seller, with minimum limits of not less than \$1,000,000 per occurrence. Buyer shall provide Seller with thirty (30) days prior written notice of any change or cancellation in any applicable insurance policy. If Seller is providing Buyer with credit, Buyer's insurance policies shall name Seller as an additional insured and shall contain an endorsement waiving subrogation rights against Seller. Buyer shall provide proof of such insurance upon request of Seller and will provide Seller, upon written request, copies of the insurance policies.
- 5. Warranty.**
- (a) Buyer understands and acknowledges that Seller is a distributor and not a manufacturer and therefore, any product warranties hereunder will be provided by the manufacturer either directly to Buyer or to the Buyer through Seller, as applicable.
- (b) Manufacturers warrant only, at the time of delivery, that Branded Prime and Generic Prime materials will conform to their then current specifications applicable to the materials sold hereunder.
- (i) Seller's Resin Class Definitions can be found [here](#).
- (ii) If Buyer purchases Branded Prime material, Seller agrees to provide Buyer with the manufacturer's Certificate of Analysis ("CoA") and Certificate of Compliance ("CoC") on M. Holland letterhead.
- (iii) If Buyer purchases Generic Prime material, Seller agrees to provide Buyer with an FDA compliance letter and a CoC, each on M. Holland letterhead. Seller will not provide the manufacturer's identity or a CoA. Regulatory support is dependent upon which manufacturer produced the generic material sold hereunder.
- (iv) If Buyer purchases Non-Prime Resin (Off-Grade/Wide Specification/Down-Grade/New Prime/Pencil Prime material, Seller will not provide Buyer with the manufacturer's name, a CoA, a CoC, or regulatory support. Seller will provide a Material Acceptance Letter.
- (c) Seller does not warrant the specifications or perform any tests on the goods. Seller warrants that it has the rights to distribute the materials. Further, Seller warrants that M. Holland Company and its affiliated companies are in good standing in the jurisdiction where they operate.
- (d) Seller will comply with the manufacturer's requirements and limitations and assist Buyer with any claims.
- (e) As a distributor, Seller cannot control its suppliers. If any of Seller's suppliers provide notice to Seller that it: (1) plans to or has changed the specifications of any goods that Seller purchases; or (2) plans to discontinue manufacturing any of the goods that

Seller purchases from its supplier, Seller will inform Buyer within thirty (30) days of receipt of notice from its supplier if Buyer purchases the affected goods from Seller.

- (f) Buyer waives all claims (including, without limitation, claims for shortages, defects or damages), regardless of the nature of said claim, unless it notifies Seller as applicable to the claim in writing in accordance with Section 3(e). THE REMEDIES SET FORTH IN SECTION 3(e) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN THIS SECTION.
- (g) BUYER ACKNOWLEDGES, REPRESENTS, AND WARRANTS THAT: IT HAS ALL NECESSARY EXPERTISE AND KNOWLEDGE IN THE INTENDED USE OF PRODUCT SOLD HEREUNDER AND ANY USE OR OTHER PRODUCT OR MATERIAL MADE THEREFROM; IT IS NOT RELYING ON SELLER'S SKILL OR JUDGEMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE; AND ASSUMES ALL RISK AND LIABILITY FOR RESULTS OBTAINED BY THE USE OF PRODUCT, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER SUBSTANCES OR IN ANY PROCESS. EXCEPT AS SET FORTH IN THIS SECTION. MANUFACTURERS SPECIFICALLY DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WHETHER ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR A PARTICULAR PURPOSE, CONDITION OR QUALITY OF THE PRODUCT, ANY TRADE USAGE OR DEALING. ANY DETERMINATION OF THE SUITABILITY OF THE PRODUCT FOR THE USE CONTEMPLATED BY BUYER IS BUYER'S SOLE RESPONSIBILITY. BUYER ACKNOWLEDGES THAT IT IS NOT RELYING ON SELLER'S SKILL OR JUDGMENT TO SELECT OR FURNISH GOODS SUITABLE FOR ANY PARTICULAR PURPOSE. BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO ANY GOODS SOLD TO BUYER OR OTHERWISE ARISING UNDER THESE TERMS OR UNDERLYING WRITTEN AGREEMENTS, IF ANY, BETWEEN THE PARTIES WITHIN ONE (1) YEAR AFTER THE DATE OF PHYSICAL DELIVERY OF SUCH GOODS WILL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.
- (h) SELLER WILL NOT PROVIDE ANY WARRANTIES EXCEPT AS STATED HEREIN. GOODS SOLD TO BUYER ARE PURCHASED BY BUYER "AS IS" AND "WITH ALL FAULTS." SELLER NEITHER GIVES NOR MAKES (AND EXPRESSLY DISCLAIMS) ANY WARRANTY, EXPRESS OR IMPLIED, WRITTEN OR ORAL OR ALLEGEDLY ARISING FROM ANY TRADE USAGE OR ANY COURSE OF DEALING, AS TO THE DESCRIPTION, QUALITY, MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, PRODUCTIVENESS, NON-INFRINGEMENT, OR ANY OTHER MATTER, OF ANY GOODS WHICH SELLER SHALL SUPPLY. SELLER SHALL BE IN NO WAY RESPONSIBLE FOR THE PROPER USE, STORAGE, TRANSPORTATION, HANDLING, DISPOSAL AND SERVICE OF THE GOODS. BUYER ASSUMES ALL RISKS PERTAINING TO THE USE AND THE RESULTS OBTAINED THEREFROM OF ALL GOODS WHICH SELLER MAY SUPPLY.
- (i) Buyer warrants that it will not resell the raw goods purchased from Seller.

**6. Limitation of Liability.**

- (a) SELLER'S TOTAL LIABILITY ARISING FROM ANY SALE OF GOODS TO BUYER FOR ANY CLAIMS OF ANY NATURE, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNITY, CONTRIBUTION, STRICT LIABILITY OR OTHERWISE, WILL NOT EXCEED THE PURCHASE PRICE OF THE PORTION OF THE GOODS IN RESPECT OF WHICH SUCH CLAIMS ARE MADE. IN NO EVENT WILL SELLER BE LIABLE TO BUYER OR ANY THIRD-PARTY FOR ANY LOSS OF USE, LOSS, CONSUMER CLAIMS, DAMAGE, INJURY, RECALLS, REVENUE OR PROFIT, OR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, CONTINGENT, EXEMPLARY OR PUNITIVE DAMAGES INCURRED BY BUYER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.
- (b) UPON REQUEST, SELLER MAY FURNISH SUCH TECHNICAL ADVICE AS IT HAS AVAILABLE IN REFERENCE TO THE USE OF GOODS BY BUYER, IT BEING EXPRESSLY UNDERSTOOD, HOWEVER, THAT ALL SUCH TECHNICAL ADVICE IS GIVEN GRATIS, PERFORMED "AS IS", AND SELLER ASSUMES NO OBLIGATION OR LIABILITY FOR THE ADVICE GIVEN OR RESULTS OBTAINED, ALL SUCH ADVICE BEING GIVEN TO AND ACCEPTED BY BUYER AT BUYER'S RISK. SEE ALSO SECTION 10(d).

- 7. Indemnification.** BUYER AGREES TO INDEMNIFY, DEFEND AND HOLD SELLER AND ITS AFFILIATES, AGENTS, REPRESENTATIVES, OFFICERS, DIRECTORS, EMPLOYEES AND INSUREDS HARMLESS FROM AND AGAINST ANY AND ALL BREACHES OF AND DEFAULTS UNDER THESE TERMS BY BUYER AND ANY AND ALL LOSS, DAMAGE, INJURY, LIABILITY AND CLAIMS THEREOF FOR INJURY OR DEATH TO ANY PERSON (INCLUDING, WITHOUT LIMITATION, BUYER'S EMPLOYEES, CUSTOMERS, REPRESENTATIVES AND AGENTS) OR FOR LOSS OF OR DAMAGE TO PROPERTY ARISING OUT OF, CONNECTED WITH OR RELATING IN ANY WAY TO BUYER'S PERFORMANCE OR ACTIONS FOLLOWING SALE OF THE GOODS FURNISHED BY SELLER TO BUYER (WHETHER IN THEIR ORIGINAL FORM AS SHIPPED BY SELLER, AS A PRODUCT MADE FROM OR INCORPORATING SUCH GOODS, OR USED IN SPECIALIZED EQUIPMENT), TOGETHER WITH ALL RELATED EXPENSES AND COSTS (INCLUDING, WITHOUT LIMITATION, COSTS AND FEES OF LEGAL COUNSEL AND ALL OTHER COSTS OF DEFENDING ANY ACTION) (COLLECTIVELY, "CLAIMS.") SELLER HAS THE RIGHT TO CONTROL THE DEFENSE, COMPROMISE AND SETTLEMENT OF ANY THIRD-PARTY CLAIMS TO WHICH BUYER'S INDEMNITY OBLIGATIONS APPLY PURSUANT TO THIS SECTION. THE FOREGOING WILL APPLY REGARDLESS OF THE TYPE OF ASSERTION BEING MADE BY THE PARTIES OR ANY THIRD-PARTY, INCLUDING, WITHOUT LIMITATION, ANY LEGAL,

EQUITABLE, OR ADMIRALTY CAUSES OF ACTIONS OR RIGHTS, AND WHETHER OR NOT SELLER WAS OR IS CLAIMED TO BE PASSIVELY, CONCURRENTLY OR ACTIVELY NEGLIGENT, AND REGARDLESS OF WHETHER LIABILITY WITHOUT FAULT IS IMPOSED OR SOUGHT TO BE IMPOSED ON SELLER AND WILL SURVIVE THE TERMINATION OR EXPIRATION OF THESE TERMS AND THE COMPLETION OR CANCELLATION OF THE APPLICABLE TRANSACTION BETWEEN THE PARTIES. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS ORDER OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY.) EACH PARTY: (A) CERTIFIES THAT NO REPRESENTATIVE, OTHER AGENT (INCLUDING ANY ATTORNEY) OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY(IES) HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

## 8. Termination.

- (a) **Termination for Breach.** Either Party may terminate a Purchase Order at any time in the event of a material breach by the other Party that remains uncured after (i) in the event of a monetary breach, ten (10) calendar days following written notice thereof; and (ii) in the event of a non-monetary breach, thirty (30) days following written notice thereof. Such termination shall be effective immediately and automatically upon the expiration of the applicable notice period, without further notice or action by either Party. Termination shall be in addition to any other remedies that may be available to the non-breaching Party. In the event of a termination, (i) all outstanding payment obligations or other indebtedness of Buyer to Seller shall be immediately due and payable and (ii) Buyer shall pay or otherwise reimburse Seller for Seller's cost of procuring or manufacturing all finished goods, raw material or other inventory relating to the goods which were custom or made-to-order (including reasonable safety stock) in contemplation of orders placed by Buyer pursuant to the Purchase Order. Acceptance by Seller of less than the full amount due shall not be a waiver of any of Seller's rights under these Terms or applicable law. Notwithstanding any provision in these Terms, Seller shall have no obligation to pay any rebate, issue any credit or make any other payment of any kind to Buyer unless Buyer is fully in compliance with its payment and other obligations under these Terms. In addition, if Buyer fails to make any payment when due, Seller shall have the right to offset any and all outstanding payment obligations or other indebtedness of Buyer to Seller against any outstanding payment obligations or other indebtedness that Seller may owe Buyer.
- (b) **Termination for Financial Insecurity.** Either Party may terminate any outstanding Purchase Orders (to the extent Goods have not already been delivered to the carrier for shipment) immediately at its option upon written notice if the other Party: (i) becomes or is declared insolvent or bankrupt; (ii) is the subject of a voluntary or involuntary bankruptcy or other proceeding related to its liquidation or solvency, which proceeding is not dismissed within ninety (90) calendar days after its filing; (iii) ceases to do business in the normal course; or (iv) makes an assignment for the benefit of creditors. This Agreement shall terminate immediately and automatically upon any determination by a court of competent jurisdiction that either Party is excused or prohibited from performing in full all obligations hereunder, including, without limitation, rejection of this Agreement pursuant to 11 U.S.C. §365.

## 9. Compliance with Laws.

- (a) The Parties will comply with all applicable laws and regulations governing the goods, use of the goods, or resale of products made with the goods, including but not limited to laws and regulations governing the export of goods, trade restrictions, embargos, and anti-corruption.
- (b) Buyer will comply with all applicable United States anti-boycott laws including but not limited to the requirements of the Export Administration Regulations, 15 C.F.R. 760, and the Internal Revenue Code, 26 U.S.C. 999, including the requirements on reporting anti-boycott requests to the U.S. Government with a copy to Seller within thirty (30) days if it involves Seller.
- (c) Buyer warrants there will be no diversion of any shipment that is (i) contrary to any applicable law; (ii) for resale and/or transfer to any party not a Party to these Terms unless approved in writing by Seller; or (iii) for shipment or use outside of the U.S., unless approved by Seller in writing, and if so approved, Buyer warrants it will comply with all applicable laws, restrictions and regulations of the U.S. and other governments, including without limitation, the Export Administration Regulations, 15 C.F.R. 760 ("EAR") administered by the U.S. Commerce Department's Bureau of Industry and Security ("BIS"), various economic sanctions regimes administered by the U.S. Treasury Department's Office of Foreign Asset Controls ("OFAC"), the U.S. Foreign Corrupt Practices Act of 1977 ("FCPA.")
- (d) The operations of Seller are and have been conducted at all times in compliance with applicable financial recordkeeping and reporting requirements of the Currency and Foreign Transactions Reporting Act of 1970 (as amended by Title III of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001), and all other applicable money laundering statutes of all jurisdictions in which Seller conducts business, the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any governmental or regulatory agency (collectively, the "Money Laundering Laws"), and no action, suit, proceeding or investigation by or before any court or governmental agency, authority or body or any arbitrator involving Seller with respect to the Money Laundering Laws is pending, or to Seller's knowledge, threatened.
- (e) The transaction contemplated by these Terms is permitted by domestic and foreign law, including, but not limited to, U.S. economic sanctions and embargoes regulated by the U.S. Department of Treasury, Office of Foreign Assets Control ("U.S. Sanctions"). Neither the Buyer nor any person for whose conduct Seller may be held responsible is a person or entity whose property or interests in property are blocked pursuant to U.S. Sanctions. Buyer has always conducted its operations in compliance

with, and not received any communication or incurred any liability with respect to any alleged, actual, or potential violation of, U.S. Sanctions. Buyer agrees to conduct any transaction contemplated by this agreement in accordance with U.S. Sanctions.

- (f) Seller represents and warrants that it has standards and values concerning its business practices, including its conduct towards people, the treatment of the environment, human rights, and compliance with all applicable local, state, national, and international laws and regulations relating to ethical and moral standards of behavior.

#### **10. Buyer's Acknowledgements, Representations and Warranties**

- (a) Buyer acknowledges that the goods sold to Buyer may be considered hazardous materials under various laws and regulations. Buyer agrees to familiarize itself (without reliance on Seller) with any hazard(s) of such goods and their applications and the containers in which the goods are shipped. Buyer agrees to inform and train its employees and customers as to such hazards. Buyer will handle, store, dispose and transport all goods in an environmentally responsible manner and in compliance with all applicable laws and regulations. Buyer will notify Seller promptly of any claims relating to the handling, storing, disposition, transport or use of goods sold by Seller to Buyer. Goods sold by Seller as export must be shipped by Buyer from country of origin and not resold to country of origin.
- (b) IF BUYER INTENDS TO USE PLASTICS DISTRIBUTED BY SELLER FOR MEDICAL DEVICES, PHARMACEUTICAL, IN-VITRO DIAGNOSTIC, OR RELATED APPLICATIONS, BUYER AGREES, CERTIFIES, REPRESENTS AND WARRANTS THAT IT HAS FULLY COMPLIED, AND AT ALL TIMES WILL BE IN FULL COMPLIANCE, WITH THE [M. HOLLAND MEDICAL, PHARMACEUTICAL AND RELATED APPLICATIONS POLICY](#).
- (c) Certain of Seller's suppliers prohibit or restrict the use of raw materials supplied by them with respect to applications in addition to those covered by the Medical Policy referenced in Section 10(b) of these Terms and included herein. Those additional prohibited or restricted applications vary from supplier to supplier and may include (solely by way of example) (i) safety and operational systems and components used in or associated with vehicles (including those pertaining to air bags, seat belts, child seats, brakes, pedals, steering and fuel), (ii) tobacco-related products (including e-cigarettes) and (iii) nuclear reactors. Buyer must advise its Seller account manager or Seller technical service engineer of the prospective end use(s) of any goods to be ordered by Buyer from Seller to determine whether any such use is encompassed or covered by the prohibitions or restrictions mandated by suppliers.
- (d) Buyer assumes sole liability for the manner and purpose for which Buyer utilizes Seller's products, technical assistance and information (whether verbal, written or by way of production evaluations), including any suggested formulations and recommendations. Seller has not performed testing on suitability of products for Buyer's intended uses and applications. Buyer must test Seller's products, technical assistance and information for suitability of intended uses and applications, which is to include testing to determine suitability from a technical, health, safety, and environmental standpoint. Buyer expressly understands and agrees to assume and hereby expressly release Seller from all liability in tort, contract or otherwise, incurred in connection with the use of Seller's technical assistance and information. Any statement or recommendation not contained herein is unauthorized and shall not bind Seller. Nothing herein shall be construed as a recommendation to use any goods in conflict with any claim of any patent relative to any material or its use. No license is implied or in fact granted under the claims of any patent.

**11. Force Majeure.** Neither Seller nor Buyer shall be held responsible for any loss, damage, delay or lack of delivery, or any other contractual obligation except the obligation to pay monies when due, to the extent arising from any event, contingency, or act, whether foreseen or unforeseen, beyond the reasonable control of the Parties such as, without limitation: acts of God, acts of any government affecting Seller in any way, embargo, war or national emergency, military operation, hostilities, acts of the public enemy, terrorist attacks anywhere in the world, riot, civil commotion, sabotage, fire, weather, flood, explosion, epidemic, pandemic, quarantine restriction, disturbances in supplies from normally reliable sources (including, without limitation, electricity, water, fuel and the like), shortage of containers or transportation, failure or breakage of machinery or other apparatus, accident, strike (either at Seller or its suppliers or subcontractors), lockout and labor disturbances, restraints or delays affecting carriers, inability or delay in obtaining supplies of adequate or suitable materials, or delay from a supplier or subcontractor facing a case of force majeure as defined herein ("Force Majeure Event(s).") Neither Party is subject to any liability to the other for failing to perform during the period such inability exists and for a reasonable time thereafter. Each Party shall use reasonable efforts to provide written notice to the other Party of the occurrence of such an event and its anticipated duration within three (3) business days of its occurrence. Without limiting the generality of the foregoing, under no circumstances shall Seller be obligated to purchase or acquire goods from a third-party for delivery to Buyer due to a Force Majeure Event(s). If a Force Majeure Event causes a failure or delay to be uncured for a period of sixty (60) consecutive days following written notice pursuant to this Section, either Party may thereafter terminate the Purchase Order upon thirty (30) days' written notice. A Party's obligation to render timely payment shall not be excused by this Section. Seller will not be liable for any damages or penalties whatsoever, whether direct, indirect, special, consequential, contingent, exemplary, punitive or otherwise, resulting from Seller's failure to perform or delay in performing as a result of the foregoing.

#### **12. Confidential Information.**

- (a) If the Parties have entered into a separate written agreement signed by the Parties such as a nondisclosure or confidentiality agreement, then it shall prevail to the extent they are inconsistent with these Terms.
- (b) As used in this Section, the Party disclosing Confidential Information is the "Disclosing Party" and the Party receiving such Confidential Information is the "Receiving Party." For purposes of this Agreement, the terms "Receiving Party" and "Disclosing Party" shall be deemed to include, except as indicated otherwise, any parent, subsidiary, affiliate of, or entity under the common control of a Party herein.
- (c) "Confidential Information" means any information, whether designated as "confidential" or "proprietary," which is disclosed by either Party to the other Party, either directly or indirectly, in writing, orally or by inspection of tangible objects, including,

without limitation, business plans, business activities, customer data, customer lists, customer names, documents, financial analysis, financial documents, market information, marketing plans, processes, products, product plans, product pricing, research, services, trade secrets or any other information which is designated as “confidential,” “proprietary” or some similar designation. Confidential Information also includes confidential or proprietary information belonging to the Disclosing Party which has been disclosed to Receiving Party by third-parties.

- (d) **Exclusions.** Confidential Information does not include information that: (a) was rightfully in the Receiving Party’s possession before receipt from the Disclosing Party; (b) is or becomes a matter of public knowledge through no fault of the Receiving Party; (c) is rightfully received by the Receiving Party from a third-party without a duty of confidentiality; (d) is independently developed by the Receiving Party without the aid, application or use of the Disclosing Party’s Confidential Information; or (e) for which the Disclosing Party has provided the Receiving Party with written permission to disclose the information.
- (e) **Use and Restrictions.** The Receiving Party: (a) will use the Disclosing Party’s Confidential Information only in connection with the business relationship of the Parties (“Business Purpose”); (b) will protect the confidentiality of the Disclosing Party’s Confidential Information in the same manner it protects the confidentiality of its own similar confidential information, and using no less than reasonable care; (c) will not copy or modify the Disclosing Party’s Confidential Information except as necessary to achieve the Business Purpose, and shall reproduce Disclosing Party’s proprietary rights notices on any copies in the same manner in which such notices were set forth in or on the original; (d) will not disclose the Disclosing Party’s Confidential Information except to its officers, directors, employees, attorneys, accountants, auditors, insurers, investment bankers and consultants collectively referred to herein as its “Representatives” who need to know the Confidential Information to evaluate and/or achieve the Business Purpose and who are bound by confidentiality obligations at least as stringent as those herein; and (e) will be responsible for any confidentiality breach by any of its directors, members, managers, officers, employees, agents and advisors. Receiving Party shall promptly notify Disclosing Party in the event of any unauthorized use or disclosure of Disclosing Party’s Confidential Information. The Parties agree and acknowledge that these restrictions are cumulative, and in addition to each other restriction. The confidentiality obligations will be in full force and effect during the relationship of the Parties plus five (5) years. The Receiving Party will maintain its obligations of confidentiality, non-use and nondisclosure regarding any trade secrets disclosed for so long as such information qualifies as a trade secret under applicable law.
- (f) **Remedies.** Each Party agrees that its obligations hereunder are necessary and reasonable to protect Disclosing Party’s Confidential Information, and expressly agrees that monetary damages would be inadequate to compensate the other Party for any breach by either Party. Accordingly, each Party agrees and acknowledges that any such breach or threatened breach of its confidentiality obligations will cause irreparable injury to the other Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, the other Party shall be entitled to obtain injunctive relief or other equitable relief against the breach or threatened breach of its confidentiality obligations, without posting a bond and without proof of actual damages.

### 13. General Terms

- (a) **Governing Law.** These Terms will be governed by and construed in accordance with the laws of the State of Illinois U.S.A. without regard to its principles of conflicts of law. With respect to any disputes pertaining to these Terms or the goods sold by Seller to Buyer, the Parties consent to the jurisdiction of the federal and state courts whose venue includes Cook County, Illinois, U.S.A. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
- (b) **Severability.** If any provision of these Terms is found to be fully or partially invalid or unenforceable, it will be enforced to the extent permitted by law, and the remainder will not be affected.
- (c) **Waiver.** No waiver by Seller of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Seller. No waiver of any provision of these Terms will constitute a waiver of the same provision on another occasion. In all circumstances, acceptance of, or acquiescence in, a course of performance rendered under this or any prior agreement will not be relevant or admissible to interpret or determine the meaning of these Terms, even though the accepting or acquiescing Party has knowledge of the course of the performance and had an opportunity to make objection.
- (d) **Attorneys’ Fees; Collection Expenses.** If either Party incurs any legal fees associated with the enforcement of these Terms or any rights under these Terms, the prevailing Party shall be entitled to recover its reasonable attorney’s fees and any court, arbitration, mediation, or other litigation expenses from the other Party. If Seller incurs any costs, expenses, or fees, including attorney’s fees and professional collection services fees, in connection with the collection or payment of any amounts due from the Buyer under these Terms, Buyer agrees to reimburse Seller for all such costs, expenses and fees.
- (e) **Notices.** Any notice to be given under the Terms by either Party to the other will be considered properly given if sent to Seller at M. Holland Company, 400 Skokie Boulevard, Suite 600, Northbrook, Illinois 60062 or to the Buyer at the address on the Purchase Order unless modified by written notice, postage prepaid: (i) by registered or certified United States Mail return receipt requested, or (ii) with a recognized overnight courier (receipt confirmed.) Buyer will also send an email to Seller at [legal@mholland.com](mailto:legal@mholland.com) which does not constitute Notice.
- (f) **Survival.** Upon termination, all rights and obligations of the Parties under these Terms will terminate, except for any rights or obligation to which any of the Parties may be entitled or be subject to before its termination (which will remain in full force and effect.)