



SANTIER, INC
TERMS AND CONDITIONS OF SALE

1. **APPLICABILITY.** All purchase orders received from Buyers for products are accepted, and all shipments are made, pursuant to these Terms and Conditions of Sale ("Terms"). These Terms supersede any provision on Buyer's purchase order or other documents which are at variance with these Terms. No changes or additions to these Terms shall be binding on SANTIER, INC ("Santier").

2. **PRICES.** Quoted prices apply only to the specific items and quantities stated in the quotation accompanying these Terms. Prices are not subject to trade or other discounts, and do not include sales, use, excise or similar taxes, or customs or import duties, levies or fees. Costs of special packaging and insurance shall be paid by Buyer. Quoted base prices are valid for 30 days from the date of quotation. Santier may change base prices after the 30-day period, at any time without notice. All adders and surcharges are subject to daily change within the 30 day period as they are charged as the price on the day of shipment.

3. **TAXES AND OTHER CHARGES.** Any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority, on or measured by the sale of the products (collectively, "taxes and other charges") shall be paid by Buyer. In the event Santier is required to pay any such taxes or other charges, Buyer shall reimburse Santier therefore. In the event the sale by Santier to Buyer is not subject to sales tax, Buyer shall furnish a valid Seller's Permit to Santier.

4. **PAYMENT.** Payment in full shall be due thirty (30) days after shipment. Payment shall be deemed made upon receipt by Santier. Interest will be charged at the rate of eighteen percent (18%) per annum on past due accounts.

5. **DELIVERY.** Delivery of products to a carrier at Santier's plant or other Santier loading point shall constitute delivery to Buyer. Santier reserves the right to make delivery in installments, unless otherwise expressly stipulated in writing by Buyer and acknowledged by Santier in advance of shipment. All such installments shall be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept remaining deliveries. Each delivery shall constitute a separate sale, and the default in any delivery shall not void these Terms as to any other deliveries. Any delivery or portion thereof not made in accordance with these Terms shall not affect any fulfilled parts thereof, nor entitle Buyer to reject subsequent deliveries. Any partial shipment shall be invoiced and paid separately in accordance with these Terms.

6. **REFUSAL OF DELIVERY.** Buyer shall notify Santier by e-mail or facsimile transmission within three (3) days after receipt of a shipment of Buyer's refusal to accept a delivery, together with the reasons therefore. Failure of Buyer to provide such timely notice shall be deemed to constitute acceptance of a delivery by Buyer. Claims for shortages or other errors in delivery must be made in writing to Santier within ten (10) days after receipt of shipment.

7. **DELIVERIES.** Delivery dates are estimates based on present and anticipated sales commitments and supplies. Santier will make every reasonable effort to deliver as specified, but in no event shall Santier be liable for any damage, consequential or otherwise, arising from any delay or late shipment. Any partial shipment shall be invoiced and paid separately in accordance with these Terms.



8. **SUCCESSIVE DELIVERIES.** Each delivery shall constitute a separate sale, and the default in any delivery shall not void these Terms as to any other deliveries. Any delivery or portion thereof not made in accordance with these Terms shall not affect any fulfilled parts thereof, nor entitle Buyer to reject subsequent deliveries.

9. **CANCELLATION.** In the event of cancellation of all or part of an order, Buyer acknowledges that it will be difficult or impossible to calculate the cost of such cancellation to Santier. Accordingly, Buyer shall pay the following cancellation fees which the parties agree are reasonable estimates of the total net detriment that Santier would suffer in the event of cancellation: costs incurred for raw material, work in process, finished goods, cancellation and a twenty-five percent (25%) administration fee. No order may be left open beyond a period of four (4) months from the date of the first acknowledged delivery by Santier unless otherwise cancelled by Buyer and the cancellation agreed to by Santier. Without this Buyer faces full liability of the order.

10. **RETURNED MATERIAL.** Santier may accept for return and credit any products purchased by Buyer which are deemed not to meet specifications by Santier and authorized to be returned by Buyer. Claims must be made within thirty (30) days of shipment in accordance with this section. Buyer must receive a Return Material Authorization (RMA) number prior to the return and all boxes must clearly show that number or the return shipment will be returned to the Buyer. Buyer shall provide the invoice number and date of shipment of all returned products. No credit will be given for products returned which were damaged after delivery to the f.o.b. carrier, or which is not otherwise in saleable condition. Prior written authorization by Santier is necessary on all returned parts as outlined in this section.

11. **TITLE.** Santier shall retain title to all products until Buyer has paid the full purchase price. Buyer grants Santier a security interest in each product, including all accessions to and replacements of them, to secure payment, and, upon request by Santier, Buyer shall execute and deliver such financing statements or other documents as may be necessary to perfect such security interest.

12. **RISK OF LOSS.** The risk of loss of all items ordered shall pass to Buyer upon delivery to carrier for shipment, without regard to any notice thereof. Buyer shall have full responsibility for negotiating with the carrier or insurer or both in the event of missed delivery, loss or damage, even though insurance may have been obtained by Santier.

13. **TRADEMARKS.** Buyer shall not remove, alter, obliterate or cancel Santier's trade names or trademarks appearing on any product nor take any actions which are inconsistent with Santier's ownership of such names and trademarks.

14. **FORCE MAJEURE.** Santier shall not be responsible for failure to deliver according to these Terms, where such failure is caused by act of God, fire, strike, civil unrest, riots, war, terrorist act or threat, shortage of raw materials, equipment, fuel, transportation or containers, breakdown of machinery, labor difficulties, failure of carriers to furnish facilities or acts of carriers, shortages of materials, or other causes beyond the control of Santier; provided, that Santier shall perform within a reasonable time after the termination of the cause or conditions resulting in Santier's inability to perform.

15. **LIMITATION ON LIABILITY.** THE WRITTEN WARRANTY SEPARATELY PROVIDED TO THE BUYER IS THE SOLE AND EXCLUSIVE WARRANTY PROVIDED BY SANTIER WITH RESPECT TO THE PRODUCT. SANTIER SHALL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO BUYER FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF OR RELATED TO THE SALE OF THE PRODUCT, INCLUDING, BUT NOT LIMITED TO, BUSINESS INTERRUPTION OR DELAY LOSSES, LOSS OF USE OF THE PRODUCT, COMMERCIAL LOSSES, INCONVENIENCE, OR LOSS OF ANTICIPATORY PROFITS RESULTING FROM THE USE OF THE PRODUCT OR DELAY IN ITS DELIVERY, EVEN IF SANTIER IS APPRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING. IN NO EVENT SHALL SANTIER LIABILITY (WHETHER BASED ON AN ACTION OR CLAIM IN CONTRACT, TORT OR OTHERWISE) TO BUYER ARISING OUT OF OR RELATED TO THE SALE OF THE PRODUCT, EXCEED THE PURCHASE PRICE OF THE PRODUCT.



16. **MODIFICATION AND INTERPRETATION.** These Terms shall supersede any prior oral or written proposals, statements, and agreements relating to the matters covered hereby of any kind whatsoever made by Santier or its representatives, except any written agreement between Santier and Buyer which expressly references these Terms. No agent, employee, or representative of Santier has any authority to bind Santier to any affirmation, representation, or warranty concerning its products other than by a written warranty provided to Buyer by an authorized representative of Santier, and no such affirmation, representation, or warranty shall be enforceable. No course of prior dealings between the parties and no usage of the trade shall be relevant to supplement or explain any provision of these Terms. Acceptance or acquiescence in a course of performance rendered under these Terms shall not be relevant to determine their meaning, even though the accepting or acquiescing party has knowledge of the nature of the performance and opportunity for objection.

17. **GOVERNING LAW.** These Terms shall be construed and enforced in accordance with the laws of the State of California, excluding its choice of law provisions. Neither the Uniform Laws on International Sales nor the Convention on Contracts for the International Sale of Goods shall apply to the purchase order.

18. **LIMITATION OF CLAIMS.** No action or proceeding based on these Terms or arising out of their performance shall be instituted by either party more than one (1) year after the claim has accrued.

19. **ARBITRATION.** Any dispute, controversy or claim arising out of or relating to the sale of products by Santier or to these Terms, or the breach thereof, shall be settled by binding arbitration before a single, neutral arbitrator in San Diego, California, administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

20. **MISCELLANEOUS.** These Terms and the purchase order contain the entire current understanding between the parties related to the transactions herein, and supersede all prior or contemporaneous agreements or understandings. No modification or amendment of these Terms shall be valid unless the same is in writing and signed by both parties. These Terms have been the subject of mutual negotiations, and no provision shall be construed against one party merely by reason of draftsmanship. All notices and other communications shall be in writing and deemed to have been delivered upon personal delivery; as of the second business day after deposit with an overnight delivery service; or as of the next business day after facsimile or e-mail transmission (with confirmation of receipt).