

## **1 Definitions**

- 1.1 "Seller" shall mean Genan Inc.
- 1.2 "Purchaser" shall mean the person or entity listed on a Genan Price Quotation, and any subsidiary of affiliate of such person of entity receiving Product under the Contract in question.
- 1.3 "Parties" shall mean the Seller and Purchaser, collectively.
- 1.4 "Product" shall mean the goods supplied pursuant to the Contract.
- 1.5 "Contract" shall mean the agreement between the Parties consisting exclusively of the Price Quotation in question (including these Terms and Conditions of Sale) together with the terms of any written supply agreement signed by both Parties related to the sale of Product to Purchaser.

## **2 Delivery**

Except as otherwise provided in the Contract, (i) the Product shall be shipped Ex Works Seller's warehouse (as defined in INCOTERMS 2000) to Purchaser at such location as Purchaser directs in writing, (ii) title to, and all risk of loss, of any Product sold hereunder shall pass to Purchaser at the point of delivery to carrier at Seller's warehouse, and (iii) Purchaser shall bear the cost of freight from Seller's shipping location to Purchaser's location. Performance shall be deemed to have occurred at the point of delivery to carrier at Seller's warehouse. Any federal, state, municipal or other taxes levied or assessed to Seller for account of Purchaser shall be borne and paid by Purchaser. Seller is entitled to increase prices if, between the placing of an order and the delivery, the costs of raw material, wages and salaries, freight, customs, duties and/or other fees have increased and therefore delivery becomes more expensive. In such event, Seller will inform Purchaser of the increase and Purchaser will have seven (7) days following receipt of notification to object to the price increase. If Purchaser objects, Seller may either withdraw from the Contract or deliver the goods at the original price, or such other price as the Parties may mutually agree.

## **3 Acceptance and Rejection**

Promptly upon receipt of Product delivered hereunder, Purchaser shall inspect such Product for any damage, defect or shortage. All claims for shortage or non-delivery and any claim for damage or defect which could reasonably be discoverable in the course of such inspection shall be waived unless Purchaser shall provide Seller written notice of the claim prior to the resale, use, mixing, blending, relabeling, repackaging, converting or other destruction of the identity of the Product and within ten (10) days after receipt of such shipment of Product to which the claim relates. If Purchaser rejects in whole or in part any non-conforming shipment of Product, Purchaser shall provide Seller written notice of such rejection prior to the resale, use, mixing, blending, relabeling, repackaging, converting or other destruction of the identity of the Product and not later than ten (10) days after receipt of such shipment of Product. If Purchaser fails to provide Seller with such written notice, Purchaser shall be deemed to have accepted the applicable shipment of Product. Upon written notice of non-conformity of any Product, Seller shall have the right to cure said non-conformity within a reasonable time even though the time for delivery has expired. If Seller agrees with Purchaser's determination that a shipment of Product does not comply with all applicable specifications, Seller shall use reasonable efforts to repair or replace the nonconforming Product, at no additional cost to Purchaser.

#### **4 Method of Payment**

Except as otherwise provided in the Contract, all payments due hereunder to Seller shall be paid to Seller in United States Dollars net thirty (30) days from the date of Seller's invoice. Any invoiced amount which is not paid within ten (10) days of its due date shall be assessed a late payment fee at the rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law with respect to such obligations, whichever is less. All orders are subject to approval by Seller's Credit Department. Seller shall not be responsible for any delay attributable to Purchaser's default of payment terms on prior orders or on prior invoices.

#### **5 Change Orders and Cancellations**

Upon Purchaser's request, Seller will carry out subsequent changes to the purchase order ("Change Order") so long as such Change Order does not result in additional costs or delays to Seller. If the Change Order results in expenses above those originally agreed upon, Seller will notify Purchaser of the increased expenses and Purchaser shall have five (5) working days to object to the change in costs. Provided, however, if Purchaser does not object within the five (5) day period, the changes requested by Purchaser and the increased costs enumerated by Seller will be deemed as agreed upon. Purchaser agrees that it shall have no right to cancel a purchase order without first obtaining the prior written consent of Seller. Should Seller consent to the cancellation by Purchaser of a given purchase order, Purchaser shall reimburse Seller for (i) the costs of any materials acquired or used in contemplation of fulfilling such order, (ii) other direct costs reasonably incurred by Seller in connection with performance of such purchase order up to the time of receipt of such notice and (iii) an additional amount equal to 10% of the aggregate amount reimbursed pursuant to subsections (i) and (ii) above as a cancellation processing fee.

#### **6 Representations and Warranties**

Seller warrants that products sold hereunder shall be free from defects in material and workmanship for a period of twelve (12) months following Purchaser's receipt of the Products; Seller makes no other warranty of any kind, express or implied, including without limitation, any warranty of merchantability, fitness for a particular purpose or noninfringement. Further, Seller specifically makes no warranties as to any services or as to compliance with laws, regulations, standards and/or conventions including any related to the environment or to the packaging, labeling and/or transport of hazardous goods. Purchaser warrants that it shall obtain any required importation licenses or approvals for importation of Product. Seller shall cooperate reasonably with Purchaser, at Purchaser's reasonable request and expense, to obtain such licenses or approvals. Purchaser warrants that it shall fully comply with all label directions for the handling, storage, possession or use of Products sold hereunder and Purchaser agrees that it shall indemnify and hold Seller harmless from all claims (including, without limitation, attorneys' fees) of personal injury or property damage resulting from any failure of Seller to comply with the above warranties.

#### **7 Remedies**

Purchaser's exclusive remedy for shortage of product, damaged or defective Product (whether or not occurring as a result of Seller's alleged negligence or gross negligence) or any other cause of action arising out of the Contract, including breach of warranty, is expressly limited to replacement or repair of nonconforming Product or payment of an amount not to exceed the purchase price of the Product for which damages are claimed, at Seller's option. Purchaser shall have no right to withhold payment or make a reduction in price. Purchaser's remedy of replacement, repair, or refund is available only if nonconformance was not caused by Purchaser's misuse, unauthorized modifications, neglect, or improper storage, including without limitation storage at inappropriate temperatures, transportation, by accident, fire or other hazard.

## **8 Limitation of Liability**

In no event shall Seller, its directors, officers, affiliates, employees or agents be liable to Purchaser for any incidental, consequential, indirect or special damages, including punitive or treble damages or attorney's fees, whether foreseeable or unforeseeable, based on claims of Purchaser or its clients or customers (including, but not limited to, claims for loss of business, goodwill, profits, use of money or use of products or impairment of other assets), arising out of breach of express or implied warranty, breach of Contract, misrepresentation, negligence, gross negligence, strict liability in tort or otherwise in connection with or arising out of the Contract, except in the case of personal injury or property damage where and to the extent that applicable law requires such liability. To the extent Purchaser incorporates or causes others to incorporate the Product in its own product or the Products of any third party, Seller shall not be liable for, and Purchaser shall indemnify seller for, third party claims for infringement of letters patent, registered design, trademark or copyright resulting from such incorporation and based upon the use of the Product or the manufacture, use, sale or offer for sale of any Product containing such Product. Any action by Purchaser for breach of the Contract by Seller or any other causes of action of Purchaser expressly allowed under the Contract must be commenced within one year after the cause of action has accrued. In no event shall Seller's aggregate liability arising out of or related to this Contract, whether arising out of or related to Seller's acts or omissions, breach of Contract, tort (including negligence) or otherwise, exceed the aggregate amount paid to Seller during the prior 12 month period for Product sold hereunder.

## **9 Indemnity**

Purchaser agrees to indemnify, hold harmless and defend Seller and its directors, officers, employees and agents, and the directors, officers, affiliates, employees and agents of any Seller parent, subsidiary or related company (the "Seller indemnitees") from and against any and all claims, suits, losses, damages, costs, fees and expenses arising out of the death or injury to person or damage to property resulting from the sale, marketing or use of the Product by Purchaser or the negligence, gross negligence or willful misconduct of Purchaser, except to the extent that such claims, suits, losses, damages, costs, fees or expenses arise or result from any negligent or wrongful act or omission of Seller.

## **10 Insurance**

During the term of this Contract, Purchaser shall, at its own expense, maintain and carry insurance in full force and effect which includes, but is not limited to, commercial general liability (including product liability) in a sum no less than \$1,000,000 with financially sound and reputable insurers. Upon Seller's request, Purchaser shall provide Seller with a certificate of insurance from Purchaser's insurer evidencing the insurance coverage specified in this Contract. The certificate of insurance shall name Seller as an additional insured. Purchaser shall provide Seller with 30 days' advance written notice in the event of a cancellation or material change in Purchaser's insurance policy. Except where prohibited by law, Purchaser shall require its insurer to waive all rights of subrogation against Seller's insurers and Seller.

## **11 Force Majeure**

No liability shall result from Seller's nonperformance or delay in performance hereunder, when due to (i) war, act of public enemy, act of God, riot, fire, explosion, flood, storm, accident, or sabotage; (ii) strike, lockout or other labor trouble (whether or not such labor trouble is within the reasonable control of Seller); (iii) compliance with any law, act, executive order, regulation, priority, request or recommendation of any governmental authority (including laws, regulations and orders pertaining to the protection of the environment or other laws or orders which increase the costs incurred by Seller to deliver the Product, including the implementation of

tariffs); (iv) unavailability, shortage or significant increase in the cost of fuel, raw materials, energy sources or labor; (v) mechanical failure or breakdown of equipment; or (vi) any contingency beyond the reasonable control of Seller interfering with the production, supply, transportation, or consumption of the Product covered by the Contract or with the supply of raw materials used in connection herewith, provided Seller gives prompt notice to Purchaser of the commencement, expected duration, estimated effect on ability to perform, and the termination of the event which causes its inability to perform (each such event shall be considered "Force Majeure"). Any delay due to Force Majeure shall not be deemed to be a breach or failure to perform this Contract, or any part thereof in the event deliveries pursuant to the Contract have been suspended due to an event of Force Majeure for any consecutive six (6) month period, either Party may cancel the Contract upon thirty (30) days notice.

## **12 Termination**

Seller may terminate this Contract with immediate effect upon written notice to Purchaser, if Purchaser: (i) fails to pay any amount when due under this Contract; (ii) has not complied with any of these terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

## **13 Miscellaneous**

### **13.1 Remedies not Exclusive**

All remedies available to the Parties for breach of obligations herein are cumulative, in addition to remedies available under applicable law and may be exercised concurrently or separately, and the exercise of any one remedy will not be deemed an election of such remedy to the exclusion of other remedies.

### **13.2 Amendments**

The Contract may not be supplemented, altered or modified by the use of any other documents or oral communications unless agreed to in writing by both Parties' authorized representatives.

### **13.3 Governing Law; Binding Arbitration**

The Contract shall be governed and construed under the laws of the State of Texas, excluding its choice of law rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. Any controversy or claim arising out of or relating to this Contract, or the breach thereof, that the Parties cannot amicably resolve shall be finally resolved by arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules ("AAA Rules"), and judgment on the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The arbitration shall be heard and determined by a single arbitrator who shall be appointed in accordance with the procedure set out in the AAA Rules. The seat of the arbitration shall be Houston, Texas. Each Party shall bear its own arbitration costs and expenses. The costs and expenses of the arbitration process shall be equally divided between the Parties. Nothing herein contained shall be deemed to give the arbitrator any authority, power or right to alter, change, amend, modify, add to or subtract from any of the provisions of this Contract, nor to award to any party any incidental, consequential, indirect or special damages, including punitive or treble damages.

### **13.4 Severability**

In the event any provision herein is held to be invalid or unenforceable, the valid or enforceable portion thereof and the remaining provisions of the Contract will remain in full force and effect.

**13.5 Waiver**

A failure by either Party to insist on performance of any of the terms of the Contract, a failure by either Party to exercise any right or privilege, or a waiver of any breach hereunder shall not constitute a waiver of any other right or privilege, whether of the same or similar type.

**13.6 Nonassignability; Binding on Successors**

Except in connection with any sale of all or substantially all of Purchaser's assets, whether by merger or otherwise, any attempted assignment of the rights or delegation of the obligations under the Contract, whether by operation of law or otherwise, shall be void without the prior written consent of Seller. In the case of any permitted assignment or transfer of or under the Contract, the Contract shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the Parties hereto.

**13.7 Ambiguities**

Ambiguities, if any, in the Contract shall not be construed against either Party, irrespective of which Party may be deemed to have authored the ambiguous provision.

**13.8 Survival of Obligations**

Any termination of the Contract shall not affect any monies owing or obligations incurred by either of the Parties prior to the effective date of the termination. The representations and warranties set forth in the Contract and these Terms and Conditions of Sale shall survive expiration or termination for any reason of the Contract.

**13.9 Terms Available Online**

These Terms and Conditions of Sale are also available in the footer on the Seller's website at <https://www.genan.us/> under Genan Policies. These Terms and Conditions of Sale may be modified by Seller from time to time, in whole or in part. Such modifications, additions or deletions will be effective immediately upon posting on the Seller's website.