

CALOY COMPANY STANDARD TERMS AND CONDITIONS

1. **Parties.** "Seller" is Caloy Company, LP, a California limited partnership. "Buyer" is the named buyer purchasing the goods (the "Goods") as provided on the attached invoice (the "Invoice"). Buyer and Seller may sometimes be referred to individually as a "Party" or collectively as the "Parties."

2. **Applicability.** These terms and conditions of purchase (these "Terms") are the only terms which govern the purchase of the Goods by Buyer from Seller. Provided, however, that if the Parties enter into a separate written contract signed by both Parties covering the sale of the Goods covered hereby, then the terms of such written contract shall control. The accompanying Invoice and these Terms, including any exhibits or attachments thereto (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. These Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its purchase order or such terms. Fulfillment 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.

3. **Price.** The price of the Goods is the price stated in the Invoice (the "Price"). If no price is included in the Invoice, the Price shall be the price set out in Seller's published price list in force as of the date of receipt of Buyer's purchase order. All Prices are exclusive of shipping costs, and all sales, use and excise taxes and any other similar taxes, duties and charges of any kind imposed by any Governmental authority on any amounts payable by Buyer. Buyer shall be responsible for all such charges, costs and taxes; provided, that, Buyer shall not be responsible for any taxes imposed on, or with respect to, Seller's income, revenues, gross receipts, personnel or real or personal property or other assets.

4. **Payment Terms.** Unless otherwise agreed by the Parties, Buyer shall pay all invoiced amounts due to Seller within thirty (30) days of the date of the Invoice. Buyer shall make all payments hereunder in U.S. dollars by wire transfer, check, or other form of payment that Seller deems acceptable.

5. **Late Payments; No Set-Off.** In the event of a late payment hereunder, Buyer shall reimburse Seller for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Terms or at law (which Seller does not waive by the exercise of any rights hereunder), Seller shall be entitled to suspend the delivery of any Goods if Buyer fails to pay any amounts when due hereunder. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller, whether relating to Seller's breach, bankruptcy or otherwise.

6. **Delivery; Shipping.** Unless Seller otherwise specifies in writing, delivery will be made F.O.B., Seller's manufacturing plant or warehouse, as applicable (the "Delivery Point"), and title and risk of loss shall pass to Buyer at that point. Seller shall have the right to choose the means of transportation and to route shipments when specific instructions are not included with Buyer's order. The Seller shall not be liable, nor shall this Agreement be subject to cancellation, for any delay in delivery which is caused by or due to any contingency beyond the Seller's control ("Force Majeure"), including, but not limited to, wars, fire, floods, riots, strikes or lockouts, or labor disputes involving the Seller or its subcontractors, insurrection, earthquakes, embargos, Acts of God, demands or requirements of governments, failure of or delay in transportation, unusually severe weather, default of a supplier or

subcontractor or due to any other cause beyond Seller's reasonable control. In the event of delay for any such cause, the specified delivery date shall be extended for a reasonable length of time, but not less than the period of delay.

7. **Inspection and Rejection of Goods.** Buyer shall inspect the Goods on or within five (5) business days after delivery of the Goods (the "Inspection Period"). Buyer will be deemed to have accepted the Goods unless it notifies Seller in writing of any nonconforming Goods during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Seller. If Buyer timely notifies Seller of any nonconforming Goods, Seller shall, in its sole discretion, (i) replace such nonconforming Goods with conforming Goods, or (ii) credit or refund the Price for such nonconforming Goods, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Buyer shall ship, at its expense and risk of loss, the nonconforming Goods to Seller. If Seller exercises its option to replace nonconforming Goods, Seller shall, after receiving Buyer's shipment of nonconforming Goods, ship to Buyer, at Buyer's expense and risk of loss, the replaced Goods to the Delivery Point. The remedies set forth in this Section 7 shall be Buyer's exclusive remedies for the delivery of nonconforming Goods.

8. **Changes; Cancellations.** Orders are not subject to cancellation, complete or partial, without Seller's written consent. Any reduction in quantities ordered shall constitute a partial cancellation subject to this clause. If any change causes an increase in the cost of or time required to deliver the Goods, an equitable adjustment will be made to the price or delivery schedule, or both. Where Seller consents to cancellation, settlement will be made on the following basis: Buyer will pay to Seller, upon delivery, the full purchase price of all Goods delivered at the time Seller agrees to cancellation. Invoices for all cancellation charges are payable promptly upon presentation. If within thirty (30) days from the presentation of such invoice. Buyer does not instruct Seller as to the disposition of the material, etc., arising from the cancellation, Seller may sell the same, crediting Buyer for the proceeds. Buyer will also pay the reasonable costs and expenses incurred by Seller in making a settlement hereunder and in protecting property in which Buyer has an interest.

9. **DISCLAIMER OF WARRANTIES. THE GOODS UNDER THESE TERMS OF SALE ARE SOLD "AS IS." SELLER HEREBY SPECIFICALLY DISCLAIMS ANY WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT AND NON-VIOLATION OF THIRD-PARTY RIGHTS, AND ANY WARRANTIES THAT MAY ARISE DUE TO COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE, WHETHER RELATED TO GOODS, OR ANY MARKETING MATERIAL, AS APPLICABLE, OR OTHERWISE.**

THE FOREGOING DOES NOT AFFECT ANY WARRANTIES WHICH CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

10. **Limitation of Liability.**

(a) **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR DIMINUTION IN VALUE, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER**

SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

(b) **IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO SELLER FOR THE GOODS SOLD HEREUNDER.**

(c) The limitation of liability set forth in Section 10(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

11. **Compliance with Laws.** Buyer shall comply with all applicable laws, regulations and ordinances. Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under this Agreement. Buyer shall comply with all applicable export and import laws of all countries involved in the sale of the Goods under this Agreement or any resale of the Goods by Buyer. Buyer assumes all responsibility for shipments of Goods requiring any government import clearance. Seller may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on the Goods.

12. **Termination.** In addition to any remedies that may be provided under these Terms, Seller may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors.

13. **Waiver.** No waiver by Seller of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Seller. No failure to exercise, or delay in exercising, any right, remedy, power or privilege by Seller arising from this Agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege by Seller hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

14. **Confidential Information.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer, whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Seller in writing. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

15. **Assignment.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Seller. Any purported assignment or

delegation in violation of this Section is null and void. No assignment or delegation relieves Buyer of any of its obligations under this Agreement.

16. **Relationship of the Parties.** The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

17. **No Third-Party Beneficiaries.** This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

18. **Governing Law.** All matters arising out of or relating to this Agreement are governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

19. **Jurisdiction; Venue.** Any legal suit, action or proceeding arising out of or relating to this Agreement shall be instituted in the federal courts of the United States of America or the courts of the State of California, in each case located in San Francisco, California, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action or proceeding.

20. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the Parties at the addresses set forth on the face of the Invoice or to such other address that may be designated by the receiving Party in writing. All Notices shall be delivered by personal delivery, overnight courier (with all fees pre-paid and confirmation of delivery), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in this Agreement, a Notice is effective only (a) upon receipt of the receiving Party, and (b) if the Party giving the Notice has complied with the requirements of this Section.

21. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

22. **Advertisement.** Unless authorized by Seller, Buyer shall not in any manner advertise or publish the fact that it has placed an order with Seller to purchase the Goods, or otherwise has entered into this Agreement with Seller. Buyer is prohibited from using Seller's trademarks or trade names.

23. **Amendment and Modification.** These Terms may only be amended or modified in a writing stating specifically that it amends these Terms and is signed by an authorized representative of each Party.

24. **Survival.** Provisions of these Terms which by their nature should apply beyond their terms will remain in force after any termination or expiration of this Agreement including, but not limited to, the following provisions: 11, 14, 18, 19, 22 and 24.