



**ORGO-THERMIT, INC.**

**STANDARD TERMS AND CONDITIONS OF SALE**

The following are the terms and conditions under which products are sold by Orgo- Thermit Inc. (OTI). The terms and conditions herein supersede all prior proposals, negotiations and representations, if any.

**1. Delivery**

Unless otherwise agreed, products shall be delivered to Purchaser FOB trucks at OTI'S warehouse, and title and risk of loss shall pass to Purchaser upon receipt by the carrier. Shipping charges are to be paid to the carrier by the Purchaser. Purchaser shall provide shipping instructions when placing its order in any event promptly after its order is accepted by OTI. If timely shipping instruction is not received, OTI shall choose a carrier and ship the goods at Purchaser's expense. OTI will obtain insurance on all shipments on Purchaser's behalf and for Purchaser's account unless otherwise agreed.

**2. Payment**

- A. All prices are FOB truck at OTI'S warehouse. Unless otherwise agreed in writing all invoiced amounts, including shipping charges, if any, shall be due and payable prior to delivery in U.S. dollars at the prices stipulated. **INTEREST MAY BE CHARGED FOR LATE PAYMENTS AT ONE AND HALF PERCENT (1.5%) PER MONTH, THE MINIMUM CHARGE BEING \$5.00 or, IF LESS, THE MAXIMUM ALLOWABLE RATE UNDER APPLICABLE LAW.** In the case of deliveries in instalments or partial shipments, proportionate payments shall become due and payable with respect to each shipment. Payments shall be made at OTI'S lockbox at P O Box 95000-4030, Philadelphia, PA 19195-0001 in U.S dollars.
- B. If before completion or performance of any delivery by Seller, Buyer becomes bankrupt, insolvent or makes an assignment for the benefit of creditors, Seller may at its option terminate the delivery by giving to Buyer a written notice of termination and Seller shall thereupon be relieved of any further obligations to Buyer. In addition to payment for goods delivered, Buyer shall reimburse Seller for its termination costs and a reasonable allowance for profit for the work terminated. In the event Seller is required to pursue legal action to collect any outstanding amounts owed, Seller shall be entitled but not limited to reasonable attorneys' fees, costs of collection and interest, as well as for any bank fees, including for returned checks/insufficient funds, imposed on Seller.

**3. Taxes**

Prices do not include sales, use or other taxes. To the extent permitted by law, any tax imposed by any federal, state, foreign or local authority which OTI may be required to collect or pay in connection with the products or related services (except OTI'S income or franchise taxes) shall be paid by the Purchaser.

**4. Limited warranty**

- A. OTI warrants that for a period of 90 days from delivery to the carrier the products shall be free from defects in materials and workmanship, shall meet OTI'S Published product standards, shall be adequately contained, packaged and labelled and shall conform to the affirmations of fact, if any, made on the container and label. OTI represents that the articles, materials or services furnished herewith were produced or rendered in accordance with the applicable provisions of the Fair Labor Standards Act of 1938, as amended. These warranties are made to Purchaser and not to any customer of Purchaser or any third party. These warranties shall not be effective if any damage or defect is the result of negligence or improper handling of the Products by Purchaser or any other party after delivery to carrier.
- B. OTI will repair or replace, at its warehouse, any Product delivered to Purchaser by OTI which fails to conform to the warranty extended in Paragraph A above, or at OTI'S option, will repay the price paid for such Product. Any products replaced shall become the property of OTI. Transportation charges for the return of defective goods to Seller or other location designated by Seller and reshipment to Buyer, if applicable, shall be borne by Buyer, and the risk of loss thereof will be borne by Seller only once such goods are received by Seller in accordance with written shipping instructions from Seller. Claims must be

made within 100 days following delivery of the product to Purchaser and OTI must be given written notice of any claimed nonconformity and a reasonable opportunity to investigate. No claims for nonconforming deliveries, whether based on quantity, quality or workmanship will be accepted after such 100 day period. **PURCHASER'S REMEDY, AND OTI'S TOTAL LIABILITY, REGARDLESS OF THE FORM OF ACTION (INCLUDING BUT NOT LIMITED TO BREACH OF WARRANTY, GUARANTY OR REPERESNTATION, NEGLIGENCE, OR STRICT LIABILTY), FOR ANY LOSSES, DAMAGES, COSTS OR EXPENSES RELATING TO ANY PRODUCT INVOLVED SHALL BE LIMITED TO THE PRICE ACTUALLY PAID BY BUYER FOR THE GOODS THAT ARE THE SUBJECT OF SELLER'S NONPERFORMANCE, OR AT OTI'S OPTION THE REPAIR OR REPLACEMENT OF PRODUCTS WHICH DO NOT CONFORM TO THE WARRANTY IN PARAGRAPH A ABOVE. IN NO EVENT SHALL OTI BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, EVEN IF OTI SHALL HAVE BEEN ADVISED OF THE POSSIBILTY OF SUCH DAMAGES.**

- C. THE FOREGOING WARRANTIES ARE EXCLUSIVE AND OTI DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, WRITTEN OR ORAL, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NO OTHER REPRESENTATIONS OR WARRANTIES, EXPIRES OR IMPLIED, ARE MADE IN RESPECT OF THE PRODUCTS DELIVERED TO PURCHASER BY OTI OR THEIR PRODUCTION.**

**5. Indemnification**

Purchaser will indemnify OTI and hold OTI harmless from any liability for losses, damages, costs or expenses (including reasonable attorneys' fees). Other than as expressly provided for herein, with respect to any claim, action or proceeding, by or on behalf of Purchaser or any third party, relating to any products delivered to Purchaser by OTI, including use in the manufacture or assembly of, or incorporation into, any other goods, except to the extent that such liability may be demonstrated to result from OTI'S willful misconduct or gross negligence.

**6. Modification of credit**

If purchaser fails to perform any term or condition hereof or if OTI at any time has reasonable doubt of Purchaser's financial responsibility OTI may decline to make further shipments except against cash payment in advance or provision of adequate assurances of Purchaser's due performance after a written demand therefore. Failure to pay any invoice when due shall automatically make all outstanding invoices immediately due and payable and OTI may withhold all subsequent deliveries until the account is settled in full.

**7. Force majeure**

OTI shall not be liable for delay or other non-performance to the extent such delay or non-performance is due to act of God or the public enemy, compliance with any applicable governmental regulation or order or court order, fire, earthquake, riot, labor dispute, vandalism, unusually severe weather or any other cause beyond OTI'S reasonable control, any delays or non-performance for such reasons shall not constitute a breach of contract. If, due to any such contingency, OTI is unable to supply Products to all its customers, OTI shall have the right to allocate its available supply among its customers and its departments and divisions in such manner as it deems fair and equitable. In no event shall OTI be obligated to purchase goods from others in order to enable it to supply Products to Purchaser, although OTI may at its option, do so at anytime.

**8. Over or under- Shipments: No delivery of instalments.**

Shipments of products in quantities 5% over or under the quantity specified in purchaser's order shall not be considered to be a non-conforming delivery as to quantity. Seller shall invoice Purchaser for the actual quantity delivered. No delivery of any instalment of the products or delivery of an instalment of non-conforming goods shall not be a breach of contract except with respect to such instalment and shall not relieve the purchaser from accepting the balance of such products. Each instalment shall be deemed as a separate sale.

**9. Modifications**

No terms or conditions other than those stated herein and no agreement or understanding, oral or written, purporting to modify these terms and conditions shall be binding on the parties unless hereafter made in writing and signed by the authorized representative of each. If this document constitutes an acceptance by OTI, this acceptance is EXPRESSLY limited to the terms hereof. If this document constitutes an acceptance by OTI, This acceptance is EXPRESSLY conditioned on purchaser's assent to any additional or different terms not contained in Purchaser's offer. If these terms and conditions are not assented to, Purchaser must notify OTI at once. Acceptance of the products sold hereunder shall constitute assent to these conditions. OTI and Purchaser hereby object to and reject any and all additional or different terms proposed by the other party,

whether contained in such party's purchasing/sales or shipping/receiving releases forms or elsewhere.

**10. Governing law**

This agreement shall be exclusively governed by and construed and interpreted in accordance with the laws of the State of New Jersey, without reference to its conflict of laws principles.

**11. Notices**

All notices shall be in writing and shall be effective upon delivery.

**12. Change of Design**

OTI reserves the right to make changes and improvements to any product without any obligation to give prior notice or to carry out such changes to products already sold.