

## Terms and Conditions of Sale

### PROVIDINGGREEN LLC STANDARD TERMS AND CONDITIONS OF SALE

- 1 **GOVERNING PROVISIONS.** These Standard Terms and Conditions shall apply to all products manufactured or offered for sale by Seller and purchased by Buyer from Seller (“Products”). Seller objects to any additional or different terms contained in any other form or communication previously or hereafter provided by Buyer to Seller that is not expressly agreed to in a writing executed by both Seller and Buyer. No such additional or different terms or conditions shall be of any force or effect. No accepted offer may be cancelled or altered by Buyer except upon such terms as are acceptable to Seller in writing; and no changes to this document shall be binding unless set forth in writing and manually signed by Seller. Seller may revoke this offer at any time before Buyer accepts it.
- 2 **PURCHASE ORDER.** “Purchase Order” means a proposal issued by Seller and accepted by Buyer, or a written order placed by Buyer and accepted by Seller.
- 3 **NO EXCLUSIVITY.** The acceptance by Seller of a Purchase Order from Buyer in no way limits Seller’s right to manufacture for or sell to any other buyer (or to use itself) any Products or any similar or competitive product.
- 4 **INVOICES; PAYMENT.** Payment Terms shall as provided in the applicable Purchase Order accepted by Seller. Unless otherwise specified by Seller in the applicable Purchase Order, Buyer shall make all payments to Seller in U.S. Dollars. Seller reserves the right to require a Letter of Credit or other financial security from Buyer.
- 5 **SHIPPING, TITLE AND RISK OF LOSS.** Unless otherwise specified in the applicable Purchase Order, the shipping terms for all Products purchased hereunder are F.O.B. Seller’s origin. Title to the Products shall pass to Buyer upon the earlier of (i) payment in full of the applicable Products, or (ii) delivery of the applicable Products to Buyer. Risk of loss to the Products shall pass to Buyer upon delivery at the delivery location.
- 6 **PRODUCT ACCEPTANCE.** Buyer shall inspect the Products upon delivery as soon as

practical, but no later than within five (5) Business Days after delivery of the Products to Buyer (“Visual Inspection”). The purpose of Visual Inspection is to check for Product quantity shortages, overages, mislabeled Products, damage to the Products during transit and other non-conforming Products. Visual Inspection is not for the purpose or assurance of Product electrical, mechanical, or quality specifications; such issues are dealt with in the warranty set forth herein. Product acceptance shall take place upon the earlier of successful Visual Inspection or five (5) Business Days after delivery. If the Visual Inspection indicates a (i) Product quantity shortage or overage that the parties did not agree upon prior to delivery or (ii) that the Products are non-conforming, Buyer will promptly, but no later than five (5) Business Days after delivery, notify Seller in writing of such shortage, overage or non-conformance. Upon receipt of Buyer’s written notice and Seller’s confirmation that such shortage is attributed to Seller, Buyer may request Seller to schedule delivery of the missing Products, or reduce the quantity of the Products ordered on the applicable Purchase Order. Any replacement shipment costs shall be at Seller’s expense.

- 7 LIMITED WARRANTY. Except as expressly provided in the applicable Purchase Order, Seller provides no other warranties, express or implied, with respect to the Products. THE WARRANTIES UNDER THE SUPPLY AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.
- 8 FORCE MAJEURE. “Force Majeure” shall mean all events which are beyond the control of the Parties, and which are unforeseen, unavoidable or insurmountable, and which prevent total or partial performance by either Party. Such events shall include earthquakes, typhoons, flood, fire, war, strikes, riots, acts of governments, or any other instances, which cannot be foreseen, prevented or controlled. If an event of Force Majeure occurs, a Party's contractual obligations affected by such an event under the Supply Agreement shall be suspended during the period of delay caused by the Force Majeure and shall be automatically extended, without penalty or liability, for a period equal to such suspension. The Party claiming Force Majeure shall promptly inform the other Parties in writing and shall use all commercially reasonable efforts to terminate the Force Majeure and shall immediately consult with the other in order to find an equitable solution and minimize the consequences of such Force Majeure.
- 9 INTELLECTUAL PROPERTY RIGHTS. Buyer acknowledges that Seller retains all intellectual property rights (collectively, “Intellectual Property”), including, but not

limited to, the ideas, concepts, techniques, inventions (whether patented, patentable or not), trade secrets, processes, Seller's trademarks or works of authorship comprising, embodied in, or practiced in connection with the Products. Buyer shall not directly or indirectly attack or impair the ownership or title of Seller to the Intellectual Property, the validity of the Supply Agreement, or any of Seller's registrations or applications relating to any Intellectual Property in any jurisdiction. Buyer agrees that it shall not file any state, federal or foreign applications to register any of the Intellectual Property, in whole or in part, or any intellectual property that infringes any of the Intellectual Property, in any jurisdiction. Notwithstanding anything in the Supply Agreement to the contrary, Buyer specifically acknowledges that no license or right to make or sell the Products is granted by Seller to Buyer. Any enhancement, refinement or other improvement of any Product shall be owned exclusively by Seller.

10 GOVERNING LAW. The sale by Seller to Buyer shall be governed and construed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.

11 DISPUTE RESOLUTION. Buyer and Seller shall exercise their best efforts to resolve by negotiation any and all disputes, controversies or differences between Buyer and Seller arising out of or relating to the Supply Agreement, or the breach thereof. All disputes, controversies or differences arising out of or relating to the Supply Agreement, or the breach thereof, that are not settled by negotiation shall be settled by arbitration in New York, in accordance with the Commercial Arbitration Rules of the American Arbitration Association.

12 CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY. Seller's liability with respect to the Products or services sold pursuant to a Purchase Order shall be limited to the warranty provided herein and, with respect to any other breaches of its contract with Buyer, shall be limited to the Purchase Price of the Products or services that are the subject of the claim. SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER ANY OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO GOODS OR SERVICES SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO. SELLER SHALL NOT BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT OR CONTINGENT DAMAGES WHATSOEVER ARISING OUT OF THE SALE OF

## SELLER'S PRODUCTS.

- 13 EXPORT. The Products and the technologies embodied therein are subject to applicable U.S. or other governmental limitations and conditions on exports, imports, and use, depending upon where such Products and/or technologies may be produced, located, received or disclosed (collectively, the "Export Laws"), including without limitation the Export Administration Regulations of the U.S. Department of Commerce, the foreign assets control regulations of the U.S. Department of the Treasury, and the International Traffic in Arms Regulations of the U.S. Department of State, as applicable. Diversion of the Products and/or related technologies contrary to U.S. law is expressly prohibited. (B) Buyer shall comply, at its sole expense, with all applicable Export Laws, including without limitation all licensing, authorization, documentation and reporting requirements, conditions and limitations relating to Purchaser's import, export, re-export, and/or use of the Products, related technologies, or derivative products thereof. (C) Buyer represents that it is not, and is not owned or controlled by or acting on behalf of, a Restricted Party, which shall be deemed to include any person or entity: (1) located in or a national of Cuba, Iran, North Korea, Sudan, Syria, or any other country that may, from time to time, become subject to U.S. export controls for anti-terrorism reasons or with which U.S. persons are generally prohibited from engaging in transactions; (2) on the U.S. Department of Commerce Denied Persons List, Entity List, or Unverified List; U.S. Department of the Treasury list of Specially Designated Nationals and Blocked Persons; or U.S. Department of State List of Debarred Parties; (3) engaged in activities involving nuclear materials or weapons, missile or rocket technologies, or proliferation of chemical or biological weapons; or (4) affiliated with, part of, or supporting any non-U.S. military organization. Buyer shall not sell, resell, loan, disclose, or otherwise transfer any Product or related technologies to any Restricted Person. If Buyer becomes a Restricted Person during the term of the Contract, Buyer shall notify Seller immediately, and Seller shall have the right to terminate the Contract (which termination may exclude Buyer's payment obligations) without notice and without further recourse by Buyer. (D) Buyer shall require any employees, agents, or third parties to which Products or related technologies are provided or disclosed to comply with applicable Export Laws. (E) Buyer shall indemnify and hold harmless Seller from any and all claims, liabilities, losses or damages arising from or relating to Buyer's breach of this Section.