

### 1. Scope

These terms and conditions of sale ("Terms") apply to all sales and samples of goods and services ("Products") made or provided by Penn Color, Inc. ("Penn Color") to any purchaser or, with respect to samples, prospective purchaser ("Buyer"). Penn Color does not accept and hereby expressly rejects all terms and conditions contained in any other document which purport to pertain to the Products and/or the relationship between Penn Color and Buyer, which terms and conditions are in addition to or inconsistent with these Terms, and such terms and conditions shall not become part of the order between Buyer and Penn Color, except as expressly agreed in writing by Penn Color.

### 2. Orders

All orders are subject to acceptance in writing by Penn Color at its office in Doylestown, Pennsylvania. Buyer shall have no right to cancel any accepted order without the prior written consent of Penn Color.

### 3. Prices

Except as otherwise agreed in writing by Penn Color and Buyer, all stated prices are F.O.B. Penn Color's shipping point. Buyer shall bear and be solely responsible for all shipping costs and shall bear all risk of loss in transit. All stated prices are exclusive of taxes. Buyer shall pay any taxes, fees and duties or other amounts, however designated (other than taxes on Penn Color's net income or gross receipts), levied or based upon the Products and/or any order. Applicable taxes shall be billed as a separate item on each invoice to the extent possible. Should these Terms accompany a quotation, the prices therein will be valid for thirty (30) days from the date of the quotation unless another period of time is specified in such quotation.

### 4. Payment Terms

Upon and subject to credit approval by Penn Color, and except as otherwise agreed in writing by Penn Color and Buyer, payment terms shall be net thirty (30) days from shipping date. Notwithstanding the above, if at any time in Penn Color's judgment Buyer's financial condition does not justify the continuation of production or shipment of Products on the terms of payment originally specified, Penn Color may require full or partial payment in advance or upon delivery, may require other security for payment or performance, or may impose such other credit or payment terms as it deems appropriate in its sole discretion. All payments shall be made in U.S. currency. Any sum not paid by Buyer when due shall bear interest until paid at a rate of 1.5% per month (18% per annum), or the maximum rate permitted by law, whichever is less. Buyer shall be responsible for, and shall reimburse Penn Color for, all fees and costs of collection hereunder (including but not limited to attorneys' fees and court costs).

### 5. Delivery

Delivery dates are approximate. Penn Color shall not be liable for delays in or failure of delivery of Products due to acts of God, acts of Buyer or of third parties (including without limitation, Penn Color's suppliers ("Suppliers")), acts of civil or military authority, fires, strikes, floods, epidemics, war, riot, terrorist acts, delays in transportation or other causes beyond Penn Color's reasonable control. Overruns or underruns of up to ten percent (10%) shall constitute due performance of any order. Penn Color's weights and measure shall govern, except in cases of proven error. Product containers, whether disposable, returnable or otherwise, are intended only for temporary storage of the Product originally contained in them; any other use of such containers may be hazardous or unlawful and Buyer will take all actions necessary to prevent reuse.

### 6. Acceptance; Limitation of Action

All claims with respect to allegedly nonconforming or defective Products shall be made by Buyer in writing within thirty (30) days of receipt of shipment of such Products, after which the Products shall be deemed accepted for all purposes, and Penn Color shall have no liability for same. Claims with respect to the Products must be verified by an authorized representative of Penn Color, and Buyer must obtain authorization and shipping instructions from Penn Color prior to returning any Products. Risk of loss of same shall remain with Buyer until delivery to Penn Color. BUYER'S FAILURE TO COMMENCE ANY CAUSE OF ACTION RELATED TO THE PRODUCTS OR OTHERWISE ARISING UNDER THESE TERMS WITHIN ONE YEAR AFTER THE DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ANY OTHERWISE APPLICABLE STATUTE OF LIMITATIONS AND FOREVER BAR ALL RIGHTS TO COMMENCE ANY CAUSE OF ACTION WITH RESPECT THERETO.

### 7. Limited Warranty; Limitation of Liability

Penn Color warrants that at the time of shipment the Products will materially conform to all specifications therefor agreed in writing between Buyer and Penn Color. EXCEPT AS EXPRESSLY PROVIDED IN THE FOREGOING SENTENCE, PENN COLOR DOES NOT MAKE ANY, AND HEREBY EXPRESSLY DISCLAIMS ANY AND ALL, WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION WARRANTIES OF TITLE, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PRODUCTS. PENN COLOR ASSUMES NO RESPONSIBILITY FOR PRODUCTS MANUFACTURED USING BUYER'S FORMULATIONS OR TO BUYER'S SPECIFICATIONS, NOR FOR DEFECTS IN RAW MATERIAL FURNISHED BY THE BUYER, ITS AGENTS OR SUPPLIERS, AND EXPRESSLY DISCLAIMS ALL RESPONSIBILITY OR LIABILITY THEREFOR.

Since Penn Color has no control over Buyer's (or others') processing, sale, use or disposition of any Product (or any product containing Product), including without limitation, the admixing, reacting or combining of any Product with any other products, chemicals or materials, Buyer assumes the entire liability and responsibility therefor. The performance of Penn Color's Products may vary due to the composition and applications of the final products in which they are used. It is therefore essential that they be thoroughly tested in their intended application prior to commercialization. Fitness for use must be determined and verified by the finished product formulator and will not be the liability of Penn Color. All samples provided are proprietary to, and contain confidential information of, Penn Color, and should not be analyzed or given to a third party for evaluation.

Penn Color's exclusive obligation under the warranties in this section, and Buyer's exclusive remedy, shall be repair or replacement of the defective Products, subject to Buyer's providing timely notice of any defect pursuant to Section 6 hereof and the Supplier's agreement to accept return of same. Penn Color will deliver replacements for defective Products to Buyer freight prepaid. Products returned to Penn Color for which Penn Color provides replacement under the above warranty shall become the property of Penn Color. IN NO CASE WILL PENN COLOR BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, WHETHER OR NOT PENN COLOR KNEW OR HAD REASON TO KNOW OF THE LIKELIHOOD OF SUCH DAMAGES. THE TOTAL LIABILITY OF PENN COLOR WITH RESPECT TO THIS AGREEMENT, THE RELATIONSHIP OF THE PARTIES, AND THE PRODUCTS SHALL NOT EXCEED THE PURCHASE PRICE ACTUALLY PAID BY BUYER FOR SUCH PRODUCT OR PORTION THEREOF GIVING RISE TO THE LIABILITY.

#### **8. Indemnity**

Buyer acknowledges and agrees that certain of the Products are or may become hazardous and further acknowledges that it has expertise and knowledge in the proper handling, processing, storage, transportation, sale, use and disposal of the Products. Buyer shall assume full responsibility for proper handling, processing, storage, transportation, sale, use and disposal of the Products after shipment to Buyer, and shall defend, indemnify and hold harmless Penn Color and its affiliates, officers, directors, shareholders, employees, agents and representatives from and against all losses, liabilities, claims, damages, demands, actions, costs and expenses (including without limitation attorneys' fees and court costs) (collectively, "Losses"), arising out of or relating to same, including without limitation Losses arising out of or relating to the manufacture, supply, sale, distribution or use of any product using or incorporating the Products. Buyer shall further indemnify Penn Color with respect to any Losses arising from or relating to any actual or alleged infringement of Products manufactured to Buyer's specifications.

#### **9. Termination**

In the event of Buyer's breach, bankruptcy or insolvency, Penn Color shall be entitled to cancel any or all orders then outstanding and shall receive reimbursement for its cancellation charges, which include but are not limited to all costs, direct and indirect, for labor, materials, tools, overhead, and profit to which Penn Color would be entitled had the order not been canceled. All payment obligations, disclaimers of warranty, limitations of liability, indemnities, and other terms that by their nature are intended to extend beyond termination of the applicable order shall survive termination.

#### **10. Waiver; Remedies Nonexclusive**

No failure by Penn Color to take any action or assert any right hereunder shall be deemed to be a waiver of such right in the event of the continuation or repetition of the circumstances giving rise to such right. Acceptance by Penn Color of any payment from Buyer shall not constitute a waiver of any default or prevent Penn Color from asserting a claim for an additional amount due or from exercising any other right or remedy. The rights and remedies of Penn Color provided for herein shall be cumulative of and in addition to all other rights and remedies now or hereafter available to Penn Color at law or in equity.

#### **11. Miscellaneous**

These Terms constitute the entire agreement between Penn Color and Buyer with respect to the subject matter hereof and supersede all prior agreements with respect thereto. No amendment or modification of these Terms shall be binding unless in writing and duly executed by authorized representatives of each party. Buyer shall not delegate any duties, nor assign any of its rights or claims under these Terms or any order, without the prior written consent of Penn Color. Any attempted delegation or assignment in violation of this Section shall be void. If any of these Terms should be declared invalid by any competent court of law, it shall be considered deleted from these Terms. All other terms and conditions hereof shall remain in full force and effect. These Terms shall be governed exclusively by the laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws principles. Any dispute arising out of or in connection with these Terms, any order hereunder or the relationship of Penn Color and Buyer shall be adjudicated exclusively in the state courts for Bucks County, Pennsylvania or the federal courts for the Eastern District of Pennsylvania, and all parties consent to personal jurisdiction and venue therein.