



## TERMS AND CONDITIONS OF SALE

- 1. ENTIRE CONTRACT.** The following Terms and Conditions of Sale (the “**Terms**”) are applicable to the sale of all goods (“**Goods**”) by Coexcell or any of its affiliates or subsidiaries (“**Coexcell**”) to any purchaser thereof (“**Buyer**”). All orders, quotations, and purchases from Coexcell are subject to these Terms and the exclusion of all other terms. ANY ADDITIONAL OR DIFFERENT TERMS IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENT ARE HEREBY DEEMED TO BE MATERIAL ALTERATIONS, AND NOTICE OF REJECTION OF SUCH TERMS IS HEREBY GIVEN. No course of prior dealings between the parties or usage in the trade shall be relevant to supplement or explain any term hereof.
- 2. PRICING.** Prices are subject to change without notice. Prices billed will be those in effect at the time of shipment. If applicable, a tax exemption certificate must be provided to Coexcell prior to order shipment.
- 3. PAYMENT TERMS.** Coexcell will invoice Buyer upon shipment. Payment is due within thirty (30) days of the date of Coexcell's invoice. Amounts remaining unpaid twenty (20) days after the due date will bear interest at the rate of one and a half percent (1.5%) per month until paid. Buyer also shall pay Coexcell's costs of collection (including without limitation attorney fees and court costs) of unpaid amounts. Payment may be made by credit card (transaction charges may apply) or on open account. Payment terms are subject to change based on Buyer's payment history. Coexcell reserves the right to decline to accept any order or make any shipment whenever, for any reason, it has doubt as to Buyer's financial responsibility, and Coexcell shall not in such event be liable for breach or non-performance of contract in whole or in part.
- 4. ACCEPTANCE.** Upon receipt, Buyer shall immediately inspect and test the Goods. Unless Buyer provides Coexcell with written notice describing the particularity any defects or the amount of claimed shortage within ten (10) days after delivery, the Goods shall be deemed accepted by Buyer, and any claims relating to the Goods shall be deemed waived.
- 5. SHIPPING TERMS; TITLE; RISK OF LOSS.** Unless otherwise agreed, all shipments are FOB Origin. The Goods will be deemed to be delivered when loaded onto a carrier at Origin. Title to and risk of loss of the Goods pass to Buyer upon delivery.
- 6. PRODUCT COMPATIBILITY.** Consistent with Title 49 of the Code of Federal Regulations, product and container compatibility is the sole responsibility of the shipper. Coexcell makes no warranty and assumes no liability with respect to the compatibility of any Goods sold hereunder with the products or materials to be held or transported in such Goods. Coexcell assumes no responsibility for product compatibility testing and selection of a proper container and makes no representations as to product and container compatibility upon sampling or sale. Buyer assumes sole responsibility with respect to the selection of Goods that are suitable and compatible to the material or product to be held or transported therein. Buyer represents that it has not relied upon Coexcell's skill or judgment in selection of Goods suitable for Buyer's intended use. Proper compliance with drum closing instructions as provided by Coexcell is the sole responsibility of the shipper.
- 7. WARRANTY.** COEXCELL WARRANTS THAT AS OF THE DATE OF SHIPMENT THE GOODS SUPPLIED BY COEXCELL WILL CONFORM IN ALL MATERIAL RESPECTS TO THE SPECIFICATIONS LISTED IN COEXCELL'S QUOTE AND ACCEPTED BY BUYER (“**SPECIFICATIONS**”). If any of the Goods are alleged by Buyer not to materially conform to the Specifications as of the date of shipment, Buyer must promptly notify COEXCELL in writing and provide such details, samples, and other supporting information that COEXCELL may reasonably require to evaluate Buyer's claim. Upon COEXCELL's determination that the Goods do not conform to the Specifications, COEXCELL shall, at its option, either replace the non-conforming Goods at COEXCELL's cost or issue a refund to Buyer of the amounts paid for such non-conforming Goods. **The parties hereto expressly agree that Buyer's sole and exclusive remedy and COEXCELL's sole obligation for any breach of the foregoing warranty shall be for COEXCELL to replace or refund the amounts paid by Buyer for the non-conforming Goods.** This exclusive remedy shall not be deemed to have failed of its essential purpose so long as COEXCELL is willing and able to replace non-conforming Goods. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Other than expressly set forth in this Section 7, no affirmation of COEXCELL by words or action, including without limitation any technical advice or information regarding the Goods, whether given verbally, in writing, as test results, or otherwise, shall constitute a warranty, either expressed or implied. At COEXCELL's request, Buyer will send, at Buyer's sole expense, any allegedly defective Goods to a location specified by COEXCELL. COEXCELL's warranty extends only to Buyer. Goods that may be sold by COEXCELL but that are not manufactured by COEXCELL are not warranted by COEXCELL but are sold only with the warranties, if any and to the extent permitted by laws, of the manufacturers thereof. Unless otherwise agreed by COEXCELL, this warranty does not cover labor or other costs or expenses to remove or install any non-conforming, repaired, or replaced Goods. Any claim relating to the Goods sold hereunder shall be deemed waived by Buyer unless submitted in writing to COEXCELL within ten (10) days following the date Buyer discovered or by reasonable inspection should have discovered any claimed breach of the foregoing warranty.
- 8. LIMITATION ON DAMAGES; INDEMNITY.** IN NO EVENT SHALL COEXCELL BE LIABLE FOR INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THESE TERMS OR ANY ORDER OR QUOTATION TO WHICH THEY APPLY. BUYER SHALL INDEMNIFY COEXCELL FOR ALL CLAIMS, DEMANDS, LIABILITY, COST, OR EXPENSE (INCLUDING ATTORNEY FEES) SUSTAINED OR INCURRED BY COEXCELL TO THE EXTENT ARISING OUT OF BUYER'S ACTS, OMISSIONS, NEGLIGENCE, OR BREACH OF THESE TERMS.
- 9. DELAYS.** All shipping dates are contingent upon current availability of materials, present production schedules, and prompt receipt of all necessary information from Buyer. Coexcell will not be liable for any damage, loss, cost, or expense arising out of Coexcell's delayed performance or nonperformance caused by: (a) strikes, fires, disasters, riots, or acts of God, (b) acts or omissions of Buyer, (c) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (d) governmental action, (e) subcontractor delay, or (f) any other cause or condition beyond Coexcell's reasonable control, whether of the class of causes enumerated or otherwise (any of the foregoing, a “**Force Majeure**”). In the event of a Force Majeure, Coexcell shall be excused from performance and may, at its option and without liability, cancel or suspend all or any portion of an order or this Agreement and/or extend any date upon which any performance is due.
- 10. RETURNS.** Goods may not be returned without Coexcell's prior written approval. For authorized returns, Coexcell will issue a partial credit calculated in Coexcell's discretion. All transportation charges for returned Goods are the sole responsibility of Buyer and must be prepaid. Returned Goods are subject to Coexcell's inspection and will not be accepted for credit unless they are in "like new" condition as determined by Coexcell in its sole discretion.
- 11. CONFIDENTIALITY.** Buyer acknowledges that it may obtain from Coexcell non-public information, in whatever form, that is of a confidential or proprietary nature, whether such information is marked as confidential or reasonably should be understood to be confidential given its nature and the circumstances of its disclosure (“**Confidential Information**”). Buyer shall not disclose Coexcell's Confidential Information without Coexcell's prior written consent, except that Buyer may disclose Confidential Information to its officers, directors, employees, agents, and contractors who have a need to know such Confidential Information for purposes of fulfilling its obligations under these Terms and who agree to be bound to the confidentiality and nondisclosure obligations hereof. Notwithstanding anything to the contrary herein, Buyer may disclose Coexcell's Confidential Information without breaching these Terms if compelled to do so by a valid order of a government agency or court of competent jurisdiction provided that, prior to disclosure, Buyer promptly notifies Coexcell of the terms of such order and cooperates with Coexcell in taking lawful steps to resist, narrow, or eliminate the need for the ordered disclosure. At any time upon Coexcell's request, Buyer will either return to Coexcell all Confidential Information received, including all copies or extracts thereof or based thereon, or destroy all such Confidential Information and provide written certification thereof to Coexcell. This Section 11 shall survive completion, expiration, or termination of the order or transaction to which these Terms apply.
- 12. GENERAL CONDITIONS.** These Terms and the sale of Goods hereunder shall be governed by the laws of the State of Ohio, without giving effect to the conflict of laws provisions thereof. The failure or delay of Coexcell at any time to enforce any provision of these Terms, to exercise its rights under any provision hereof, or to require performance of any provision hereof, shall in no way be construed as a waiver of such provision nor in any way affect the right of Coexcell thereafter to enforce each and every provision hereof. No waiver of any term, condition, or provision of this Agreement will be binding unless made in writing and signed by the party making the waiver. The remedies herein reserved by Coexcell shall be cumulative and additional to any other or future remedies provided at law or in equity. If Buyer breaches any of these Terms or any other contract with Coexcell, Coexcell shall have the right to suspend performance or terminate the order to which these terms apply, without liability. This contract shall be binding upon Coexcell and Buyer and shall insure to the benefit of their successors and assigns. Buyer may not assign or transfer these Terms or any order to which these apply, in whole or in part, except upon the prior written consent of Coexcell. If any provision in these Terms is finally determined to be invalid or unenforceable, it shall be modified to the minimum extent required to bring it into conformity with applicable law or severed from these Terms, and all other terms shall remain in full force and effect. No agent, salesperson, or other party is authorized to bind Coexcell by any agreement, warranty, promise, or understanding not herein expressed.