



AUSTIN POWDER

General Terms and Conditions for the Sale of Products in the U.S.

1. **APPLICABILITY.** These General Terms and Conditions for the Sale of Products in the U.S. (these “**Product Terms**”) are the only terms that govern the sale of the products and certain equipment (“**Products**”) within the U.S. and the provision of Ancillary Services (as defined herein) by the applicable Austin Powder entity set forth on the Order Confirmation (as defined below) (“**Austin Powder**”) to the buyer (“**Buyer**”) named on the accompanying sales order, sales order acknowledgement, sales agreement, order confirmation, quote, credit application, and/or purchase order (the “**Order Confirmation**”). The Order Confirmation and these Product Terms (collectively, this “**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, regarding the sale of the Products in the U.S. and the provision of Ancillary Services. This Agreement supersedes any of Buyer’s general terms and conditions of purchase regardless of whether or when Buyer has submitted its purchase order or such terms. Austin Powder expressly rejects Buyer’s general terms and conditions of purchase, and fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions or serve to modify or amend these Product Terms. Acceptance of the Order Confirmation by Buyer is a prerequisite to the purchase of the Products and shall operate as an acceptance of these Product Terms which are expressly incorporated into the Order Confirmation.

2. **DELIVERY; RISK OF LOSS; SHIPMENT TERMS.** The Products will be delivered within a reasonable time after the receipt of the Order Confirmation. Unless otherwise expressly agreed in writing by the parties, the delivery and transfer of risk of loss of the Products shall be governed by (a) DAP (Incoterms 2020) at the pump truck on the pattern located at Buyer’s site set forth on the applicable Order Confirmation for any bulk explosives and (b) ExWorks (Incoterms 2020) at Buyer’s address set forth on the applicable Order Confirmation for all other products, in each case using Austin Powder’s standard methods for packaging and shipping such Products. Austin Powder shall not be liable for any delays, loss, or damage in transit. Buyer shall be responsible for all loading costs and provide equipment and labor reasonably suited for receipt of the Products at the location of delivery of the Products (the “**Delivery Point**”), and will unload and release all transportation equipment promptly so Austin Powder incurs no demurrage or other expense. Austin Powder may, in its sole discretion, without liability or penalty, make partial shipments of Products to Buyer. Each shipment will constitute a separate sale, and Buyer shall pay for the units shipped whether such shipment is in whole or partial fulfillment of the Order Confirmation. If for any reason Buyer fails to accept delivery of any of the Products on the date fixed pursuant to Austin Powder’s notice that the Products have been delivered at the Delivery Point, or if Austin Powder is unable to deliver the Products at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (a) risk of loss to the Products shall pass to Buyer on such date; (b) the Products shall be deemed to have been delivered on such date; and (c) Austin Powder, at its option, may store the Products until Buyer picks them up, whereupon Buyer shall be liable for all related costs and expenses (including, without limitation, storage and insurance).

3. **QUANTITY.** If Austin Powder delivers to Buyer a quantity of the Products of up to five percent (5%) more or less than the quantity set forth in the Order Confirmation, Buyer shall not be entitled to object to or reject the Products or any portion of them by reason of the surplus or shortfall and shall pay the Price (as defined herein) for such Products set forth in the Order Confirmation adjusted pro rata.

4. **TITLE.** Title shall pass to Buyer upon delivery of the Products at the Delivery Point. As collateral security for the payment of the Price of the Products, Buyer hereby grants to Austin Powder a lien on and security interest in and to all of the right, title, and interest of Buyer in, to, and under the Products, wherever located, and whether now existing or hereafter arising or acquired from time to time, and in all accessions thereto and replacements or modifications thereof, as well as all proceeds (including insurance proceeds) of the foregoing. The security interest granted under this provision constitutes a purchase money security interest under Delaware’s Uniform Commercial Code.

5. **INSPECTION.** Buyer shall inspect the Products within ten (10) days of delivery (the “**Inspection Period**”). Buyer will be deemed to have accepted the Products unless it notifies Austin Powder in writing of any Nonconforming Products (as defined below) during the Inspection Period and furnishes such written evidence or other documentation as reasonably required by Austin Powder. As used herein, “**Nonconforming Products**” means only the following: (a) the product shipped is different than identified in the Order Confirmation; or (b) the product’s label or packaging incorrectly identifies its contents. If Buyer timely notifies Austin Powder of any Nonconforming Products, Austin Powder shall, in its sole discretion, (i) replace such Nonconforming Products with conforming Products, or (ii) credit or refund the Price for such Nonconforming Products, together with any reasonable shipping and handling expenses incurred by Buyer in connection therewith. Unless informed by Austin Powder in writing that Austin Powder will pick up the Nonconforming Products, Buyer shall ship, at its expense and risk of loss, the Nonconforming Products to Austin Powder’s facility set forth on the applicable Order Confirmation. If Austin Powder exercises its option to replace Nonconforming Products, Austin Powder shall, after receiving Buyer’s shipment of Nonconforming Products, ship to Buyer, at Buyer’s expense and risk of loss, the replaced Products to the Delivery Point. Buyer acknowledges and agrees that the remedies set forth in this section are Buyer’s exclusive remedies for the delivery of Nonconforming Products. Except as provided under this section all sales of Products to Buyer are made on a one-way basis and Buyer has no right to return Products purchased under this Agreement to Austin Powder.

6. **PRICE; PAYMENT.** Buyer shall purchase the Products from Austin Powder at the price(s) (the “**Price(s)**”) set forth in the Order Confirmation, and if the Order Confirmation does not exist or does not set forth the Prices, Austin Powder’s published price list in force as of the date of the date of purchase of the Products shall apply. All Prices are exclusive of 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, Austin Powder’s income, revenues, gross receipts, personnel, or real or personal property or other assets. Austin Powder may, by written notice to the Buyer, increase the Price before delivery of the Products to the Delivery Point to take account of any foreign exchange fluctuation, currency regulation, or other market fluctuation; changes of taxes, duties, or other charges, increase in the costs of labor, materials or other costs of manufacture; any change in delivery dates, quantities or specifications for the Products or any delay caused by any instructions of Buyer or failure of Buyer to give Austin Powder adequate information or instructions. Austin Powder may invoice separate charges and costs in addition to the Price. Buyer shall pay the fees set forth in the invoice. Buyer shall pay all invoices within thirty (30) days of the invoice date. Austin Powder may charge interest on any overdue amount at one-and-a-half percent (1.5%) per month, or the maximum

rate permitted by law, from the due date until paid in full. If Buyer elects to pay any amounts due under the invoice by credit card, Austin Powder may charge a credit card processing surcharge equal to the actual processing fee incurred by Austin Powder, not to exceed the transaction amount, or the maximum amount permitted by applicable law, whichever is less, and such surcharge will be disclosed to Buyer at or before the time of payment. Buyer shall reimburse Austin Powder for all costs incurred in collecting any late payments, including, without limitation, attorneys' fees. In addition to all other remedies available under these Product Terms or at law (which Austin Powder does not waive by the exercise of any rights hereunder), Austin Powder shall be entitled to suspend the delivery of any Products if Buyer fails to pay any amounts when due hereunder and such failure continues for ten (10) days following written notice thereof. Buyer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Austin Powder, whether relating to Austin Powder's breach, bankruptcy, or otherwise.

7. INTELLECTUAL PROPERTY. All intellectual property rights ("**Intellectual Property Rights**") in and to all documents, work product, and other materials that are delivered to Buyer under this Agreement or prepared by or on behalf of Austin Powder in the course of sale of the Products, including any items identified as such in the Order Confirmation shall be owned by Austin Powder, and nothing in this Agreement grants Buyer any right, title, or interest in any Intellectual Property Rights except as expressly provided herein.

8. SITE EXAMINATION AND BUYER'S REGULATORY COMPLIANCE OBLIGATIONS. Buyer shall be solely responsible, at its own cost, for determining, monitoring, and ensuring compliance with all applicable foreign, federal, state, provincial, and local laws, statutes, regulations, ordinances, codes, directives, standards, and other governmental requirements (including those of any governmental or quasi-governmental authority, utility, or permitting agency) relating to or arising out of the delivery and use of the Products and any associated vibrations, air overpressure, noise, dust, environmental impacts, conditions or releases of hazardous substances, waste generation and disposal, fly-rock, fumes, wind or weather effects, traffic disruption, or other off-Site or collateral impacts, as well as all other environmental, zoning, land use, health and safety, and nuisance requirements. Without limiting the foregoing, Buyer shall: (a) obtain, maintain in full force, comply with, and, upon Austin Powder's request, furnish copies of all licenses, consents, approvals, notifications, and permits (including blasting, vibration, noise, environmental, right of way, access, and road closure permits) required for the delivery of the Products at the Site (as defined below); (b) accurately determine and communicate to Austin Powder in writing all applicable vibration, air overpressure, noise, and similar limits or criteria imposed by any third party or governmental authority; and (c) secure all necessary permissions, easements, waivers, and rights of access from owners and occupants of adjacent or nearby properties, utilities, or facilities that may be affected by the delivery of the Products. Austin Powder shall be entitled to fully rely on any permits, approvals, limits, information, markings, written regulations and processes, and signs provided by Buyer for the delivery of the Products and the use of the Products (such location, the "**Site**"), including any Mine Safety and Health Administration training specific to the Site. Buyer acknowledges that Austin Powder has relied and will rely on Buyer's determinations, information, and instructions regarding conditions at the Site, regulatory and permit requirements, and applicable limits on vibrations, air overpressure, and noise, and Austin Powder shall have no responsibility to independently investigate or verify such matters or to determine what permits, consents, or regulatory requirements apply to the delivery and use of the Products. If Austin Powder determines in its sole and reasonable discretion that it is unsafe to supply or continue supplying the Products to Buyer and/or for the Site, Austin Powder may suspend or modify such activity,

without liability or penalty, until it reasonably determines that such activity is safe to resume, any concerns for non-compliance have been sufficiently addressed, and any potential violations of applicable law or permit conditions have been sufficiently mitigated as the case may be, with any resulting delay, standby, or additional cost to be borne exclusively by Buyer. Buyer shall defend, indemnify, and hold harmless Austin Powder and its affiliates and their respective officers, directors, members, managers, suppliers, contractors, employees, and agents (collectively, the "**Austin Powder Indemnified Parties**"), from and against any and all claims, demands, suits, causes of action, liabilities, damages, fines, penalties, costs, and expenses (including reasonable attorneys' fees and expert costs) (collectively, "**Losses**"), including damage to underground or above-ground utilities, structures, or other third-party property, arising out of or related to: (i) Buyer's failure to obtain or maintain any required permit, approval, license, or consent; (ii) Buyer's failure to comply with any applicable legal or regulatory requirement (including environmental, vibration, noise, or nuisance requirements); (iii) Buyer's failure to identify, disclose, or accurately describe the Site's conditions, nearby structures, or utilities that may be affected by the use of the Products; or (iv) any allegation that the delivery or use of the Products as performed in accordance with Buyer's instructions, limits, or Site information violated any applicable law, regulation, permit condition, or third-party right, except to the extent finally determined to have been caused solely by Austin Powder's gross negligence or willful misconduct.

9. ENVIRONMENTAL HARM AND REMEDIATION. If any environmental harm (excluding that which is minor, incidental, or unavoidable releases that are customary for the type of work being performed, does not exceed applicable legal or permit thresholds or does not trigger any reporting or corrective action requirements under applicable laws) directly results from any grossly negligent acts or omissions of Austin Powder in connection with the performance of its obligations hereunder, Buyer shall promptly cause such environmental harm to be remediated, repaired, reclaimed or otherwise corrected to the extent required by applicable law or any governmental authority. Buyer shall be responsible for: (a) any releases of any pollutant, contaminant, or hazardous substances to the environment, including emissions of noxious fumes or particulates resulting from the detonation of the Products; (b) reporting such releases as required to appropriate governmental authority as required by applicable law; (c) properly characterizing, handling, transporting, and disposing of waste and waste materials generated as a result of the use of the Products, including but not limited to rock debris, overburden, dust, spent blasting materials, packaging, contaminated soils, water, or residues in accordance with applicable law (and Austin Powder shall not be deemed the generator of any waste under such law); and (d) assessing, mitigating, and remediating any environmental impacts or conditions including but not limited to, dust generation, ground disturbance, fly-rock, vibration, noise, and contamination of the environment resulting from or associated with the placement of the Products or other explosives products into boreholes in connection with any blasting services, and supply of Products hereunder. Buyer shall be solely responsible for, and shall defend, indemnify, and hold harmless the Austin Powder Indemnified Parties and from and against all Losses arising from or related to: (i) Buyer's failure to obtain or comply with required environmental permits; (ii) the handling, storage, characterization, or disposal of waste; (iii) environmental impacts, releases of hazardous substances, or contamination of the environment, associated with the use of the Products; (iv) site conditions or hazards including fly-rock, ground vibrations; and any other impacts; and (v) any regulatory actions, enforcement, or third-party claims related to environmental or safety matters. As used herein, "environmental harm" means the discharge, emission, or disposal of any pollutant, contaminant, hazardous substance, or waste into the environment (including soil, land

surface or subsurface strata, surface waters, groundwaters, drinking water supplies, streams, sediments, ambient air, soil gas, plant and animal life, and any other environmental medium, attribute or natural resource) without a required permit, approval, or authorization, in excess of applicable permit limits, standards, or conditions, or otherwise in violation of applicable law.

10. ANCILLARY SERVICES; NON-RELIANCE; INDEMNIFICATION FOR ANCILLARY SERVICES. As used herein, “**Ancillary Services**” means any technical advice, consultation, training assistance, site visits, or similar non-tangible support provided by Austin Powder to Buyer in connection with the sale of the Products. Ancillary Services are provided solely as an accommodation to Buyer and are incidental to the sale of the Products. Ancillary Services do not constitute professional engineering, geological, or blast design services unless explicitly agreed to in a separate written agreement or under separate terms and conditions of Austin Powder. Buyer acknowledges that any Ancillary Services provided by Austin Powder are advisory in nature only. Buyer retains sole and exclusive authority, control, and responsibility for all operations, blast site management, product application, and safety procedures. Austin Powder’s personnel may offer suggestions or observations, but Buyer is under no obligation to accept such advice and does so entirely at its own risk. Nothing in these Product Terms or in the provision of Ancillary Services shall be construed as Austin Powder assuming the role of “Blaster in Charge” or “Supervisor” under any applicable federal, state, or local regulations. Austin Powder’s provision of Ancillary Services does not relieve Buyer of its non-delegable duty to maintain a safe worksite and to warn the Buyer Personnel (as defined herein) of the hazards associated with the use of the Products. **ANCILLARY SERVICES ARE PROVIDED ON AN “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS” BASIS. AUSTIN POWDER MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, REGARDING ANCILLARY SERVICES, INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF ACCURACY, COMPLETENESS, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY. ANY ORAL OR WRITTEN ADVICE GIVEN BY AUSTIN POWDER OR ITS AGENTS SHALL NOT CREATE A WARRANTY.** Buyer represents that it is sophisticated and knowledgeable in the handling, storage, transport, and use of the Products, which may contain explosive materials. Buyer acknowledges that it is not relying on Austin Powder’s skill or judgment to select or furnish suitable services or advice for any specific application. Buyer agrees that it is solely responsible for determining the suitability of any advice or recommendations provided by Austin Powder for Buyer’s specific operational conditions. Buyer shall defend, indemnify, and hold harmless the Austin Powder Indemnified Parties from and against any and all Losses arising out of or related to: (a) Buyer’s use or implementation of any advice, recommendations, or Ancillary Services provided by Austin Powder; or (b) any bodily injury, death, or property damage resulting from Buyer’s blasting operations, regardless of whether Austin Powder’s advice or other information included in any Ancillary Services was utilized in connection therewith.

11. DANGEROUS PRODUCTS; ASSUMPTION OF RISK; GENERAL INDEMNIFICATION. Buyer warrants that all of its employees, contractors, other personnel, and other third parties to whom it grants access to the Products (the “**Buyer Personnel**”) will be fully trained and informed (without reliance on Austin Powder) regarding the proper storage, handling, use and application of the Products, including how to safely and properly respond when any Products may have misfired or failed to fully detonate. Buyer further warrants that all Buyer Personnel who handle or use the Products will do so safely in accordance with all applicable laws, regulations, warnings and instructions, and currently accepted industry practice. Buyer acknowledges that (a) it is familiar with and assumes all risks and

liability associated with the Products, and (b) even the exercise of due care in blasting may not prevent injuries or damage to Buyer or the Buyer Personnel. Buyer also acknowledges and agrees that Buyer’s choice of the Products (or election not to purchase other products that may mitigate risk) may result in adverse consequences. Buyer shall indemnify, defend, and hold harmless the Austin Powder Indemnified Parties from and against all Losses that Austin Powder may incur, directly or indirectly, arising from or related to (i) Buyer’s handling, ownership, possession, storage, further processing, transportation, disposal, sale, or other use of the Products, whether used alone or in combination with or incorporated into other goods or materials, (ii) Buyer’s violation or alleged violation of any law or regulation, (iii) Buyer’s breach of this Agreement, or (iv) the use of the Products not directly caused by Austin Powder’s breach of the Limited Warranty (as defined herein).

12. ACCIDENTS AND INVESTIGATIONS. In the event of any type of accident or incident, including but not limited to, fly-rock, a misfire or unplanned detonation, or any other accident located on or near the Site (an “**Incident**”), whether or not the Incident results in any injury to any people, equipment or property or lost production time and where the Incident involves any Products, the parties agree to cooperate in good faith to investigate the Incident in accordance with each party’s respective internal investigation policies for Incident reporting. Further, neither party shall hinder the other party with any rescue efforts necessary in the event of any Incident and shall fully cooperate with the other party in the event of any such rescue efforts. The parties agree to allow appropriate first responders to take all necessary steps in an Incident. The parties further agree to work together to develop new procedures or practices to reduce the risk of a similar Incident occurring in the future. Buyer will give Austin Powder reasonable access to the site where the Incident occurred and to the individuals involved in the Incident for the purpose of developing new procedures or practices.

13. INSURANCE. It is the responsibility of Buyer to determine that the Products and Ancillary Services are appropriate for Buyer’s intended use and to carry sufficient insurance to cover its potential liabilities hereunder. Austin Powder represents that it maintains commercially reasonable insurance to cover its obligations under this Agreement. Upon Buyer’s written request, Austin Powder will provide certificates of such insurance coverage.

14. LIMITED WARRANTY FOR THE PRODUCTS. Austin Powder represents and warrants that at the time of delivery at the Delivery Point, the Products will comply with the technical data sheets available on Austin Powder’s website or provided in connection with the delivery of the Products (the “**Limited Warranty**”). EXCEPT FOR THE LIMITED WARRANTY, AUSTIN POWDER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING ANY (a) WARRANTY OF MERCHANTABILITY, (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (c) WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. Austin Powder shall not be liable for a breach of the Limited Warranty unless: (i) Buyer gives written notice of the defect, reasonably described, to Austin Powder within ten (10) days of the time when Buyer discovers or ought to have discovered the defect; (ii) Austin Powder is given a reasonable opportunity after receiving the notice to examine such Products and Buyer (if requested to do so by Austin Powder) returns such Products to Austin Powder’s place of business at Austin Powder’s cost for the examination to take place there; and (iii) Austin Powder reasonably verifies Buyer’s claim that the Products are defective. The Limited Warranty does not apply where the Products have been: (1) subjected to abuse, misuse, neglect, negligence, accident, abnormal physical stress or environmental

conditions, use contrary to any instructions issued by Austin Powder, or improper testing, installation, storage, handling, repair, or maintenance; (2) reconstructed, repaired, or altered by anyone other than Austin Powder or its authorized representative; or (3) used with any third-party product, hardware, or product that has not been previously approved in writing by Austin Powder. Subject to the foregoing above, Austin Powder shall, in its sole discretion, either: (A) replace such Products (or the defective part) or (B) credit or refund the amount paid for such Products at the pro rata contract rate provided that, if Austin Powder so requests, Buyer shall, at Austin Powder's expense, return such Products to Austin Powder. THE REMEDIES SET FORTH IN THIS SECTION SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND AUSTIN POWDER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY.

15. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL AUSTIN POWDER BE LIABLE TO BUYER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, PRODUCTIVITY, OR PROFIT, ANY LOSS OF DATA OR DIMINUTION IN VALUE, ANY ADDITIONAL COSTS OR DAMAGES FROM DOWNTIME, SHUTDOWN, INTERRUPTION, OR OPERATIONAL DELAYS, OR FOR ANY OTHER 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 AUSTIN POWDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL AUSTIN POWDER'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 LESSER OF (a) THE TOTAL OF THE AMOUNTS PAID TO AUSTIN POWDER FOR THE PRODUCTS SOLD UNDER THE APPLICABLE ORDER CONFIRMATION GIVING RISE TO THE CLAIM OR (b) \$500,000. AUSTIN POWDER DISCLAIMS ALL OTHER LIABILITY TO BUYER OR TO ANY OTHER PERSON OR ENTITY WHETHER BASED UPON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHER LEGAL THEORY. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN, ANY ACTION AGAINST AUSTIN POWDER MUST BE BROUGHT WITHIN TWELVE (12) MONTHS AFTER THE DATE SUCH CAUSE OF ACTION ACCRUED.

16. **COMPLIANCE WITH LAW.** Each party shall comply with all applicable laws, regulations, and ordinances. Each party shall maintain in effect all the licenses, permissions, authorizations, consents, and permits that it needs to carry out its obligations under this Agreement. Buyer assumes all responsibility for shipments of Products requiring any government import clearance. Austin Powder may terminate this Agreement if any governmental authority imposes antidumping or countervailing duties or any other penalties on Products. Neither party shall directly or indirectly hinder the other from fulfilling any regulatory reporting obligations that are required in the event of regulatory violations, ensuring full cooperation with any regulatory requirements or investigations.

17. **TERMINATION.** In addition to any remedies that may be provided under this Agreement, Austin Powder may terminate this Agreement with immediate effect upon written notice to Buyer, if Buyer: (a) fails to pay any amount when due under this Agreement and such failure continues for ten (10) days after Buyer's receipt of written notice of nonpayment; (b) has not otherwise performed or complied with any of these Product Terms, in whole or in part; or (c) 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.

18. **WAIVER.** No waiver by Austin Powder of any of the provisions of this Agreement is effective unless explicitly set forth in writing and signed by Austin Powder. No failure to exercise, or delay in exercising, any right, remedy, power, or privilege 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 hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

19. **CONFIDENTIAL INFORMATION.** All non-public, confidential or proprietary information of each party, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts, or rebates, disclosed by one party (as "**Discloser**") to the other party (as "**Recipient**"), 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 (collectively, "**Confidential Information**") is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Discloser in writing. Upon Discloser's request, Recipient shall promptly return all Confidential Information received from Discloser. Discloser shall be entitled to injunctive relief for any violation of this section. This section does not apply to Confidential Information that is: (a) in the public domain; (b) known to Recipient at the time of disclosure without an obligation of confidentiality; (c) rightfully obtained by Recipient on a non-confidential basis from a third party; or (d) independently developed by Recipient without use of or reference to Discloser's Confidential Information.

20. **EXPORT CONTROL.** In addition to other compliance obligations contained herein, Buyer represents and warrants that it will comply fully with all applicable laws and regulations governing the export, reexport, or transfer of the Products including, without limitation, the laws of the United States and any other jurisdiction having authority over the transaction. Such laws expressly include, but are not limited to, U.S. export control laws and regulations, U.S. economic sanctions laws administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, the U.S. Foreign Corrupt Practices Act, and any laws or regulations applicable to the handling, storage, transport, or use of the Products. Buyer agrees that it will not, directly or indirectly, sell, export, reexport, trans-ship, or otherwise provide the Products to any individual, entity, destination, or for any use prohibited by such laws and regulations or without obtaining all required authorizations from the appropriate governmental authorities. No Product shall be: (a) re-exported, trans-shipped, sold, or otherwise transferred to any country other than the country to which Austin Powder has expressly authorized shipment, except as permitted under applicable U.S. law and with Austin Powder's prior written consent; or (b) e-exported, trans-shipped, sold, or otherwise transferred to any person or entity in the authorized destination if such transfer would violate any applicable law, regulation, sanction, or anti-corruption requirement.

21. **FORCE MAJEURE.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations of Buyer to make payments to Austin Powder hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's reasonable control, including, without limitation, the following force majeure events ("**Force Majeure Event(s)**"): (a) acts of God; (b) natural disaster, flood, fire, earthquake, epidemic, pandemic or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order, law, or action; (e) embargoes or blockades in effect on or after the date

of this Agreement; (f) national or regional emergency; (g) strikes, labor stoppages, disputes, or slowdowns, or other industrial disturbances; (h) shortage of adequate materials, internet, power or transportation facilities; (i) mechanical breakdown of manufacturing facilities; (j) interruption of or delay in transportation or inability to obtain any material used in or equipment needed for the production, handling, storage or transportation of the Products, provided, however, the quantities so affected may be eliminated from this Agreement and this Agreement shall otherwise remain in full force and effect; and (k) other similar or dissimilar events beyond the reasonable control of the impacted party. The impacted party shall use commercially reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are mitigated to the extent commercially practicable. The impacted party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause. Notwithstanding anything to the contrary herein, if Austin Powder's supply of material is limited by any cause beyond Austin Powder's control, Austin Powder shall have the right to prorate its available supply over its own manufacturing requirements and its commitments to its customers in such manner as it deems fair and equitable and Buyer shall not be deemed in breach of its purchase obligations under this Agreement during any period of curtailed delivery by Austin Powder.

22. **ASSIGNMENT.** Buyer shall not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Austin Powder. 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.

23. **THIRD-PARTY BENEFICIARIES.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns. 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.

24. **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.

25. **DISPUTE RESOLUTION.** Any dispute arising out of or in connection with the agreement shall be addressed through the following escalation process before either party initiates litigation: (a) The parties shall first attempt in good faith to resolve the dispute through discussions between their respective day-to-day business representatives within ten (10) business days after written notice of the dispute; (b) if the dispute is not resolved at that level, either party may escalate the matter by written notice to a senior executive of each party, who shall meet (in person or by video/telephone conference) and attempt in good faith to resolve the dispute within twenty (20) business days after such escalation notice; (c) if the dispute remains unresolved after completion of the executive-level discussions, either party may, but is not required to, propose mediation under mutually agreed rules

and a mutually agreed mediator; if the parties do not agree to mediation within fifteen (15) business days, or if mediation is conducted and fails, either party may pursue any remedies available at law or in equity. Nothing in this section shall prevent either party from seeking interim or conservatory relief from a court of competent jurisdiction at any time.

26. **GOVERNING LAW AND VENUE.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Ohio, without regard to any choice of law rule or principle that would direct the application of the laws of an alternative jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the federal or state courts located in the State of Ohio, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

27. **WAIVER OF JURY TRIAL.** Each party irrevocably and unconditionally waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal action, proceeding, cause of action, or counterclaim arising out of or relating to this Agreement.

28. **NOTICES.** All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and addressed to the parties at the addresses set forth on the face of the Order Confirmation or to such other address that may be designated by the receiving party in writing. All notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid), electronic transmission (with confirmation of transmission), or certified mail (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.

29. **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.

30. **SURVIVAL.** The following provisions of these Product Terms shall survive any termination or expiration of this Agreement: (a) all indemnification obligations, including but not limited to general indemnification, indemnification for use of Products, and indemnification for reliance on the Ancillary Services; (b) limitation of liability; (c) waiver of consequential, incidental, and punitive damages; (d) confidentiality obligations; and (e) any other provisions that by their nature are intended to survive termination or expiration of this Agreement.

31. **AMENDMENT AND MODIFICATION.** This Agreement may only be amended or modified in a writing which specifically states that it amends this Agreement and is signed by an authorized representative of each party.

[end of document]