

FUNCTIONAL PRODUCTS INC.

STANDARD TERMS AND CONDITIONS OF SALE

- 1. Terms and Conditions:** The terms and conditions set forth below are intended to establish standard terms and conditions of sale for all sales by Functional Products Inc. and its affiliates (collectively, "Functional Products") to the first, original retail purchaser ("Customer") unless otherwise provided in a written agreement signed by Customer and Functional Products. This document, together with the written quotes, purchase order/order confirmations, invoices and technical data sheets (and all supplements and attachments thereto issued by Functional Products from time to time) shall constitute the entire agreement ("Agreement") between Customer and Functional Products for each such sale. To the extent any terms set forth in any document (exclusive of an Order confirmation signed by Functional Products) conflict with these terms and conditions, these terms and conditions shall control. Additional or different terms provided in Customer's purchase order (each an "Order") which vary in any degree from any of the terms and conditions herein are rejected and shall not apply. If Functional Products accepts an offer or Order by Customer and if any terms herein are additional to or different from any terms of such offer or Order, then any reference to this Agreement by Functional Products shall constitute an acceptance expressly conditioned upon Customer's agreement to all of the terms and conditions of this Agreement. Any conduct by Customer (including without limitation payment for or use of the goods) after being notified of this Agreement shall constitute acceptance by Customer of this Agreement and its terms and conditions.
- 2. Prices, Permits, and Taxes:** Functional Products' price shall be the price identified in the applicable Order confirmation. Prices are subject to change without notice and exclude sales, use, franchise, license, excise and other taxes regarding the manufacture, sale or delivery of the goods furnished hereunder, delivery or freight charges, export or import duties, inspection fees, and all interest and penalties related to the same, all of which shall be paid by Customer unless a proper exemption certificate is furnished. If Customer fails to pay and discharge any such amounts when due, Functional Products may, at its option, pay the same, in which event Customer shall promptly reimburse Functional Products for such sums paid.
- 3. Payment Terms:** Subject to on-going credit approval by Functional Products, the payment terms shall be net thirty (30) days from date of invoice, and Customer's payment shall be cash in United States funds payable pursuant to Functional Products' instructions. Functional Products reserves the right to withhold shipment for Customer's: (a) non-payment; (b) late payment; or (c) failure to provide assurances of payment upon request by Functional Products. Functional Products further reserves the right to make delivery in installments, and all such installments are to be separately invoiced and paid for at the then-current price when due as stated on the invoice, without regard to subsequent deliveries. Any late payment shall accrue interest at a rate of one and one half percent (1.5%) per month (eighteen percent (18%) annually) of the outstanding balance, or the maximum rate allowed by applicable law, whichever is lower, from the date such payment is due until the full invoiced amount and accrued interest is fully paid. In addition, Customer shall be responsible for Functional Products' collection costs and attorneys' fees in collecting any past due amounts.
- 4. Orders.** Unless Functional Products provides written consent otherwise, once an Order is accepted by Functional Products, no cancellations or changes are permitted to such Order, whether in whole or in part or to any portion of any blanket Order, including, without limitation, to the delivery date, shipment date, quantity, materials, drawdown schedule, transportation mode, destination or otherwise. Minimum Order quantities for goods shall be as specified by Functional Products in its quotation or Order confirmation. All Orders shall be subject to Functional Products' then-current manufacturing lead times. Any requests for expedited manufacturing may be subject to additional charges to Customer and shall require Functional Products' prior written approval.
- 5. Forecasts Upon Request.** For larger or recurring orders, Functional Products may request forecasts of needs. Any such forecast should detail Customer's anticipated purchases for each of the specific goods for each month during the applicable period. Functional Products shall not have any liabilities or obligations regarding anticipated purchases set forth in any forecast, and Functional Products only has obligations or liabilities for Orders for which Functional Products issues a written Order confirmation pursuant to and in accordance with these terms and conditions.
- 6. Custom and Made-to-Order Product Orders.** In regard to any custom or made-to-order goods being offered for commercial sale in the market ("Custom Product") as determined by Functional Products, until such time as Functional Products shall notify Customer in writing, Customer must submit an Order that may not be cancelled, changed or modified in any manner without Functional Products' written approval ("Firm Purchase Order"). Functional Products will not order any raw materials, schedule, or begin any manufacture of the Custom Product, and shall not be liable for any delay or failure to do the same, unless and until Customer has submitted such Firm Purchase Order for such Custom Product. Unless otherwise approved in writing by Functional Products, if Customer no longer desires to continue purchasing a particular Custom Product from Functional Products, Customer must deliver at least six (6) months prior written notice of such election to Functional Products prior to Customer ceasing any such purchases.
- 7. Freight.** Unless Functional Products agrees otherwise in writing, all Orders shall be shipped and invoiced to Customer in accordance with Functional Products' then-current freight policy ("Freight Policy"). The Freight Policy includes all costs and expenses Functional Products incurs with the carrier, as well as costs and expenses associated with the management of the carriers and shipping activities. Any requests for air shipment shall be subject to additional charges to Customer and shall require Functional Products' prior written approval. Where possible and according to applicable law, freight pricing will be listed as a separate line item on Functional Products' invoice. Customer agrees to pay any non-standard carrier surcharges, accessorial charges and similar costs and expenses which may be charged to or incurred by Functional Products after the date of shipment; Functional Products may invoice Customer or issue a debit memo to Customer's account for these additional amounts. Any request for expedited shipping may be subject to additional charges to Customer and must be approved in writing by Functional Products.
- 8. Risk of Loss, Delivery, Title, Returns:** Unless Functional Products provides written consent otherwise, delivery shall

INCOTERM Ex Works. If Functional Products agrees to deliver the applicable Products to an agreed upon place of destination in accordance with a different governing INCOTERM, Customer must reimburse Functional Products for any demurrage, detention or other similar charges if Customer does not take delivery and possession of the Products at the agreed time and location. These charges may include fees from carriers or terminals for use of their personnel, equipment or facilities due to Customer's delay in accepting delivery as agreed. In circumstances where Customer is responsible for collecting the applicable Products at Functional Products' facility in accordance with the applicable governing INCOTERM, if Customer fails to timely pick up the applicable Products at Functional Products' facility as required, then (i) payments are still to be made as specified hereunder, (ii) the Products shall be held at Customer's risk and (iii) Functional Products may invoice Customer for charges designated by Functional Products, including, without limitation, late pick up and storage charges. The ordered quantity and this variance must be shipped by Functional Products or picked up by Customer in accordance with the applicable INCOTERM within thirty (30) days after the date of production. Customer assumes all responsibility for risk of loss of, or damages to or caused by the goods furnished hereunder, either at Functional Products' facility or upon delivery as applicable. Title to the goods shall transfer to and vest in Customer at the same time that risk of loss transfers to Customer, to the extent permissible by law. Where required in the importing countries, Customer shall have the obligation to obtain any import license or authorization prior to the goods being exported from the Functional Products' facility. Goods may not be returned for any reason, including for convenience or fault by Functional Products, unless authorized in advance in writing by Functional Products. Functional Products reserves the right to inspect the goods at Customer's installation to verify claims of damage or breach of warranty under Section 9 (in either case, "non-conforming" goods). If a return is agreed upon, Functional Products will manage the disposition of non-conforming material unless otherwise agreed in writing by Functional Products. Shipment and delivery dates are estimates, and Functional Products shall not have any liability for any late shipment and/or delivery.

9. **Warranties:** Functional Products warrants to Customer that at the time of delivery: (a) the goods sold hereunder shall conform to Functional Products' then current specifications; (b) Functional Products has good title to such goods; and (c) such goods are free and clear of all liens and encumbrances created by Functional Products. Customer has not relied upon any representations, recommendations, or advice other than Functional Products' written specifications. All goods should be inspected and tested before use and Customer is responsible for such testing/inspection. If any defects are found, the goods should not be used, and Customer must notify Functional Products immediately. If Customer uses the goods, it shall be considered as an unequivocal acceptance of the same and conclusive evidence that it is not defective and is of the character and type ordered. Customer is solely responsible for determining suitability for any application of the goods and Functional Products makes no warranty of any results Customer might obtain in any particular application. Customer's sole and exclusive remedy for any breach of warranty shall be limited, in Functional Products' sole discretion, to repair or replacement at Customer's installation of any non-conforming goods or refund of the purchase price thereof. Return of goods for breach of warranty shall be as specified in Section 8, above. **Customer's failure to give written notice that goods are non-conforming within fourteen (14) calendar days of delivery shall constitute a waiver by Customer of all warranty claims.** Notwithstanding the foregoing warranties and remedies, Functional Products shall have no obligation hereunder if the goods become defective as a result of improper storage, contamination, adulteration, improper use or misapplication after delivery thereof to Customer. This Warranty shall not apply where goods are blended, combined, or altered beyond Functional Products' control. The above warranties extend only to Customer. **THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTY, EXPRESS, IMPLIED OR STATUTORY, MADE BY FUNCTIONAL PRODUCTS. CUSTOMER ACKNOWLEDGES THAT IT IS PURCHASING THE GOODS SOLELY ON THE BASIS OF THE COMMITMENTS OF FUNCTIONAL PRODUCTS EXPRESSLY SET FORTH HEREIN. FUNCTIONAL PRODUCTS MAKES NO WARRANTIES WHATSOEVER FOR THE USE OF GOODS PROVIDED BY FUNCTIONAL PRODUCTS IN ANY MEDICAL, PHARMACOLOGICAL, FOOD OR NUCLEAR APPLICATIONS AND FOR COMPLYING WITH ALL APPLICABLE LAWS AND REGULATIONS RELATING TO THE MANUFACTURE, SALE AND END USE PRODUCT FOR SUCH APPLICATIONS.**

10. **LIMITATION OF LIABILITY:** TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL FUNCTIONAL PRODUCTS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR ANY LOSS OF CARGO; PROPERTY DAMAGE; LOST PROFITS; LOSS OF USE; LOSS OF TIME; INCONVENIENCE; RENTAL OR TRANSPORTATION EXPENSES; PERSONAL INJURY OR DEATH; LABOR COSTS; DAMAGES FOR DELAYS; OR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, STATUTORY, OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE THEORY OF LIABILITY (INCLUDING, WITHOUT LIMITATION, CONTRACT, TORT, STRICT LIABILITY, STATUTE OR OTHERWISE) AND EVEN IF FUNCTIONAL PRODUCTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. WITHOUT LIMITING THE FOREGOING, IN ALL EVENTS AND UNDER ALL CIRCUMSTANCES, FUNCTIONAL PRODUCTS' TOTAL AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE GOODS, THIS AGREEMENT, OR ANY TRANSACTION OR PERFORMANCE HEREUNDER SHALL NOT EXCEED THE PURCHASE PRICE PAID FOR THE PARTICULAR GOODS GIVING RISE TO THE CLAIM. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES SHALL BE, AT FUNCTIONAL PRODUCTS' OPTION, REPAIR OR REPLACEMENT OF NON-CONFORMING GOODS OR REFUND OF THE PURCHASE PRICE PAID FOR SUCH GOODS; NO OTHER REMEDIES ARE AVAILABLE. TO THE FULLEST EXTENT PERMITTED BY LAW, THE EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND SHALL BE INDEPENDENT OF AND IN ADDITION TO ANY OTHER LIMITATIONS OR DISCLAIMERS IN THIS AGREEMENT. THE EXCLUSIONS AND LIMITATIONS IN THIS SECTION APPLY WITHOUT EXCEPTION, TO THE FULLEST EXTENT PERMITTED BY LAW, INCLUDING WITH RESPECT TO ANY ALLEGED GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR STATUTORY VIOLATIONS; PROVIDED THAT NOTHING HEREIN SHALL EXCLUDE OR LIMIT LIABILITY TO THE EXTENT SUCH EXCLUSION OR LIMITATION IS PROHIBITED BY APPLICABLE LAW. FOR THE AVOIDANCE OF DOUBT, ANY FORM OF STATUTORY DAMAGES IS EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY LAW. ANY ACTION RESULTING FROM OR RELATING TO THE GOODS OR THIS AGREEMENT MUST BE COMMENCED BY CUSTOMER WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. THIS LIMITATION OF LIABILITY SECTION, TOGETHER WITH ANY DISCLAIMERS OF WARRANTIES AND REMEDY LIMITATIONS, SHALL SURVIVE DELIVERY, INSPECTION, ACCEPTANCE, PAYMENT, TERMINATION, CANCELLATION, OR EXPIRATION OF THIS AGREEMENT, AND SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW.

11. **INDEMNITY:** FUNCTIONAL PRODUCTS SHALL NOT BE LIABLE TO CUSTOMER FOR, AND CUSTOMER SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS FUNCTIONAL PRODUCTS AND ITS RESPECTIVE SHAREHOLDERS, DIRECTORS, OFFICERS AND EMPLOYEES, AND THE SUCCESSORS AND ASSIGNS OF THE FOREGOING, FROM AND AGAINST, ALL OR ANY PART OF ANY CAUSES OF ACTION, CLAIMS, LIABILITIES, LOSSES, COSTS, DAMAGES AND EXPENSES (INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND EXPENSES) (COLLECTIVELY "CLAIMS") FOR INJURY, ILLNESS OR DEATH TO PERSONS (INCLUDING, WITHOUT LIMITATION, THIRD PARTIES AND CUSTOMER'S EMPLOYEES AND ITS AGENTS, CONTRACTORS, SUBCONTRACTORS AND CUSTOMERS, AND THEIR RESPECTIVE EMPLOYEES) AND DAMAGES TO OR LOSS OF PROPERTY (INCLUDING, WITHOUT LIMITATION, THAT OF CUSTOMER OR THIRD PARTIES) ARISING OUT OF OR RESULTING FROM CUSTOMER'S PURCHASE, OWNERSHIP, TRANSPORTATION, RECEIPT, HANDLING, STORAGE, PROCESSING, ALTERATION, USE, DISPOSAL OR RESALE OF THE GOODS, ALONE OR IN COMBINATION WITH OTHER SUBSTANCES OR IN THE OPERATION OF ANY PROCESS.

12. **Security Interest.** Unless Customer pays in full for all goods prior to shipment, Customer hereby grants to Functional Products a lien on and security interest in and to all of the right, title, and interest of Customer in, to, and under the goods, 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 the Ohio Uniform Commercial Code. Customer agrees to execute such further documents as Functional Products requests to perfect a security interest in the goods and other collateral as security for payment. The goods shall at all times be considered personal property and shall not be deemed a fixture, a part of, or an appurtenance to any building, real estate, or vehicle, even though attached thereto. Damage to or loss or destruction of the goods will not release Customer from its payment obligation. This lien and security interest shall be released upon Customer's full payment for such goods.

13. **Return of Goods.** Customer must obtain written return authorization from Functional Products in order to return the goods to Functional Products. Goods must be unused, in their original condition, and in their original packaging in order to be eligible for return. All return freight charges shall be Customer's responsibility. All returns of goods are subject to a 25% restocking fee to be paid by Customer.

14. **Functional Products' Remedies.** In the event of a default by Customer, or if Functional Products deems itself insecure, Functional Products may suspend all shipments of goods until all delinquencies and defaults are cured and Customer gives Functional Products adequate assurances of performance. CUSTOMER IS LIABLE TO FUNCTIONAL PRODUCTS FOR, AND WILL PAY TO CUSTOMER, ALL COSTS AND EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, INCURRED BY FUNCTIONAL PRODUCTS TO COLLECT THE PURCHASE PRICE FROM CUSTOMER OR OTHERWISE TO ENFORCE ANY AGREEMENT IN THE EVENT OF CUSTOMER'S BREACH. In the event of Customer's default, Functional Products is entitled to all remedies available under the Ohio Uniform Commercial Code, and as otherwise provided by applicable law.

15. **Force Majeure:** Functional Products shall be relieved from liability hereunder for failure to perform any or all of its obligations, for the time and to the extent of such failure to perform where Functional Products' failure is occasioned by any cause or causes of any kind or character reasonably beyond the control of Functional Products (any such cause herein called "Force Majeure"), including, without limitation: Acts of God, accidents, fire, explosion, flood and hurricanes; strikes, lockouts or other industrial disturbances; riots or civil commotion; war, declared or undeclared; compliance with any laws, rules, regulations, ordinances, codes or Executive Orders of any kind and nature now or hereafter in effect promulgated by any federal, state, county or local government, or any other government (domestic or foreign) or any other governmental agency (domestic or foreign)(collectively, the "Laws") including, without limitation, priority, rationing, allocation or pre-emption orders or regulations affecting the conduct of Functional Products' business which Functional Products in its sole discretion deems it advisable to comply with as a legal or patriotic duty; cancellation of Functional Products' license to operate its plant; shortage or breakdown or other failure of facilities used for manufacture or transportation; shortage of labor; inability to secure, in Functional Products' sole discretion, all at reasonable prices or on account of shortages of, transportation, power, fuel, materials or supplies; or total or partial shutdown due to Functional Products' normal plant turnaround or as required by Functional Products' operation. If Functional Products is rendered unable by Force Majeure to carry out its obligations under this Agreement, Functional Products shall give notice to Customer, and upon the giving of such notice the obligations Functional Products, so far as they are affected by such Force Majeure shall be suspended during the continuance of any inability so caused. Upon the cessation of the cause or causes for any such failure or delay, performance hereof shall be resumed, but such delay shall not, except by mutual agreement, operate to extend the term of this Agreement or obligate Functional Products to make up deliveries or Customer to purchase quantities so missed. Settlement of strikes or lockouts shall be entirely within the sole discretion of Functional Products, and Functional Products shall not be required to settle strikes or lockouts by acceding to the demands of the employees involved, when such course is inadvisable in Functional Products' sole discretion. Functional Products shall not be responsible for reasonable delays in filling any Order when due. "Reasonable delays" include, without limitation, delays to which Customer, when notified, makes no objection. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of the delay. In the event of inability, for any reason, to supply the goods to be furnished hereunder, Functional Products may allocate its available supply of goods or raw materials among any or all Customers, as well as departments, divisions, subsidiaries or affiliates of Functional Products or among Functional Products' product lines on such basis as Functional Products may in its sole discretion deem practical without liability for any failure of performance which may result therefrom.

16. **Compliance with Laws:** Customer shall comply with all Laws in any way relating to Customer's purchase, ownership, transportation, receipt, handling, storage, processing, alteration, use, disposal or resale of the goods, alone or in combination with other substances or in the operation of any process. Customer agrees that it will not resell, export or dispose of any goods or product obtained from Functional Products into any country or to any entity in violation of the US export control regulations or sanctions.

17. **Responsible Practices:** Customer acknowledges that Functional Products has furnished Customer with product literature or

information, such as a Safety Data Sheet ("SDS"), that include warnings and safety and health information related to the goods furnished hereunder. Customer acknowledges that this information is provided for informational purposes only and does not constitute design, approval, or guarantee of performance. Customer shall: (a) familiarize itself with such information; (b) adopt and follow safe handling, storage, transportation, use, treatment and disposal practices with respect to the goods furnished hereunder, including, without limitation, special care and practices as Customer's use of the goods requires including, without limitation, all such practices required by applicable Laws; (c) instruct its employees, independent contractors, agents and customers of the precautions and safe use practices required in connection with the unloading, handling, storage, use, transportation and disposal of the goods furnished hereunder (including, without limitation, information contained in Functional Products' most current SDS); and (d) comply with applicable safety and environmental Laws and take action necessary to avoid spills or other dangers to persons, property or the environment. Functional Products may suspend goods shipments and/or cancel this Agreement on fifteen (15) days' notice if Customer fails to comply with any of its commitments under this Section. Customer shall indemnify, defend and hold Functional Products harmless against any and all third party causes of action, claims, liabilities, losses, costs, damages and expenses (including, without limitation, attorneys' fees and expenses) to the extent arising out of Customer's failure to comply with any of its commitments under this Section. Any technical, formulation, or application guidance or suggestions provided by Functional Products is illustrative only and does not constitute engineering, design services, product approval, or certification. Customer remains solely responsible for validation and compliance of its products. If Customer proceeds with manufacture, blending, sale, or use of goods contrary to Functional Products' written advice or recommendations, Customer assumes all risk arising therefrom and agrees to indemnify, defend, and hold Functional Products harmless from any resulting claims.

18. Miscellaneous: This Agreement constitutes the entire agreement regarding the sale of goods between Customer and Functional Products, and supersedes any prior or contemporaneous communications, representations or agreements between the parties, whether oral or written. This Agreement may only be modified or amended in a writing signed by both parties. All notifications, requests, demands and other communications required or allowed under this Agreement (including, notices of breach and/or termination of this Agreement) must be in writing and addressed and delivered to the recipient at the address, or email specified by a party pursuant to this provision. Notice is deemed given: (a) upon delivery, when delivered in person or by courier during a business day, otherwise on the next business day after delivery; (b) the same day, when sent by confirmed email during a business day, otherwise on the next business day after sending, provided that the sender has proof that the email has been received by a proper email address, or (c) five (5) business days after deposit in the government mail service to be sent by certified mail, return receipt requested. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall continue to be valid and enforceable. If a court determines that any provision of this Agreement is invalid or unenforceable, but could be valid by limiting such provision, then such provision shall be deemed to be written, construed and enforced as so limited. Functional Products' failure to exercise any rights under this Agreement in a particular instance shall not operate as a waiver of any right to exercise the same or different rights in any subsequent instance. Functional Products' waiver of any breach of this Agreement by Customer in a particular instance shall not operate as a waiver of subsequent breaches of a same or different kind. Any waiver must be in writing and signed by Functional Products. Functional Products may assign its rights and delegate its obligations under this Agreement. Customer's rights and obligations under this Agreement are personal in nature and shall not be transferable by assignment, delegation, operation of law, subcontract or otherwise without Functional Products' prior written consent and any attempt to do so shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. The rights and remedies of Functional Products in this Agreement are cumulative and not exclusive. Functional Products' rights and remedies and Customer's obligations and responsibilities which have accrued before, or by their nature would extend beyond, the expiration, termination or other cancellation of this Agreement, shall survive such expiration, termination or other cancellation and continue to bind the parties and their permitted successors and assigns indefinitely until fulfilled or waived (including, without limitation, Sections 3, 9, 10, 11, 12, 13, 14, 16, 17, and 18). This Agreement shall be governed by the laws of the State of Ohio, USA, without regard to principles of conflict of laws. Both parties hereby irrevocably consent and submit to the exclusive jurisdiction of the State courts of Ohio, USA and of the United States District Courts located in the State of Ohio, USA in connection with any litigation arising out of the Agreement, and both parties hereby expressly waive any objection they have or may have as to the venue of any such courts. The rights and obligations of the parties under this Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

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