



## TERMS AND CONDITIONS OF SALE

APO-MKT-018 D220601

**Effective July 26, 2017**

Supersedes all previously published policies

The following Terms and Conditions are the Terms and Conditions of Sale of the Products supplied by Apollo America Inc., a Delaware Corporation (hereinafter "Company"). These terms and conditions apply to all Products.

THESE TERMS AND CONDITIONS ARE COMPANY'S SPECIFIC TERMS OF SALE, AND THE TERMS AND CONDITIONS SPECIFIED IN THIS DOCUMENT AND ANY ATTACHMENTS. ALL CONTRACTS OF SALE BY COMPANY SHALL BE ON AND SUBJECT TO THESE TERMS AND CONDITIONS. COMPANY DOES NOT AGREE TO ANY PROPOSED ADDITION, ALTERATION, OR DELETION BY CUSTOMER, OR CUSTOMER'S CUSTOMERS, OR TO ANY TERMS OR CONDITIONS SET FORTH IN CUSTOMER'S OR CUSTOMER'S CUSTOMERS ORDERS. THESE TERMS AND CONDITIONS CAN BE VARIED ONLY BY A WRITING SIGNED BY AN OFFICER OF COMPANY. COMPANY RESERVES THE RIGHT TO MODIFY THESE TERMS AND CONDITIONS OF SALE AT ANY TIME WITHOUT PRIOR NOTICE TO CUSTOMER. HOWEVER, SUCH REVISED TERMS AND CONDITIONS WILL NOT BE EFFECTIVE UNTIL THE NEXT ORDER AFTER THE REVISION.

Customer will ensure by its contract with the end user or ultimate owner or its buyer that Company is given the benefit of the Terms and Conditions of Sale, including the exclusions and limitations of liability set forth herein, or as hereafter modified by Company, by all such users, owners and buyers and Customer will indemnify Company against claims of any kind by them to the extent that Company would not be liable to Customer under the conditions if the claim had been made by Customer. Customer will insure that these Terms and Conditions of Sale for the Products are transmitted to its end customer upon resale or transfer of the Product. As such, except as to Sections I, Customer Recognition; 1V, Ordering Information; V, Pricing; VI, Payment Terms; VII, Freight and Delivery Terms; VIII, Inspection and Acceptance, and XI, Return Material Authorization, which are exclusive to Customer. Any reference to "Customer" in these Terms and Conditions shall also refer to Customer's customers, transferees, assigns, affiliates, or whoever else takes control of the Product.

### I. CUSTOMER RECOGNITION

- A. Company recognizes Customer as a non-exclusive distributor. Customer acknowledges that Company may sell directly or to any third party that Company selects as and when Company so desires in its sole and absolute discretion.
- B. Customer agrees that Company's arrangement with Customer can be terminated with or without cause, upon fourteen (14) days notice. In the event of termination, all of the goodwill and other proprietary rights in and to Company's products are the sole property of Company. Customer will not be entitled to any compensation or payments for expenses, lost profits, etc. as a result of termination.

### II. INFORMATION ABOUT PRODUCTS

- A. "Products" are the goods of or services provided by Company, details of which are set out as indicated on any commercial invoice.
- B. Any description, specification or drawing published by the Company in relation to the Products shall not form part of any contract of sale by the Company.
- C. The Customer in assessing whether the Products are reasonably fit for any particular purpose for which it is purchasing them has not relied on the skill or judgment of the Company.

### III. CONTRACT

- A. The Company shall sell and the Customer shall purchase the Products in accordance with the written order of the Customer accepted by the Company in writing ("the Order") and with these Conditions (together "the Contract").
- B. The Contract represents the entire understanding and supersedes any previous agreement between the Company and the Customer in relation to their subject matter.
- C. The Contract shall not in any circumstances whatsoever be or be deemed to be affected by any previous dealings with the Company and any previous terms and/or conditions issued by the Company are superseded.
- D. Where the Order Acceptance is on terms which vary from those set out in these Conditions, those terms shall prevail, but otherwise these Conditions shall be deemed to be part of the Contract.

#### IV. ORDERING INFORMATION

- A. Company will accept Orders from its recognized Customers, or the Customer's recognized branches. Possession of Company's product catalog or price schedule does not constitute authority to purchase items directly from Company.
- B. To submit orders please use one of the following acceptable mechanisms:
  - 1. E-Mail: [Sales.USA@aaifire.com](mailto:Sales.USA@aaifire.com)
- C. Order must state Customer's account number, ship to address, catalog part number, item description, quantity ordered and unit price.
- D. No order given may be cancelled or amended unless agreed by the Company in writing. Order changes by Customer must be made in writing, or verified in writing before Company can complete processing of the order, and as referenced in Section VII.F herein.
- E. All Products may be combined on a single order for best freight terms.
- F. Where indicated on the Company's pricing guides, some Products are only available in the multiples shown. Some items are also noted with a required minimum purchase quantity which must be adhered to. Company reserves the right to increase the order quantity in compliance to item minimums and multiples without authorization, or refuse to accept the order.
- G. A minimum net billing of \$100.00 USD per order, per branch drop shipment applies. (Excluding freight and/or applicable taxes.)
- H. Orders will only be accepted for shipment to one destination. Portions of orders for shipment to other addresses will be considered separately for pricing, freight, item minimum and multiple requirements.
- I. Drop shipments to destinations other than a recognized Customers' address, or its recognized branch address, will require approval based solely at the discretion of Company. Products drop shipped to such destinations are required to be ordered in whole case quantity multiples, with a one case minimum. If approval is obtained additional charges may apply. Standard order terms and requirements will apply.
- J. These Terms and Conditions of Sale shall govern the sale of the Products which are the subject matter hereof and shall supersede any preprinted terms and conditions contained in Customer's purchase order or any other document. Such Customer terms are hereby rejected and considered null and void.
- K. Nothing in these Terms and Conditions of Sale requires or is intended to require Company to accept any purchase order from Customer, and Company will have no liability to Customer or to any third party in the event Company decides not to accept any order.
- L. All orders are final once shipped and accepted by Customer.

#### V. PRICING

- A. PRICES ON ALL ORDERS ARE SUBJECT TO CHANGE OR WITHDRAWAL WITHOUT NOTICE. Written notification of pending price increases will be made in advance of the effective date of the price change whenever practicable. Except where prices are specifically designated as firm in Company's quotation, all products shipped on or after the effective date of a price change will be invoiced at the new quoted price level. Company reserves the right to make price changes within the periods of contracts or blanket orders.
- B. The prices are exclusive of any applicable sales taxes, taxes, excises, duties, quotation fees, or other governmental impositions which Company may be required to pay or collect under any existing or future law. Customer shall pay sales tax when required in respect of the price at the standard rate prevailing at the date of delivery, together with all other taxes, duties or imports arising in connection with the sale. Customer agrees to pay or reimburse any such applicable taxes or impositions which Company or Company's agents or suppliers are required to pay.
- C. In the event any order submitted by Customer to Company contains pricing not in accordance with the then current price schedule, or its special quoted pricing, Company will notify Customer of the discrepancy in price and Customer shall correct the pricing in writing by either acknowledging the correction on a revised order confirmation, pricing approval form, or by submitting a new order to Company. All orders shall be placed on hold until Customer provides written acknowledgment of correct pricing.

#### VI. PAYMENT TERMS



- A. Subject to Company's Credit Department approval, standard invoice payment terms are Net 30 days from date of invoice.
- B. Payment of the Price shall be made in U.S. Dollars at the office of the Company. All payments shall be made in full without deduction in respect of any right of set-off or counter-claim.
- C. Payments can be made either via check, certified check, money order, wire transfer, or irrevocable and confirmed letter of credit, paid to the order of the remittance name specified on invoice.
- D. Invoices are due and payable in one installment and any portion of the price which is not paid on time shall be subject to a service charge at the lesser of one and one half percent (1½%) per month (18% per annum), or the maximum rate permitted by law, from the due date until the amount is paid in full. Company shall be entitled to recover from Customer all costs for collection, including reasonable attorneys' fees, and interest (at the legally permitted limit not to exceed 1½% per month (18% per annum)) incurred by Company in connection with any amount due Company from Customer. Company reserves the right to require Customer to provide prepayment or a check in advance, if in Company's judgment, Customer presents an unusual credit risk.
- E. If the Customer fails to make due payment under the Contract the Company shall be entitled to treat the Contract as repudiated by the Customer.

## **VII. FREIGHT AND DELIVERY TERMS**

- A. The delivery terms for all orders are EXW (Ex Works) as per Incoterms 2000.
  - 1. The lone exception to this applies to any situation in which the customer arranges the freight forwarder. In this instance, title to the goods passes when the final assembly is completed and the goods are placed on the dock. A delivery of a PO to Apollo America implies acceptance to these terms.
- B. Where Company has agreed to pay freight expense, the following conditions will apply:
  - 1. The delivery terms for all orders are CPT (Carriage Paid To) as per Incoterms 2000.
  - 2. A minimum order value exclusive of applicable taxes may apply. Orders less than this minimum value will be prepaid by Company but will be at Customer's expense, and freight charges will be added to Customer's invoice.
  - 3. Where the order value is equal to or exceeds the minimum requirements, regular ground freight will be prepaid by Company via carrier of Company's choice.
- C. Company agrees to use commercially reasonable efforts to meet delivery schedules requested by Customer, but shall have no liability for failure to do so for any reason.
- D. The Customer shall promptly, on request made at any time by the Company, provide the Company with any information or instruction it may require in order to supply the Products.
- E. Company reserves the right to select the manner in which the product is packaged, quoted prices include regular packing. Special requirements for packing will be subject to extra charges unless otherwise agreed to by Company in writing.
- F. Orders acknowledged by Company may not be canceled or amended, or deliveries deferred, by Customer except with Company's prior written consent, and then only upon such terms as shall be acceptable to Company.
- G. Title and risk of loss to all products shall pass to the Customer upon delivery by Company to a carrier at Company's shipping point.
- H. Where the Company has made part delivery of the Products it will not be taken under any circumstances to have agreed to waive any lien or right of retention on the remainder of the Products or to give up possession of the whole of the Products unless expressly so agreed in writing.

## **VIII. INSPECTION AND ACCEPTANCE**



**A.** Customer shall inspect all deliveries within two (2) business days of receipt. In the event there is damage to product or shortage of product, Customer shall notify the carrier and Company within such two (2) business days and provide a copy of the signed packing list noting the damage or shortage thereon. All other products shall be deemed to have been finally inspected and accepted by Customer within ten (10) days after date of invoice unless a written notice of claim is given by Customer to Company within the 10-day period. This ten (10) day period applies to all other discrepancies, including discrepancies in invoicing, shortage or damage, and excludes shortage in shipment caused by carrier or damaged shipment caused by carrier as provided for above which requires two (2) business days notice. No product subject to a claim may be returned without the prior authorization of Company. Authorized return shipments must be sent to Company accompanied by a packing slip, and including Company's Return Materials Authorization (RMA) Number, purchase order number, Company's invoice number, the number of cartons and items received, condition of cartons and any other relevant facts that would be helpful in tracing the cause of the discrepancy and must have transportation charges prepaid.

**B.** Company will verify all reports of shipping discrepancies, and where applicable a credit invoice will be issued. No prior debits will be accepted.

#### **IX. USE AND SAFETY**

**A.** The Products are designed only for use in accordance with the Company's operating and maintenance instructions in relation to the Products at the time of delivery. The Company warns that use, repair or adaptation of the Products in any other manner may result in damage to the Products or other property and/or affect the safety of the Products.

**B.** Save only as provided in these Conditions the Company shall not be liable for any loss or damage caused wholly or partly by the fitment to the Products of any part, accessory or item of equipment which has not been manufactured or approved by the Company or by misuse of the Products or failure to follow operating or maintenance instructions supplied by the Company. The Customer shall indemnify and keep indemnified the Company against any and all claims whatsoever in respect of any such loss or damage.

#### **X. WARRANTY POLICY**

##### **A. Warranty**

**1.** Company warrants those products listed in the then current pricing guide (with the exception of Duct Detectors and Accessories and certain smoke detector products) against failure due to defects in material workmanship or products that do not perform in accordance with the specifications for that product, with consideration to the specific application or latent defects after initial installation for a period of one year from the original date of installation (proof of installation is required) or one and one-half years (18) months from the date of manufacture, whichever is earlier.

**2.** Company warrants those products listed in the then current pricing guide under the heading "Duct Detectors and Accessories" against failure due to defects in material workmanship or products that do not perform in accordance with the specifications for that product, with consideration to the specific application or latent defects after initial installation for a period of three years (36 months) from the original date of installation (proof of installation is required) or three and one-half years (42) months from the date of manufacture, whichever is earlier.

**3.** Company warrants specific smoke detector products and accessories free from defects in material and workmanship for a period of 10 years (5 years for carbon monoxide detectors) from the date of manufacture (the "Warranty Period.") Company makes no other warranties concerning the goods whatsoever. Company disclaims and excludes all other express warranties and implied warranties including without limitation the implied warranties of merchantability and fitness for a particular purpose whether or not the company is aware of customer's intended usage of the goods.

**a)** If Customer notifies Company in writing of Customer's claim that the Goods are damaged or defective in such a manner as to be covered by the Warranty within (10 days) of the discovery of the damage or defect (which such discovery must be made within the applicable Warranty Period), Company will review Customer's claim, and if valid, Company will, at its option, either repair (with non-OEM, after market, pre-owned or new parts at Company's discretion) or replace the Goods with same or similar Goods. Such repair or replacement is subject to the Customer consenting or procuring consent for access to the Goods by the Company's employees or sub-contractors to carry out any work under this clause. This undertaking is given and shall be accepted by the Customer in lieu of any other remedy. Replaced Goods are warranted for (either 30 days or the remainder of the original warranty period, whichever is longer).

**b)** The Warranty shall not be of any force or effect, and Company shall not have any obligation to repair or replace the Goods as set forth in clause 10.2 above if:

**(1)** The Customer makes any further use of the Goods after giving notice in accordance with clause 3.a

**(2)** The defect arises because the customer failed to follow the Company's oral or written instructions as to the installation, use, maintenance or cleaning of the Goods or (if there are none) good trade practices that apply to the Goods.

**(3)** The Customer alters or repairs the Goods without the Company's prior written consent.



(4) The defect arises as a result of normal wear and tear, willful damage, negligence or abnormal storage or working conditions. For example, the Customer will be responsible for replacing parts that are expected to have a limited working life, such as batteries and rubber seals.

(5) The defect arises as a result of electrical or power supply failure.

c) The warranty are solely made to Customer and are not transferable by Customer.

4. Exceptions from the Warranty stated above:

a) Some products may contain extended warranties. Please refer to the product's documentation for the specific warranty coverage.

b) Product subjected to abuse or damage is not warranted. Abuse or damage may be indicated by, but not limited to, one or more of the following:

- |                                       |                   |
|---------------------------------------|-------------------|
| •Burned contacts                      | •Stripped threads |
| •Water or fire damage                 | •Split castings   |
| •Abuse or tampering                   | •Missing parts    |
| •Improper installation or application |                   |

c) Products or their components that fail during the warranty period and otherwise qualify under the terms of our warranty policy will, at Company's sole discretion be, (i) credited at Customer's lowest net invoice amount to Customer's account, (ii) repaired, or (iii) replaced. In no event shall the warranty claim exceed the product price allocated to the Customer's lowest net invoice price over the previous twelve (12) months or since the inception of the Customer's contract, whichever is sooner. If a product returned is determined to be warranted, then at Company's sole discretion, and if Customer has requested on the packing list that a replacement product be sent to Customer, Company will issue a replacement product in lieu of issuing a credit to Customer. Company reserves the right to supply suitable substitutes when warranty items are not currently in production or otherwise available.

d) THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES, GUARANTEES, OR REPRESENTATIONS, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, BY OPERATION OF LAW OR OTHERWISE. COMPANY SHALL NOT BE LIABLE FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOST PROFITS, LOST SAVINGS, OR OTHER INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES OF ANY NATURE WHATSOEVER RESULTING FROM THE USE OR INABILITY TO USE COMPANY'S PRODUCTS. ANY STATEMENTS OR REPRESENTATIONS MADE BY OTHER PERSONS OR FIRMS ARE VOID.

e) THE FOREGOING REMEDY SHALL BE THE CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR FAILURE OF PRODUCT TO CONFORM TO THE WARRANTY.

B. Return for Warranty Consideration

1. All products to be considered for warranty must be returned to Company freight pre-paid.
2. Product returned to Company must be packaged in such a manner that will prevent any further damage to the product during transit. Items damaged during transit will not be considered for warranty concession.
3. An itemized packing slip, including Customer's name and address, is required for each shipment to Company of product(s) to be considered for warranty concession. The packing slip should contain an RMA number, items and their quantities being returned, reason for warranty return, date of installation, date of failure and a contact at the Customer in case further information is required.
4. For all customers, all cartons must be clearly identified as WARRANTY PRODUCT and returned to:  
Warranty Department  
Apollo America  
25 Corporate Drive  
Auburn Hills, MI 48326

C. Inspection of Product

1. Prior to Company granting warranty concessions, Company will inspect each device to confirm that the returned product qualifies for the warranty in Section A. If the inspection by Company does not disclose any defect covered by this warranty in Section A, product credit or repair or replacement will not be approved. If this occurs, Company shall notify Customer and the Customer has the option to request Company to scrap the product or return it at Customer's expense. AT



COMPANY'S OPTION, COMPANY MAY SCRAP THE PRODUCT WITH NO FURTHER LIABILITY TO COMPANY, UNLESS CUSTOMER NOTIFIES COMPANY OTHERWISE WITHIN TWO (2) WEEKS OF COMPANY'S NOTIFICATION.

2. In the event Customer sends Company products that were not manufactured and/or distributed by Company, Company will notify Customer. Customer has the option to request Company to scrap the product or return it at Customer's expense. AT COMPANY'S OPTION, COMPANY MAY SCRAP THE PRODUCT WITH NO FURTHER LIABILITY TO COMPANY. UNLESS CUSTOMER NOTIFIES COMPANY OTHERWISE WITHIN TWO (2) WEEKS OF COMPANY'S NOTIFICATION.

3. Final disposition of any warranty claim shall be determined solely by Company.

#### **XI. RETURN MATERIAL AUTHORIZATION**

A. Returns will not be accepted nor credit given without a factory authorized Return Materials Authorization (hereinafter "RMA"). RMAs are required both for materials returned for warranty concession consideration and for stock returns. RMAs for stock returns are only issued to the original point of purchase location for current manufactured and/or distributed items that are in warranty, and have been purchased within the last three (3) months. Returns will not be accepted for special order or non-stock items (as indicated in price schedule).

B. In order to request an RMA number for a stock return, Customers must provide the invoice number, sales order number (or customer's purchase order number), the item numbers and quantities of products they wish to return, and the reason for return to their Sales or Customer Service Representative.

##### **C. RMA Processing for Warranty Returns**

1. The RMA number is valid only if the product it refers to is received at the address specified on the RMA form, freight prepaid, within fourteen (14) days from the date Company issued authorization. If product is received after fourteen (14) days, Company may reject the request.

2. The return must include all information as required in Section IX, Warranty Policy, and must be clearly marked with the assigned RMA number.

##### **D. RMA Processing for Stock Returns**

1. The RMA number is valid only if the product it refers to is received at the address specified on the RMA form, freight prepaid, within fourteen (14) days from the date Company issued authorization. If product is received after fourteen (14) days, Company may reject the request.

2. The product must be received in its original saleable condition (including all accessories and inserts), in its original packaging, and undamaged. Damaged product will not be accepted for return, even if a RMA number has been issued.

3. Credit for the return will be based on the lowest net invoice amount for the Customer over the last 12 months or since the inception of the Customer's contract, whichever is sooner, unless proof of purchase for the actual shipped product is provided

4. All returns are subject to a minimum 15% restock charge or \$15.00, whichever is greater, and/or the actual cost of materials and labor required to return product into saleable condition. Company will not accept returns that do not have a proper RMA or are sent to Company in error. If Company receives unauthorized product, or product that was not manufactured and/or distributed by Company, Company shall notify Customer. The Customer has the option to request Company to scrap the product or return it at Customer's expense. AT COMPANY'S OPTION, COMPANY MAY SCRAP THE PRODUCT WITH NO FURTHER LIABILITY TO COMPANY, UNLESS CUSTOMER NOTIFIES COMPANY OTHERWISE WITHIN TWO (2) WEEKS OF COMPANY'S NOTIFICATION.

#### **XII. DISCONTINUED PRODUCTS**

A. Company reserves the right to discontinue distribution of any product without notice, or substitute material or complete devices when items ordered are not currently in production or otherwise available.

#### **XIII. PERMISSIBLE VARIATIONS**

A. Company may, prior to the delivery of product to Customer, make changes in the product including without limitation changes to the model, design, component parts or dimensions. In addition, Company may make any change or variation in the product which is within industry, government or professional organization standards or specifications applicable at the time of manufacture without notice to Customer. Customer will accept any product which may incorporate any such changes or variations, and any increase in price resulting from such changes or variations will be for the account of Customer.



#### **XIV. PRODUCTS PURCHASED FOR RESALE**

**A.** In respect of any Products which are purchased by the Customer for resale, the Customer shall not apply its own trade or other marks to the Products or their packaging without the written consent of the Company.

**B.** In respect of any Products which are purchased by the Customer for resale, the Customer shall not alter or interfere with the Products and shall comply with all applicable legislative and other requirements and standards and the Company's instructions in relation to the storage, handling and safety of the Products. The Customer shall indemnify and keep indemnified the Company against any and all loss, damage, claims, costs and expenses suffered or incurred by the Company arising from any failure by the Customer to comply with this Condition.

#### **XV. INTELLECTUAL PROPERTY**

**A.** All patent, design, trademark, service mark, copyright and other industrial or intellectual property rights of the Company of whatever nature in respect of the Products, any of their constituent parts, their packaging or other material supplied with the Products shall remain the absolute property of and vested in the Company.

**B.** The Customer shall indemnify and keep indemnified the Company against any and all loss, damage, claims costs and expenses whatsoever suffered or incurred by the Company in connection with any infringement of any patent, design, trademark, service mark, copyright or other industrial or intellectual property right of any other person in connection with the Company's use or application in relation to the Products or possession of any material or information or instruction supplied by the Customer in relation to the Products.

#### **XVI. FORCE MAJEURE**

**A.** Company shall not be liable for any delay or failure in performance, or for any damages suffered by the Customer by reason of such delay, if caused or arising directly or indirectly from any act beyond Company's reasonable control, including, without limitation, acts of God, vandalism, sabotage, accidents, fires, floods, explosions, strikes or other labor disputes, mechanical breakdown, shortages or delays in obtaining suitable parts, equipment, material, labor, power or transportation, acts of suppliers, interruption of utility services, acts of terrorism, or acts of any unit or agency of government, civil disturbance, insurrection, war or any other cause whatsoever beyond the Company's reasonable control. Any delays so occasioned shall affect a corresponding extension of Company's performance dates which are, in any event, understood to be approximate.

#### **XVII. DEFAULT AND TERMINATION**

**A.** If any of the events specified in Section XVII.B occurs, all monies accrued owing under the Contract shall become immediately due and payable and the Company shall be entitled at any time thereafter to terminate the Contract and any other contract between the Company and the Customer by notice and/or to suspend further deliveries of Products the subject of any or all such contracts.

**B.** The events referred to in Section XVII.A are:

1. The Customer makes default in or commits a breach of the Contract;
2. any distress or execution is levied upon the Customer's property or assets;
3. the Customer makes or offers or proposes to make any arrangement or composition with its creditors, any resolution or petition to wind up the Customer is passed or presented, any petition for an administration order in respect of the Customer is presented, a petition for a bankruptcy order is made against the Customer, or a receiver or manager of the Customer's undertaking, property or assets or any part thereof is appointed; or
4. the Customer fails to provide any letter of credit, bill of exchange or other security requested by the Company.

#### **XVIII. LIMITATION OF LIABILITY**

**A.** Notwithstanding any other provision in these Terms and Conditions, Company's liability is limited as follows:

1. IN NO EVENT SHALL COMPANY'S LIABILITY EXCEED THE AMOUNT PAID TO COMPANY FOR THE PRODUCT FOR THE QUANTITIES OF COMPANY'S PRODUCTS GIVING RISE TO THE LIABILITY. COMPANY SHALL NOT INDEMNIFY CUSTOMER FOR OR AGAINST ANY CLAIMS, DAMAGES, EXPENSES, FEES AND COSTS, LOSSES. CAUSES OF ACTION OR SUITS WHICH ARISE OUT OF OR RELATE TO THE SALE DUE TO THE DIRECTION, NEGLIGENT ACT OR OMISSION, WILFUL MISCONDUCT, OTHER FAULT OF ANY NATURE OF CUSTOMER, ITS EMPLOYEES, AGENTS, SERVANTS, CUSTOMERS, OR END USERS; and
2. COMPANY ASSUMES NO LIABILITY FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF PRODUCTION, LOSS OF GOODWILL, LOSS OF CONTRACTS, LOSS OF ANTICIPATED SAVINGS, LOST REVENUES OR PROFITS, OR INCREASE IN OPERATING COSTS. THESE LIMITATIONS SHALL APPLY EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF WHETHER THE CLAIM FOR RECOVERY IS BASED ON (i) BREACH OF WARRANTY OR CONTRACT, OR (ii) NEGLIGENCE, STRICT LIABILITY OR OTHER TORT. THE RIGHT TO RECOVER DAMAGES WITHIN THE LIMITATIONS SPECIFIED IS THE CUSTOMER'S EXCLUSIVE ALTERNATIVE REMEDY IN THE EVENT THAT ANY OTHER CONTRACTUAL REMEDY FAILS OF ITS ESSENTIAL PURPOSE.



## **XIX. CONFIDENTIALITY**

**A.** The pricing guides, schedules, quotes, discounts, rebates and any other agreed terms of trade are considered confidential information of Company and Customer shall in no instance share such information, business discussions, financial information, or other related confidential information with any other person, group, entity, or the like.

## **XX. GENERAL**

**A.** This document will be governed by the laws of the State of Michigan, USA except to the state's rules as to conflicts of law, if any, which might require application of laws of another jurisdiction or country. Venue for any dispute shall be in the State of Michigan, Oakland County, in the State or Federal Courts therein.

**B.** In the event that any of the provisions hereof shall be held invalid, illegal or unenforceable, the remaining provisions shall remain in full force and effect as written.

**C.** As used herein, Customer and Company include their respective heirs, executors, personal representative, successors and assigns, including their corporate successors by purchase, merger and acquisition.

**D.** Company shall comply with all Federal, state and local laws and regulations governing Company's performance. Company hereby certifies that all products are produced in compliance with all applicable requirements of Sections 6, 7 and 12(a) of the Fair Labor Standards Act of 1938, as amended, and the regulations and orders of the US. Department of Labor issued under Section 14 thereof.

**E.** The headings of paragraphs herein are inserted for convenience of reference only and shall not be used in the construction or interpretation hereof.

**F.** Each of the rights and remedies conferred on the Company by these Conditions shall be in addition and without prejudice to any other right or remedy which the Company may have under these Conditions or otherwise and in particular to any right to payment of all sums due or to become due in respect of the Products.

**G.** No waiver of any default by either party shall act as a waiver of a subsequent or different default.

**H.** Save only as provided in these Conditions time shall not be or be deemed to be of the essence of the Contract.

**I.** Company reserves the right to modify these Terms and Conditions at any time and at its sole discretion upon notice to Customer.

**J.** These Terms and Conditions of Sale supersede any and all previously agreed to Terms and Conditions, whether oral or written, or previously published versions.

**K.** Apollo America and Halma have a zero tolerance attitude toward bribery and corruption in our business activities. Bribery and corruption are defined as "the offer, promise or gift of a financial or other advantage, with the intention of inducing or rewarding the improper performance of a function or activity." Part of the terms and conditions agreed upon are that no party may enter into any acts of bribery or corruption related to Apollo America's business activities.

