

## **Axiom Materials, Inc. (“Seller”) General Sales Terms and Conditions - Limited Warranty**

1. **APPLICATION.** THESE GENERAL SALES TERMS AND CONDITIONS AND LIMITED WARRANTY (THE “TERMS”) APPLY TO ALL SALE AGREEMENTS, ORDERS, ACKNOWLEDGEMENTS OR CONFIRMATIONS WHICH REFERENCE THESE TERMS AND ALL OTHER SALES MADE BY SELLER UNLESS OTHERWISE AGREED UPON IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF SELLER. Each contract document, order, order acknowledgment or confirmation that references or incorporates these Terms, together with any schedules, exhibits or other documents incorporated by reference in such documents, is referenced below collectively as the “Contract.” The term “Material(s)” used below refers to the products or Material(s) sold by Seller and identified in the Contract. The Contract constitutes the complete and exclusive statement of the terms of the agreement between the parties regarding the sale and purchase of the Material(s) and supersedes all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral. No amendment, modification, rescission, alteration, extension or release from any provision of the Contract shall be affected by mutual agreement, acknowledgement, acceptance of purchase order or shipping instruction forms, or otherwise, unless the same shall be in writing, signed by an authorized representative of each party, and specifically described as an amendment or extension of the Contract only in accordance with the terms hereof. None of Buyer’s inconsistent and/or additional terms and conditions submitted in acknowledging or accepting the Contract or in issuing purchase orders, releases, shipping instructions or other documents shall apply, and fulfillment of Buyer’s order does not constitute acceptance of any of Buyer’s terms and conditions and does not serve to modify or amend these Terms. Unless expressly provided in a Contract document signed by both parties, if any term, condition or other provision contained in any schedule, exhibit or other document expressly incorporated by reference into the Contract is in any way inconsistent with or creates any ambiguity concerning these Terms, these Terms shall control.

Buyer’s acceptance or use of any shipment of Material(s) after Seller’s offer of sale and/or acknowledgment referencing or incorporating these Terms but before the Contract is signed or before Buyer otherwise makes a definite and timely act or expression of acceptance, shall constitute acceptance of the terms of the Contract as to that shipment only but shall not in itself constitute an acceptance of the final written expression of the Contract with respect to future shipments.

### 2. **LIMITED WARRANTY.**

(a) Seller warrants that (i) for the period stated on the certificate of conformance contained in each applicable Material’s packaging, the Material(s) shall materially

conform to the Buyer’s specifications provided to Seller as part of the Contract, if applicable, (ii) be free from defective material and workmanship, and (iii) that upon shipment from Seller’s facility, Buyer will receive good title to all such Material(s) free from any lien or encumbrance. EXCEPT FOR THE WARRANTIES SET FORTH IN THIS SECTION, SELLER MAKES NO OTHER WARRANTY OF ANY KIND AS TO THE MATERIAL(S) SOLD OR ANY INSTRUCTIONS OR TECHNICAL ADVICE PROVIDED, INCLUDING ANY (A) WARRANTY OF MERCHANTABILITY, (B) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, OR (C) WARRANTY AGAINST INFRINGEMENT OR INTELLECTUAL PROPERTY RIGHTS OF A THIRD PARTY, WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE, OR OTHERWISE. Any suggestions made by Seller, its’ agents, employees, sales representatives concerning uses or applications of said Material(s), reflect Seller’s opinion only and Seller makes no warranty of results to be obtained. The term of this limited warranty as to all Material(s) sold shall be limited to and shall not exceed the specifications and shelf life times set forth in each product description.

(b) Seller will not be liable for a breach of warranty contained in Section 2(a) above unless: (i) Buyer notifies Seller in writing of any claims within 30 days after Buyer physically receives Material(s) at Buyer’s dock, (ii) Buyer gives Seller the opportunity to examine and test any allegedly non-conforming work at a time and place reasonably determined by Seller in its sole discretion, and (iii) Seller reasonably verifies Buyer’s claims that the Material(s) are not in conformity with stated specifications. Failure by Buyer to give Seller written notice of claim within 30 days from date of delivery shall constitute a waiver by Buyer of all claims in respect of such Material(s).

(c) Seller shall not be liable for a breach of the warranty set forth in Section 2(a) above if: (i) Buyer makes any further use of the Material(s) at issue after giving the required notice to Seller under Section 2(b) above, without the prior written consent of Seller; (ii) the defect arises because Buyer failed to properly store, use or maintain the Material(s); or (iii) Buyer alters or repairs those Material(s) without the prior written consent of Seller.

(d) Subject to Sections 2(b) and 2(c) above, Seller, at its sole option, will either: (i) repair or replace such Material(s) or (ii) credit or refund the price of such Material(s) at the pro rata contract rate provided that, if Seller so requests, Buyer shall, at Seller’s expense, return such Material(s) to Seller.

(e) No Material(s) may be returned without Seller’s prior authority. A Return Authorization Number must be

obtained and referenced on all paperwork prior to returning Materials or issuance of Seller's debit memo. At Seller's request, Buyer must return the Material(s) on which claim was based by packaging the item in the same manner as the original shipment, transportation charges collect by a carrier of Seller's choice. The returned Material(s) must be received at Seller's dock in the same condition as when received by Buyer.

**(f) THE REMEDIES STATED IN SECTION 2(d) SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY AND SELLER'S ENTIRE LIABILITY FOR ANY BREACH OF THE LIMITED WARRANTY SET FORTH IN SECTION 2(a) ABOVE.** Buyer assumes the risk and liability for using Seller's Material(s) in combination with any other substances or in the manufacture of specific parts. No statement, recommendation or technical advice of Seller to Buyer's representatives, regarding use of the Material(s) will be considered a waiver of these provisions or affect in any respect Seller's liability as outlined above. Any action for breach of the Contract (other than for nonpayment of the purchase price) must be commenced within one year after the cause of action has occurred.

3. **TITLE AND RISK OF LOSS.** Title and risk of loss passes to Buyer upon delivery of the Material(s) at the Delivery Point and for Will-Call related orders, Buyer (or its agent) shall take possession of the Material(s) within one business day of Seller's notice that the Material(s) have been delivered to the Delivery Point. On passage of title to Buyer, Buyer assumes all responsibility and liability for, and agrees to defend and indemnify Seller against, all claims, loss or damage resulting from Buyer's storage, handling or use of the Material(s) purchased, alone or in combination with other substances, or their containers. As collateral security for the payment of the purchase price of the Material(s), Buyer hereby grants to Seller a lien on and security interest in and to all of the right, title and interest of Buyer in, to and under the Material(s), 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 California Uniform Commercial Code.

4. **LIMITATION OF LIABILITY.**

**(a) IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT OR LOSS OF DATA OR DIMINUTION IN VALUE DAMAGES FOR INJURIES TO PERSONS OR TO PROPERTY, OR FOR ANY 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 SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.**

**(b) IN NO EVENT SHALL SELLER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THE CONTRACT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE MATERIAL(S) IN RESPECT OF WHICH DAMAGES ARE CLAIMED.**

(c) The limitation of liability set forth in Section 4(b) above shall not apply to liability resulting from Seller's gross negligence or willful misconduct.

5. **INTELLECTUAL PROPERTY.** Seller reserves the right to discontinue deliveries hereunder of any Material(s) if, in the opinion of Seller, its manufacture, sale and/or use would infringe any intellectual property rights of any third party now or hereafter issued and under which Seller is not licensed to use.

6. **PAYMENT; CREDIT STATUS.** Unless agreed in writing by Seller, payment in full without deduction or set-off is due thirty (30) days from invoice date. Seller reserves the right, among other remedies, either to terminate the Contract, in whole or in part, or to suspend further deliveries in the event Buyer fails to pay for any delivery when due. Additionally, Seller may alter or revoke credit terms at any time without notice. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or satisfactory security may be required by Seller for future deliveries and for goods theretofore delivered. Buyer agrees to pay all claims and expenses that Seller incurs to obtain collection of any amounts owed to Seller under the Contract, including but not limited to, interest, collection agency expenses, court costs and reasonable attorney's fees. Those claims and expenses incurred by Seller are due and payable to Seller by Buyer within seven business days from the invoice date on each applicable invoice sent by Seller to Buyer.

Any amount not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one-half percent (1.5%) per month or the highest rate permissible under applicable law. All domestic and international sales are made in U.S. dollars and in accordance with Seller's pricing at the time orders are shipped.

Buyer authorizes Seller to make credit inquiries into any banking and business or trade references that the Buyer may have supplied. Should "open account" terms be granted by

Seller to Buyer, all decisions with respect to any credit availability may be terminated anytime at Seller's sole discretion. Buyer authorizes Seller to investigate any credit references listed pertaining to Buyer's credit and financial responsibility, provided that all information will be kept strictly confidential in accordance with Seller's customary confidentiality policies relating to similar information.

7. **CONFIDENTIALITY.** All non-public, confidential or proprietary information of Seller, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Seller to Buyer and its subsidiaries, affiliates, agents and employees (each a "Representative") (collectively, the "Confidential Information"), 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 the Contract is confidential. Buyer, on behalf of itself and each of its Representatives, must: (a) use its best efforts to protect and safeguard the confidentiality of all such Confidential Information; (b) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than solely for the use of performing the Contract, or otherwise in any manner to Seller's detriment, including without limitation, to reverse engineer, disassemble, decompile, or design around Seller's proprietary services, products, and/or confidential intellectual property; (c) not disclose any such Confidential Information to any person or entity, except to Buyer's Representatives who: (i) need to know the Confidential Information to assist Buyer, or act on its behalf, in relation to solely for the use of performing the Contract; (ii) are informed in writing by Buyer of the confidential nature of the Confidential Information; and (iii) are subject to confidentiality duties or obligations to Buyer that are no less restrictive than the terms and conditions of the Contract; (d) immediately notify Seller of any unauthorized disclosure of Confidential Information or other breaches of the Contract by Buyer or its Representatives of which the Buyer or its Representatives have knowledge; (e) fully cooperate with Seller in any effort undertaken by Seller to enforce its rights related to any such unauthorized disclosure; and (f) be responsible for any breach of the Contract caused by any of its Representatives. Upon Seller's request, Buyer shall promptly return all documents and other materials received from Seller. Seller shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Buyer at the time of disclosure; or (c) rightfully obtained by Buyer on a non-confidential basis from a third party.

8. **WAIVER.** Failure of Seller to exercise any right under the Contract shall not be deemed a waiver thereof.

9. **FREIGHT AND TAXES.** Any increase in freight rates paid by Seller on shipments covered by the Contract and any tax or governmental charge or increase hereafter becoming effective increasing the cost to Seller of

producing, repairing, overhauling, selling or delivering the Material(s), and any tax now in effect or increase in same payable by Seller because of the importation, production, sale or delivery of the Material(s), other than income or franchise taxes, may at Seller's option, be added to the purchase price herein specified.

10. **SAFETY; HEALTH.** Seller will provide Buyer with and/or access to Material Safety Data Sheets ("MSDS") for the Material(s) sold hereunder which will provide warnings and safety and health information about such Material(s). Buyer agrees to provide such warnings and information to all persons whom Buyer can reasonably foresee may be exposed to hazards of such Material(s). Buyer will familiarize itself with all information and precautions, including but not limited to such related to safety and health, contained in the MSDS or otherwise transmitted to Buyer by Buyer at any time. Buyer will instruct its employees, agents, contractors, customers or any third party which may be exposed to the Material(s) about such information and precautions and make copies thereof available to such parties. Buyer assumes full liability and responsibility for compliance with the above-referenced information and precautions, and with all laws, statutes, ordinances and regulations of any governmental authority applicable to the processing, transportation, delivery unloading, discharge, storage, handling, sale and use of the Material(s). Buyer shall maintain in effect all the licenses, permissions, authorizations, consents and permits that it needs to carry out its obligations under The Contract. Buyer further agrees to indemnify, protect, defend and hold harmless Seller from and against all claims, demands, causes of actions, damages, losses, liabilities, costs, expenses (including reasonable attorneys' fees), penalties, and judgments ("Claims") associated with the processing, transportation, delivery, unloading, discharge, storage, handling, sale or use of any Material(s) after delivery which is (i) inconsistent with any information provided to Buyer by Seller; or (ii) in violation of any applicable law, statute, ordinance or regulation of any governmental authority.

11. **SHIPPING TERMS AND DELIVERY.** Unless otherwise specified by Seller in writing, delivery shall be made EXW Seller's plant (Incoterms 2010) (the "Delivery Point"). The Material(s) will be delivered within a reasonable time after the receipt of Buyer's purchase order, subject to availability of finished Material(s). Seller shall not be liable for any delays, loss or damage in transit. Unless otherwise agreed in writing by the parties, Seller shall deliver the Material(s) to the Delivery Point using Seller's standard methods for packaging and shipping such Material(s). Seller may, in its sole discretion, without liability or penalty, make partial shipments of Material(s) 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 Buyer's purchase order. If for any reason Buyer fails to accept delivery of any of the Material(s) on the date fixed pursuant to Seller's notice that the Material(s) have been delivered at the Delivery Point, or

if Seller is unable to deliver the Material(s) at the Delivery Point on such date because Buyer has not provided appropriate instructions, documents, licenses or authorizations: (i) risk of loss to the Material(s) shall pass to Buyer; (ii) the Material(s) shall be deemed to have been delivered; and (iii) Seller, at its option, may store the Material(s) for a reasonable period of time at Buyer's expense and risk (including, without limitation, storage and insurance), but in no event longer than 15 calendar days.

12. **NON-DELIVERY.** In the event that Seller agrees in writing to change the Delivery Point to a location other than its facility, the following provisions will apply:

(a) The quantity of any installment of Material(s) as recorded by Seller on dispatch from Seller's place of business is conclusive evidence of the quantity received by Buyer on delivery unless Buyer can provide conclusive evidence proving the contrary.

(b) The Seller shall not be liable for any non-delivery of Material(s) (even if caused by Seller's negligence) unless Buyer gives written notice to Seller of the non-delivery within five business days of the date when the Material(s) would in the ordinary course of events have been received.

(c) Any liability of Seller for non-delivery of the Material(s) shall be limited to replacing the Material(s) within a reasonable time or adjusting the invoice respecting such Material(s) to reflect the actual quantity delivered.

13. **SET-OFF.** Seller has the right but not the obligation to set-off any amount owed by Seller or any of its affiliated companies to Buyer or any of its affiliated companies against any amount due to Seller under the Contract. Buyer and its affiliates companies shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Seller or its affiliated companies, whether relating to Seller's, or its affiliates companies', breach, bankruptcy or otherwise.

14. **EXCUSE OF PERFORMANCE.** Seller shall not be subject to any liability for delay in performance or nonperformance as a result of fire, flood, natural catastrophe, labor strike, labor dispute, accident, riot, act of governmental authority, act of domestic or international terrorism, compliance with government request, act of God, or other contingencies and circumstances beyond Seller's reasonable control interfering with the production, supply, or transportation of the Material(s) covered by the Contract or with the supply of any raw Material(s) at a commercially reasonable price, or in the event Seller ceases or suspends operation of any facility where it is manufacturing any quantity of Material(s) deliverable hereunder and such termination or suspension is made by Seller because said facility, the operation thereof, and/or the product therefrom violates or fails to comply with any applicable governmental

law, regulation, ordinance, standard, order or decree relating to pollution, ecology, occupational safety and health or environmental matters. Material(s) so affected may be eliminated from the Contract without liability, but the Contract shall otherwise remain unaffected.

15. **ORDER REVISION.** Seller requires receipt of written notice of any order change prior to the scheduled manufacture date of the Material(s). In the event that Buyer provides less than 7 working days' notice for any change of order for any reason, Buyer shall nevertheless take delivery and make payment for those Material(s) that have been completed or that have been processed for completion by Seller on the date Seller receives notice from Buyer, provided, however, that if for any reason, Buyer cannot accept delivery of such Material(s), Buyer will pay for it as though delivery has been made and accepted. In such case, Seller will store the Material(s) for Buyer for a reasonable period of time at Buyer's expense and risk (including, without limitation, storage and insurance), but in no event longer than 15 calendar days.

16. **TERMINATION.** In addition to any remedies that may be provided under The Contract, Seller may terminate the Contract with immediate effect upon written notice to Buyer, if Buyer: (i) fails to pay any amount when due under the Contract or any other contract between the parties (or their respective affiliates); (ii) has not otherwise performed or complied with any of these Terms, in whole or in part; or (iii) 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.

17. **EXPORT.** All of the Material(s) and Seller's technology are subject to U.S. government export regulations. The Material(s) may not be exported, transferred, trans-shipped on a non-continuous voyage, or otherwise be diverted to any other country contrary to U.S. law, either in their original form or after being incorporated into other end-items, without verifying export regulations set forth by the U.S. Department of State or the U.S. Department of Commerce - Export Administration Regulation. Unless otherwise agreed in writing by Seller, all verification of export regulations as contemplated by this Section are the sole responsibility of Buyer. Buyer agrees to indemnify, protect, defend and hold harmless Seller from and against all Claims associated with Buyer's failure to comply with the requirements of this Section.

18. **ASSIGNABILITY.** The Contract is not assignable or transferable by either party, except to a party's successor or to the transferee of all or substantially all the party's assets to which the Contract relates. Seller and Buyer may also assign any of their respective rights and obligations hereunder to any of their affiliated entities. No assignment hereunder shall relieve any party of its obligations under the Contract.

19. **NOTICES.** All notices, request, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the face of the Contract 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 pre-paid), facsimile (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage prepaid). Except as otherwise provided in the Contract, 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.

20. **MISCELLANEOUS.** The Contract contains all the terms and conditions of sale and purchase of the Material(s) and constitutes the complete understanding of the parties with respect thereto. No waiver by either Seller or Buyer with respect to any breach or default or of any right or remedy and no course of dealing shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy unless such waiver is expressed in writing signed by the party to be bound. The Contract and performance hereunder shall be construed and governed by the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than those of the State of California. Buyer and Seller agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to the Contract. Any claim or cause of action arising out of the purchase of product may be commenced at the Seller's option in the courts of Orange County, California. Seller certifies that the Material(s) were produced, repaired or overhauled in compliance with all applicable requirements of Section 6, 7, and 12 of the Fair Labor Standards Act as amended, and of regulations and orders of the United States Department of Labor issued under Section 14 thereof. The relationship between the parties is that of independent contractors. Nothing contained in the Contract 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. The Contract is for the sole benefit of the parties hereto and their respective successors and permitted assigns and 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 these Terms. If any term or provision of the Contract is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of the Contract or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of these Terms which by their nature should apply beyond their terms will remain in force after

any termination or expiration of the Contract including, but not limited to, the following provisions: compliance with laws, indemnification, limitation of liability, confidentiality, notice, no-third party beneficiaries, relationship of the parties, governing law, submission to jurisdiction, and survivability.

The undersigned signature below attests to its' financial responsibility, ability and willingness to pay Sellers invoices and full understanding and agreement to Sellers' General Sales Terms and Conditions , Limited Warranty as stated herein:

**"BUYER"**

Company Name: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_