

**TERMS
AND
CONDITIONS OF PURCHASE**

Harry Miller Corp.

1. **ACCEPTANCE AND TERMS AND CONDITIONS:** Harry Miller Corp., a Pennsylvania corporation having its principal place of business at 4309 N. Lawrence St., Philadelphia, PA 19140 (“Seller”) agrees to supply the goods specified in Buyer’s purchase order (“PO”) (whether verbal or written) on the terms and conditions set forth below which shall be the sole terms and conditions of the agreement between Buyer and Seller (“Agreement”) regarding this transaction. Any terms and conditions contained in the PO or any related documentation or communication from Buyer are superseded by this Agreement and acceptance of delivery of the goods by Buyer shall conclusively evidence Buyer’s express consent to the terms and conditions of this Agreement. Use or re-sale of the goods subject to the PO, in addition to any deposit check delivered to Seller, shall be evidence of Buyer’s acceptance of this Agreement.
2. **PRICE.** Unless otherwise agreed in writing by Seller and Buyer, the price of the goods subject to this Agreement shall be the last price that Seller quoted Buyer whether such quote was verbal or in writing. Prices shall be subject to increase by Seller at any time to offset an increase in costs incurred by Seller for (i) transportation of the goods, or (ii) other circumstances that were not reasonably expected by either of the parties. In addition to the price of the goods, Buyer shall be solely responsible for all sales, excise or any other taxes or governmental charges arising from the transaction covered by this Agreement. The representative of Buyer submitting Buyer’s PO represents and warrants to Seller that such representative is duly authorized to submit such PO on behalf of Buyer and that such representative is authorized to enter into this Agreement on behalf of Buyer
3. **PAYMENT.** Buyer shall remit payment to Seller in United States currency unless Seller expressly authorizes payment otherwise. Unless otherwise agreed to in a writing signed by Seller or otherwise set forth on Seller’s invoices for this transaction, the full price for the goods shall be paid by Buyer to Seller net 10 days. Interest is payable on overdue accounts at the rate of 1.5%, compounded monthly, until paid in full.
4. **TITLE; RISK OF LOSS.** In the event that Seller arranges for the transportation of the goods subject to this Agreement, title and risk of loss shall pass to Buyer when the delivery vehicle arrives at the entrance of Buyer’s facility. In the event that Buyer arranges for the transportation of the goods subject to this Agreement, or the parties specify transportation terms as “ex works” (EXW), “F.O.B. Seller’s Plant”, or any other similar terms, title and risk of loss shall pass to Buyer when Buyer’s designated transportation carrier commences loading of the goods subject to this Agreement.
5. **DELIVERY.** If Seller arranges for transportation of the goods subject to this

Agreement, the selection of the carrier and the routing of the shipments shall be at Seller's sole option. Subject to transportation delays and Force Majeure (defined below), the goods subject to this Agreement shall be delivered within a reasonable period of the date agreed to by Buyer and Seller. Time for delivery is NOT of the essence and shall not be made so by the service of any notice from Buyer. Seller shall not be liable for any loss, damage, incidental or consequential damage due to delays. If no date for delivery is agreed to by Buyer and Seller, the goods shall be delivered in a reasonable time after receipt of Buyer's PO. If the Buyer refuses or fails to take delivery of the goods tendered in accordance with this Agreement, Seller may terminate this Agreement and may dispose of the goods as it sees fit and may recover from the Buyer any loss and additional costs incurred as a result of such refusal or failure (including, without limitation, storage costs from the due date of delivery).

6. LIMITED WARRANTY. Seller warrants that the products were tested for conformity to specifications. A certified test report (Certificate of Analysis) for the products is available on request. **OTHER THAN THE FOREGOING WARRANTY, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THOSE OF MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR ANY PARTICULAR USE, PURPOSE OR OTHERWISE, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS OR IN ANY PROCESS. SELLER MAKES NO WARRANTIES THAT WHEN THE PRODUCT IS COMBINED WITH OTHER PRODUCT THAT THE RESULTING PRODUCT WILL NOT VIOLATE THE INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. SELLER IS NOT RESPONSIBLE FOR ANY ERRORS OR OMISSIONS BY BUYER OR ITS EMPLOYEES OR AGENTS IN CONNECTION WITH THE USE OR STORAGE OF THE PRODUCT WHICH IS THE SUBJECT OF THIS AGREEMENT.**

No agent or representative of Seller is authorized to change this warranty or to give any other warranty, express or implied, and no such agent or representative is authorized to make any representations concerning Seller's product which are not subject to the qualifications and to the limitations of liability herein expressed and all such warranties and/or representations are hereby waived.

7. LIMITATION OF LIABILITY.
 - a. **NOTWITHSTANDING ANY OTHER PROVISION HEREIN AND REGARDLESS OF THE CIRCUMSTANCES, SELLER'S TOTAL LIABILITY TO BUYER FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES ARISING OUT ANY CAUSE WHATSOEVER, WHETHER BASED ON CONTRACT, NEGLIGENCE OR OTHER TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PRODUCTS IN THE SPECIFIC PO IN RESPECT**

TO WHICH SUCH CAUSE OF ACTION AROSE. BUYER'S EXCLUSIVE REMEDY WILL, AT SELLER'S OPTION, BE THE REPLACEMENT OF THE NON-CONFORMING PRODUCT OR A REFUND OF THE PARTICULAR PO PURCHASE PRICE

- b. IN NO EVENT SHALL SELLER BE LIABLE FOR LOSS OF USE, BUSINESS INTERRUPTION, LOST PROFITS, REVENUE OR OPPORTUNITY OR FOR INJURY TO PERSON OR PROPERTY, OR FOR ANY OTHER INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND OR NATURE.**
- c. Any cause of action that arises under this Agreement must be brought within one (1) year after the cause of action has accrued.
- 8. **TECHNICAL INFORMATION.** Any technical advice or assistance furnished by Seller to Buyer with respect to the selection or use of the goods which are the subject of this Agreement shall be given and accepted by Buyer at Buyer's sole risk, and Seller shall have no liability whatsoever for the use of, or results obtained from, such advice or assistance whether or not based on negligence or any other theory of liability. Seller agrees to furnish buyer with Certificates of Analysis for goods sold hereunder, and, if required by law, Material Safety Data Sheets. Buyer shall be responsible for the distribution of such information to its employees, customers and contractors.
- 9. **CLAIMS.** Claims as to defects in quality (i.e., non-conformity of the product to the Certificate of Analysis), or any other claims arising under this Agreement shall be made by written notice to Seller within seven (7) days after the delivery in question or such claim shall be deemed waived. Seller shall have the right to inspect the goods if Buyer issues any such notice. In the event that any claim of Buyer is verified by Seller as provided in this Agreement, Seller may either at its option (i) replace the defective product without additional charge to Buyer; or (ii) refund the purchase price following the return of the defective product at Seller's expense. Buyer agrees that these are Buyer's only remedies and Seller's sole responsibility for a verified claim hereunder.
- 10. **FORCE MAJEURE.** Neither party shall be liable to the other for failure or delay in performance hereunder to the extent that such failure or delay is due to war, fire, flood, strike, lockout or other labor trouble, accident, breakdown of equipment or machinery, riot, act or request of governmental authority, act of God, or other contingencies beyond the reasonable control of the affected party which interfere with the production, throughput, or transportation of the goods sold under this Agreement or with the supply of any raw material, provided that in no event shall Buyer be relieved of the obligation to pay in full for goods received. The affected party shall use reasonable efforts to remedy the force majeure; provided, however, the settlement of strikes, lockouts, industrial disputes, or disturbances shall be entirely within the discretion of the affected party. If any of the events specified in this

provision shall have occurred, Seller shall have the right to allocate goods or raw material in a fair and reasonable manner among its customers and own requirements. The party affected by an event of force majeure shall give prompt written notice to the other party of the occurrence of such event and the expected duration of the force majeure event.

11. MISCELLANEOUS PROVISIONS

- a. Governing Law. This Agreement shall be interpreted under and governed by the law of the Commonwealth of Pennsylvania without regard to its conflict of law rules. Buyer and Seller expressly exclude the application of the United Nations Convention on Contracts for the International Sales of Goods, as amended.
- b. Course of Performance. The fact that Seller may accept or acquiesce in a course of performance shall not affect the terms herein, though Seller knows of the nature of the performance and has an opportunity to object to it. In no event shall any such action constitute or be deemed a waiver of any right, claim or defense against Buyer.
- c. Product Discontinuance; Specific Changes. Nothing contained herein shall require Seller to continue to offer goods meeting the specifications in the PO in the future or accept any future PO from Buyer. Specifically, Seller may at its discretion (i) change or alter the quality or specifications of any goods sold hereunder; (ii) discontinue the manufacture of any such goods; or (iii) discontinue the manufacture of any such goods at a particular manufacturing or blending facility.
- d. Security Interest. Seller hereby reserves a security interest in and to all goods to be shipped to Buyer hereunder, and the proceeds thereof, to secure the payment of the purchase price provided herein.
- e. Ownership. Buyer understands and agrees that all information relating to Seller's products and processes (including Seller web sites, mobile applications, social media, software and manuals) and any other non public information of Seller and all material related to any of the foregoing (collectively the "Technology") are confidential and constitute the property and /or trade secrets of Seller. Buyer will not use or permit the use of any Technology except in connection with the intended use on Buyer's business operations. Buyer will not disclose, exhibit, reproduce, summarize, sell or distribute any Technology to any person other than Buyer's agents, employees and advisors who need to know in connection with the ordinary course of business operations of Buyer. Buyer will take all such action as is necessary to maintain the secrecy, and to prevent unauthorized use of the Technology. It is understood and agreed that Seller's rights in and to the Technology are unique and that the remedies at law are insufficient to compensate Seller for any

infringement of such rights. Seller shall be entitled to such injunctive and other equitable relief as may be necessary to protect, maintain, defend, enforce and preserve such rights, but shall not be precluded from obtaining any remedy at law in respect of such rights.

Buyer will not make any Technology available to suppliers or prospective suppliers except on the agreement in writing (of which a copy will be furnished to Seller) of such supplier or prospective supplier that it will keep such Technology confidential and will not use the same except for the purpose of the supplier supplying to Buyer materials, manufacturing facilities, parts or components described therein, and will return to Buyer all such Technology and all copies thereof on demand of Buyer or Seller.

Buyer will not do or permit any act or omission whereby patent or other intellectual property rights of Seller in respect of the Seller's Technology may become prejudiced void or void-able.

Buyer acknowledges that any patentable rights or discovery or invention or secret process or design or improvement in procedure made or discovered by being an improvement or adaptation of the Technology shall not be the property of Buyer shall be the sole and absolute property of Seller. Buyer undertakes to disclose promptly to Seller any improvements in relation to the Technology which is made or comes to the possession of Buyer and such improvements will be the property of Seller notwithstanding that the same may have originated from or have been communicated by Buyer or any other licensee or any other person and Buyer will be deemed to hereby forthwith assign the same to Seller in consideration of the terms and conditions of this Agreement and for no other consideration. All know-how relating to the manufacture marketing and sale of the Technology is and will be the property of Seller and Buyer will not dispute or deny or raise any objections to the proprietary rights interests or claims of Seller in or to such know-how notwithstanding that the know-how of any part that it may acquire from Buyer or from any other person and this Agreement may be pleaded by Seller in bar to any dispute denial or objection by Buyer to the proprietary rights interests or claims by Buyer to any proprietary interest in the know-how.

- f. Buyer Responsibilities. Buyer safety procedures and the ordinary course of business operating procedures are the sole responsibility of the Buyer. Seller is not responsible for any misuse of the products of Seller. Seller is not responsible for any failure of Buyer to properly maintain or store the products purchased from Seller. Buyer is responsible for the training and supervision of its employees and agents in connection with the use of any Seller products acquired by Buyer.
- g. Right to Identify Goods. If the Buyer wrongfully rejects or revokes acceptance or fails to make a payment due on or before delivery or repudiates this

Agreement in whole or in part then, notwithstanding any other remedy available to the Seller, the Seller may identify to the contract any conforming finished goods in the Seller's possession or control at the time the Seller learns of the breach, or if the goods at such time are unfinished the Seller may either complete the manufacture and wholly identify the goods to the contract or cease manufacture and resell for scrap or salvage value or proceed in any other reasonable manner, including proceeding against Buyer for any delinquency that may result from such identification or resale for scrap or salvage value.

- h. Right to Stop Goods in Transit. If Buyer becomes insolvent, exceeds Buyer's credit limit with Seller, repudiates, or fails to make payment when due on this PO or any other account owed to Seller, before delivery to the Buyer, the Seller shall have the right to stop delivery of the goods.
- i. Right of Resale. In the event of any breach or repudiation of or under this contract by Buyer or any failure of Buyer to comply with the provisions hereof, Seller may resell any Seller-owned goods covered hereby which have not already been delivered to Buyer, together with any Seller-owned goods reclaimed by Seller or as to which Seller may agree to accept return, at one or more public or private sales, at wholesale or otherwise, and recover from Buyer the amount by which the price established in this contract exceeds the amounts so received, together with all incidental damages occasioned by the default of Buyer.
- j. Reorders. Reorders, at Seller's option, may require a new written agreement. Any reorders accepted by Seller but not placed pursuant to a new written contract shall be governed by the terms and conditions stated herein.
- k. Termination. Seller may cancel this contract if any of the following occurs: (a) Buyer becomes insolvent; (b) Buyer ceases to conduct operation in the normal course of business; (c) Buyer is unable to meet its obligations as they mature, or admit in writing such inability; (d) Buyer files a voluntary petition in bankruptcy; (e) Buyer suffers the filing of an involuntary petition in bankruptcy and the same is not dismissed within thirty (30) days after filing; (f) a receiver, custodian or trustee is appointed for Buyer or for a substantial part of Buyer's property; (g) Buyer fails to make payment on the terms and within the time specified in this Agreement; (h) Buyer executes an assignment for the benefit of its creditors; or (i) Buyer exceeds its credit limit with Seller. In the event of such cancellation, Seller shall have all rights and remedies set forth herein and as set forth in the UCC of any applicable jurisdiction and all other remedies available at law or in equity.
- l. Cancellation. Orders canceled or terminated by the Buyer for reasons not the fault of Seller are subject to cancellation charges in addition to actual costs incurred by Seller which may include the actual cost of the product if Seller is unable to re-sell such product in a reasonable time.

- m. Severability. No part of this Agreement shall be affected if any other part of it is held invalid or unenforceable.
- n. Payments In Advance. If, in the Seller's judgment, the financial condition of the Buyer at any time does not justify continuance of production, or shipment on the terms of payment originally specified, the Seller may require full or partial payment in advance or other adequate assurance of payment satisfactory to Seller.
- o. Dispute Resolution. If any dispute arises between the parties, the Chief Executive Officer of the each party shall meet in person in Delaware County, Pennsylvania to discuss an amicable resolution. Either party shall have the right to call such a meeting. The parties shall use good faith to meet within 10 days of the call for such a meeting. If either of them determines that an amicable resolution cannot be reached, they shall submit such dispute in writing (a "Dispute Notice"), to local office of JAMS Arbitration and Mediation or a similar organization if JAMS ceases operations or if the parties mutually agree on a different dispute resolution service provider (the "Arbitrator"). Each party shall submit to the Arbitrator and simultaneously exchange with the other, in accordance with a procedure to be established by the Arbitrator, its best offer to resolve the dispute between the parties. The Arbitrator shall be limited to awarding only one or the other of the two positions submitted by the parties. The fees of the Arbitrator shall be divided equally between the parties provided, however, that if the Arbitrator determines that either party has acted in bad faith the Arbitrator shall be entitled at the option of the Arbitrator to also award attorneys fees and costs to the prevailing party as determined by the Arbitrator. Neither party shall be permitted to bring any legal proceedings against the other and the parties agree that this paragraph is the sole procedure for resolving any and all disputes under this Agreement. The parties agree that the Federal Arbitration Act shall apply to any award by the Arbitrator under this Agreement and that award may be confirmed and entered as a final non-appealable judgment in any court of competent jurisdiction.