

TERMS & CONDITIONS OF SALE

PORAVER NORTH AMERICA INC. („PNA“)

Preamble

In the event of any conflict between these terms and conditions (“**Terms**”) and a supply agreement, if any, entered into between the Customer and Poraver North America Inc. (“**PNA**”), the terms of which apply to the specific Products purchased, the terms of the supply agreement shall prevail. In the event that there is no supply agreement or if the supply agreement is silent on any of the provisions in the Terms, those provisions shall apply to the sales of PNA Products. “**Products**” means expanded glass microspheres described as Poraver[®] in the size ranges specified. Any terms or conditions attached to or on the face of purchase orders that differ from these Terms will not become part of any sales agreement, purchase, or other document unless specifically approved in writing by an authorized employee of PNA.

The Customer agrees that these Terms are intended to form a part of any agreement to purchase Products from PNR, whether by purchase order or other means of agreement, and understands that any such agreement is contingent on the acceptance of these Terms and their incorporation into the agreement between the parties.

Quotations & Order Confirmations

- All Customer orders shall be subject to written acceptance by an authorized employee of PNA (a „**Confirmation**“).
- All PNA quotations are made for prompt acceptance and prices quoted therein are subject to alteration without notice after fifteen (15) days from the date thereon unless specifically stated otherwise on the quotation.
- Right of prior sale is reserved in respect of all quotations.
- All agreements and purchase orders must be in writing. Any oral representations made or assurances given by PNA representatives, or independent distributor representatives, which are not contained in a Confirmation, shall be void and unenforceable unless subsequently confirmed by PNA in writing.

Deliveries and Delivery Periods

- Delivery dates are given as accurately as conditions permit and reasonable efforts will be made to make deliveries as scheduled. PNA assumes no liability for damages, loss or expense, consequential, incidental or otherwise incurred by Customer or by Customer's customers arising out of failure to deliver Products on schedule.
- All shipping dates are based on receipt of a firm order from the Customer with complete information contained therein. Inspection or testing required by Customer will be considered as extending the shipping and delivery dates accordingly.
- Delivery periods and dates shall be reasonably extended (even after delay constituting default has occurred) in the event of Force Majeure. „**Force Majeure**“ means any delay in or impairment of performance resulting in whole or in part from acts of god, labour disruptions, inability to procure product, supplies or raw materials, severe weather conditions, or any other circumstances or cause beyond the control of PNA in the conduct of its business.
- If the purchase order cannot be filled in full, Customer accepts that partial deliveries may be made on the same terms. When the remainder of the purchase order can be filled, it will be shipped at that time without penalty to PNR.

Shipping Terms and Transfer of Risk

- The Products shall be delivered F.O.B. the PNR facility unless otherwise indicated herein. All risk on Products and liability for loss or damage to the Products shall pass to the Customer upon either the delivery by PNR of the Products to a carrier for shipment to the Customer, or upon pick up by the Customer. Customer shall bear all transportation and insurance expense associated with delivery of the Products to the Customer's plant including shipping, unless otherwise indicated herein.

- Should shipment be delayed by reason of circumstances for which Customer is responsible, risk of loss shall pass to Customer as of the date when Customer is advised that the Products are ready for shipment at PNA's facility.

Receipt of the Products; Acceptance

- Customer shall inspect any shipment of Products immediately upon receipt and shall, subject to the following paragraph, be deemed to have accepted the Products as delivered.
- PNA shall not be liable for defects or shortages discovered on reasonable inspection unless Customer notifies PNA before the expiry of 3 days following receipt of any Products alleged to be defective or lacking conformity with these Terms. PNA shall make good shortages so notified to it as soon as reasonably practicable, but shall not be liable for any loss or damages whatsoever arising from such shortage. At the end of the period of three (3) days, the Buyer shall be treated as having accepted the Product which has not been rejected.
- Any notice of rejection by Customer shall be accompanied by a reasonably detailed statement of its reasons for rejection and a report of any pertinent analysis performed by Customer on the allegedly non-conforming Products, together with the methods and procedures used.
- PNA shall notify Customer as promptly as reasonably possible, but in any event within fifteen (15) days after receipt of such notice of rejection, whether it accepts Customer's assertions of nonconformity. The Customer shall refrain from any use of the alleged defective product until such acceptance is provided by PNA.

Price

- Unless otherwise agreed, all pricing is in U.S. Dollars, F.O.B. PNA's facility at Innisfil, Ontario, Canada, and does not include freight, insurance, any national, provincial, state or local sales, use value-added or other taxes, unloading, customs duties, or similar tariffs and fees which PNA may be required to pay or collect upon the delivery of the Products or upon collection of the prices or otherwise.
- Invoicing will be based on the number of units of standard weight bags and super sacs, or recorded delivery weight for bulk orders.

Payment Terms

- All payments due PNA shall be due and payable in accordance with the terms of the PNA invoice and shall be payable in immediately available funds, in U.S. Dollars, at PNA's main office in Innisfil, Ontario, Canada.
- With respect to any sales of goods and services on credit, all amounts payable shall be paid by Customer on or before the net due date as shown on the invoice. Any invoice not paid by the net due date will automatically be deemed delinquent (a „**Delinquency**“). A service charge of 1.5 % per month (18 % annually) will accrue on any amount that becomes a Delinquency. Waiver of any service charges and/or any interest for any month shall not be deemed a waiver of any future charges. All payments received may be applied as against open charges at the discretion of PNA. Customer shall be responsible for any costs of collection, including legal costs incurred on a solicitor (attorney) and his own client basis.

Disclaimer

- Customer understands and acknowledges that Products are made from recycled glass and sold “as is”. Customer agrees that any information, statements or assistance whatsoever provided by PNA about the Products, is given to and accepted by Customer at its risk. PNA disclaims all liability for and provides no representations or warranties whatsoever, including but not limited to those related to compressive strength, durability, use and workability of the Products.



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- PNA EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF QUALITY, PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE OR PURPOSE, ABSENCE OF INFRINGEMENT OF THIRD PARTY RIGHTS, AND THE PROVISIONS OF THE INTERNATIONAL SALE OF GOODS ACT (ONTARIO) AND THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS OR ANY OTHER APPLICABLE LAW.

Limitation of Liability

- PNA AND ITS AFFILIATED COMPANIES AND THIRD PARTY SUPPLIERS SHALL NOT BE LIABLE FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, PUNITIVE OR INCIDENTAL DAMAGES (INCLUDING LOSS OF REVENUE OR PROFIT) INCURRED BY CUSTOMER OR OTHERS, DIRECTLY OR INDIRECTLY ARISING FROM OR RELATING TO THE SALE, HANDLING OR USE OF THE PRODUCTS, OR THE FOREGOING WARRANTY, WHETHER SUCH CLAIM IS BASED IN CONTRACT OR IN TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EVEN IF PNA HAS BEEN ADVISED OF THE POSSIBILITY OR THE LIKELIHOOD OF THE SAME.
- FOR FURTHER CLARIFICATION, CUSTOMER AGREES THAT ITS SOLE REMEDY AGAINST PNA FOR CLAIMS, LOSSES OR DAMAGES OF ANY KIND WHATSOEVER, ARISING OUT OF, CONNECTED WITH OR RESULTING FROM THE PURCHASE OF THE PRODUCTS IS REPLACEMENT OF THE PRODUCTS, OR AT PNA'S OPTION, REFUND OF THE PURCHASE PRICE PAID FOR THE PRODUCTS, WHICH SHALL IN NO EVENT BE GREATER THAN THE NET INVOICED VALUE OF THE PRODUCTS ORDERED AS FULLY PAID.

Indemnity

Customer shall indemnify and hold harmless PNA, its affiliates and their respective directors, officers, employees and agents from and against any and all damages, losses, liabilities and expenses, of whatsoever kind, nature or description (including without limitation, reasonable legal fees and expenses) caused by claims made by third parties for injury to person (including death) or damage to tangible property arising out of the sale or use of the Products.

Validity

In the event that any of the provisions of the Terms shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, the remaining portions of the Terms shall remain in full force and effect, provided that in such event the parties agree to negotiate in good faith substitute enforceable provisions which most nearly effect the parties intent in agreeing to be bound by the Terms.

Dispute Resolution

Any Customer claim or dispute hereunder which cannot be resolved amicably as between PNA and Customer shall be referred to final and binding arbitration under the Arbitration Act, 1991 (Ontario). Unless otherwise agreed by PNA and Customer, there shall be one arbitrator who shall be a person with legal or technical expertise or background in the subject area of the dispute. If the parties are unable to select an arbitrator within thirty days of the notice of arbitration, the arbitrator shall be appointed by a Judge of the Superior Court of Justice sitting in Toronto, upon the application of either party. Unless otherwise agreed by the parties, the place of arbitration shall be Toronto, Ontario. The procedure to be followed shall be agreed to by the parties or, in default of such agreement, determined by the arbitrator. The arbitrator shall render a decision in writing in English not more than one hundred and twenty days after the appointment of the arbitrator. The decisions shall be final and binding on the parties and not subject to appeal or review. The prevailing party shall be entitled to an award of costs and legal fees (on a solicitor and his own client basis) unless the arbitrator determines that each party should bear its own costs and split the common costs of arbitration.

Governing Law

The rights and obligations of the parties and any claims or disputes relating thereto, shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada and the federal laws of Canada applicable therein.

