



**Gale Corporation**

## **STANDARD TERMS AND CONDITIONS OF SALE APPLYING TO PRODUCTS AND SERVICES SOLD AND/OR QUOTED BY GALE CORPORATION**

### **1. AGREEMENT**

These Standard Terms and Conditions supersede all previous agreements and representations relating to the subject matter hereof, except for the terms contained in any credit application signed by the purchaser, which terms are incorporated herein by reference. These Standard Terms and Conditions are subject to change without notice. Any representation, promise, or condition in connection with the sale and/or quotation of product and/or services not incorporated herein shall not be binding upon Gale Corporation (Corporation).

### **2. ACCEPTANCE OF ORDER**

All orders are subject to acceptance on these Standard Terms and Conditions of Sale applying to products sold by the Corporation. The acceptance of the Purchasers order is expressly made conditional on the Purchasers assent to the terms and conditions as stated herein. The Purchaser acknowledges and accepts the Corporations Standard Terms and Conditions of Sale by virtue of (a) the issuance of a purchase order, or (b) the acceptance of a delivery either by (the Corporation or common carrier) or of services performed. No waiver, alteration, or modification of the terms and conditions herein shall be valid unless made in writing and signed on behalf of the Corporation by an executive officer. No provisions of any purchase order or any form of acceptance used by the Purchaser which are inconsistent with or in addition to the Terms and Conditions hereof, except additional provisions specifying the quantity and type of the products or services, the shipping schedule, purchase price, invoicing, and shipping instructions, shall be considered applicable to the purchase of the Corporations products or services, and none of these provisions shall be binding upon the Corporation unless specifically accepted or approved in writing and signed on its behalf by one of its said officers.

### **3. SHIPPING AND HANDLING**

Unless otherwise specifically provided in writing, all product sales are made FOB point of shipment with freight prepaid and charged to destinations (nearest freight station or common carrier delivery point) within the continental Unites States, except Alaska. All product sales made to Alaska and Hawaii are FOB point of shipment with freight prepaid and charged to port of embarkation. All transportation charges will be billed to and paid by Purchaser. In all cases, title to the products shall pass upon delivery to the carrier at the FOB point, and thereafter all risk of loss or damage shall be upon the

Purchaser. Shipments are not insured unless so ordered. All claims for shortage, breakage, or damage must be filed with the carrier.

#### 4. CHANGES

After a Purchaser's order is received by the Corporation, no changes therein, whether pertaining to the quality and type of products or services ordered, their specifications, or other provisions of the order, will be approved by the Corporation unless the Purchaser agrees in writing to pay the Corporation for any applicable cost or expenses resulting from such changes.

#### 5. RETURNS

The Corporation's permission must be obtained in writing before any products are returned to it by Purchaser for any reason whatsoever. If products are returned without such permission, Purchaser authorizes the Corporation, in addition to such other remedies as it may have, to hold the returned products at Purchaser's sole risk and expense. Materials are subject to a minimum restocking charge of 25% on authorized returns. Applicable invoice numbers must accompany returned goods.

#### 6. ASSIGNMENT

Purchaser's assignment of the order, or any interest therein, or of any rights hereunder, without the written consent of the Corporation shall be void at the Corporation's option.

#### 7. DELIVERY DATES

The Corporation does not guarantee delivery dates. Shipping dates given by the Corporation prior to shipment are estimated only, and the Corporation shall not be liable for failure to meet such dates for any reason, including delays in or failure of delivery by a manufacturer resulting from product shortages or other manufacturing delays or causes beyond the Corporation's reasonable control. Causes beyond the Corporation's reasonable control include the following, whether in the Corporation's own facilities or in any other facility affecting its supply, production, transportation, or delivery: Fire, windstorm, earthquake, or other natural disaster; strikes, lockouts, or other work stoppages; wars, riots, or civil commotion; priorities or other Government allocations or controls; interference or restraint of public authority (whether lawful or not) explosion or accident; epidemic or quarantine restrictions; failure of the Corporation's suppliers to deliver; shortage of raw material or labor; or any other cause, whether or not of the same kind as those herein specified, which the Corporation cannot provide against by the exercise of reasonable diligence. In the event of any delay from such causes, shipping and/or delivery dates shall be extended to a period equal to the time lost by reason of the delay. In the event of a product shortage, the Corporation shall have the right to allocate its available products among its customers on such a basis as it may determine at its sole discretion in the exercise of its business judgment.

#### 8. CREDIT

All sales are subject to prior approval by the Corporation's credit department and agreement to the extension of credit by the Corporation's main office. If the financial condition of the Purchaser at any time does not, in the judgment of the Corporation, justify continued performance by the Corporation on the terms of payment as agreed upon, the Corporation may require full or partial payment in advance or shall be entitled to cancel any order then outstanding and shall receive reimbursement for its reasonable

and proper cancellation charges, and in the event of bankruptcy or insolvency of the Purchaser or in the event any proceeding is brought against the Purchaser, voluntarily or involuntarily, under bankruptcy or insolvency laws, the Corporation shall be entitled to cancel any order then outstanding at any time during the period allowed for filing claims against the estate and shall receive reimbursement for its reasonable and proper cancellation charges. No credit will be issued for goods returned without the Corporations permission, and a restocking charge will be made (see the paragraph on Returns above). All claims for shortage must be reported immediately upon receipt or shipment, or otherwise will be deemed waived.

#### 9. LIMITED WARRANTY

The parties hereto expressly agree that the Purchasers sole and exclusive remedy against the Corporation shall be for the repair or replacement of a defective product under the terms of the manufacturers warranty for each of the products sold by the Corporation. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Corporation is willing and able to negotiate in good faith with the manufacturer on behalf of the Purchaser for either repair or replacement of defective goods. THIS LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE NOT EXPRESSLY SET FORTH HEREIN. The Corporations liability, whether under theories of breach of contract or warranty, negligence, or strict liability, shall be limited to repairing or replacing parts found by the Corporation to be defective or, at the Corporations option, to refund the purchase price of such product. In no even shall the Corporation be liable for incidental or consequential damages arising out of or in connection with a product or services sold by the Corporation. Consequential damages shall include, but not be limited to, loss of use, income, or profit, and losses sustained as a result of injury (including death) to any person or loss of or damage to property.

#### 10. SEVERABILITY AND WAIVER

Should any provision of this agreement be held illegal or invalid, such illegality or invalidity shall not invalidate the remainder of the Agreement. In that event, this Agreement shall be construed as if it did not contain the invalid or illegal part, and the rights and obligations of the parties shall be construed and enforced accordingly. The failure of either party at any time to demand performance of this Agreement shall not be deemed a waiver thereof.

#### 11. GOVERNING LAW

This agreement shall be governed by and interpreted in accordance with the laws of the State of California applicable to contracts made and to be performed entirely within the State of California. Any and all disputes arising out of or in connection with this agreement shall, at the option of the Corporation, be resolved by binding arbitration in the State of California. Venue of any arbitration or other legal action arising out of or in connection with this agreement shall be at the sole option of the Corporation. The prevailing party in any such arbitration or other legal action shall be entitled to recover its attorneys fees and expenses, including expert witness fees, in addition to any other costs allowed by law. Notwithstanding and in addition to the foregoing, should the Corporation retain any attorney or collection agency for the purpose of collecting monies owed by Purchaser to Corporation for products or services sold hereunder, Purchaser

shall pay all of Corporations costs of collection, including attorneys fees, whether or not a lawsuit is filed to collect the debt.

I/we herein make application to establish and confirm our credit relationship with creditor herein. The information supplied with the application is true and correct. If credit is granted, I/we agree individually or corporately to be liable and pay all bills when rendered. We further agree that if this account is not paid by the close of this creditors billing cycle, a 1.5 percent (1.5%) per month late charge will be computed and added to the unpaid balance. If this balance is not so paid and Gale Corporation deems it necessary to turn the account over to a collection service, we agree to pay an additional 25 percent (25%) of the amount due and owing. If Gale Corporation and/or any authorized collection service finds it necessary to refer this account to any attorney for initiation of a lawsuit, a fee of 33-1/3 percent (33-1/3%) of the outstanding balance plus any and all court costs shall be added to the account balance. I/We authorize creditor herein or its agent to obtain credit information, verify and/or supplement the information stated hereon. All products will incur a minimum 25% restocking fee.

#### TERMS OF PURCHASE & PAYMENT

Parties hereby agree that all purchases made are subject to the following Terms & Conditions:

1. All sales will be C.O.D. until credit application is processed and approved.
2. The undersigned Purchaser (BUYER) agrees to and accepts that any sale of product entered into is applicable to Gale Corporations (SELLER) Standard Terms & Conditions of Sale and cannot be waived. The Standard Terms & Conditions of Sale are therefore incorporated herein by reference.
3. The undersigned BUYER hereby agrees that all invoices containing discounts are payable by the 10th day from the date of the invoice. If any amounts due are not paid within said period, BUYER agrees to forego stated invoice discount and pay the full amount no later than 30 days from the date of the invoice.
4. The undersigned BUYER agrees that invoices are conclusive and accurate in all respects unless undersigned BUYER notifies SELLER in writing within ten (10) days of receipt of the invoices.
5. Gale Corporation may apply payments in its sole discretion unless purchaser instructs seller in writing how funds are to be applied. This credit application binds the BUYER and any successor business, which is any business controlled or managed by any of the current purchasers principals.
6. Gale Corporation provides quotations and accepts orders for any and all products, solely on these Terms & Conditions, which shall be construed as accepted by BUYER on each quotation and/or Purchase Order, Purchase Agreement or Purchase Contract placed by BUYER.
7. Non-adherence by BUYER of any portion of these Terms & Conditions can result in delay or cancellation of existing orders and/or termination of BUYER/SELLER relationship, without any consequence whatsoever to the SELLER. Terms & Conditions of SELLER shall prevail when conflict over those of BUYER, regardless of BUYERS latest operative document.
8. Gale Corporation reserves the right to apply a late charge of 1 1/2 % per month on all past due accounts. SELLERS standard terms are Net 30 days from invoice date,

regardless of when invoice/statement is received. BUYER agrees that all collection costs, including SELLERS Receivables Insurance collection costs, and all court cost, investigation costs, legal fees and all other incidental costs incurred in the collection of the BUYERS past-due account will be paid by BUYER. Possessory Lien Clause: GALE CORPORATION retains a security interest in the goods released to the BUYER until the invoice is paid. (UCC financing statement is impractical in this instance.)

9. The typed name in the online application and submission of this electronic form must and will be construed to be from a DULY AUTHORIZED REPRESENTATIVE of the BUYER, and shall act as an authorization for release of Bank and Trade-Reference information and a legally binding acceptance of the GALE CORPORATION account controlling TERMS & CONDITIONS. BUYER agrees that an electronically submitted Application & Agreement shall serve as an original document and be legally binding on the BUYER.

10. Notwithstanding, this original online application must be received by Gale Corporation prior to final credit approval.

11. Any clarification required shall be directed immediately to the management of Gale Corporation by calling (888) 566-5728 or faxing to (877) 338-1781.

I/we herein make application to establish and confirm our credit relationship with creditor herein. The information supplied with the application is true and correct. If credit is granted, I/we agree individually or corporately to be liable and pay all bills when rendered. We further agree that if this account is not paid by the close of this creditors billing cycle, a 1.5 percent (1.5%) per month late charge will be computed and added to the unpaid balance. If this balance is not so paid and Gale Corporation deems it necessary to turn the account over to a collection service, we agree to pay an additional 25 percent (25%) of the amount due and owing. If Gale Corporation and/or any authorized collection service finds it necessary to refer this account to any attorney for initiation of a lawsuit, a fee of 33-1/3 percent (33-1/3%) of the outstanding balance plus any and all court costs shall be added to the account balance. I/We authorize creditor herein or its agent to obtain credit information, verify and/or supplement the information stated hereon. All products will incur a minimum 25% restocking fee.