



MORGANITE CRUCIBLE INC TERMS AND CONDITIONS OF CONSUMABLE SALE PRODUCTS

1. **Agreements of Sales.** Morganite Crucible Inc. (referred to as "Seller") agrees to sell goods to the buyer identified in this Acknowledgement (referred to as "Buyer"), but only on the terms and conditions in this Acknowledgement. SELLER WILL ONLY FILL BUYER'S ORDER ON THE TERMS AND CONDITIONS SET FORTH IN THIS ACKNOWLEDGEMENT (this "Agreement"). SELLER DOES NOT AGREE TO DIFFERENT OR ADDITIONAL TERMS IN YOUR PURCHASE ORDER OR OTHER DOCUMENTS UNLESS SELLER SPECIFICALLY ACCEPTS SUCH TERMS IN WRITING. THIS AGREEMENT IS EXPRESSLY CONDITIONED ON BUYER'S ACCEPTANCE OF SELLER'S TERMS. IF BUYER DOES NOT PROMPTLY NOTIFY SELER IN WRITING THAT BUYER DOES NOT ACCEPT SELLER'S TERMS, BUYER'S ASSENT SHALL BE CONCLUSIVELY PRESUMED. No waiver or modification of any of the provisions hereof shall bind Seller unless it is accepted in writing by one of Seller's executive officers, and no waiver or failure by Seller to insist, in one or more instances, on Buyer's performance of any provision set forth herein shall be deemed to be a waiver of the same or of any other right granted hereunder with respect to any succeeding breach of the same or other provision hereof.

2. **Prices.** Seller may increase the prices in this Agreement after written notice to Buyer. The increased price will become effective and govern this Agreement unless Seller receives written notice, before the increased price becomes effective, of Buyer's cancellation of this Agreement as it applies to any goods to which the increased price would apply.

3. **Taxes.** Seller may increase the prices in this Agreement without prior notice to cover any existing or future manufacturers, sales, use, excise, or similar taxes and governmental fees that Seller may be required to pay or collect with respect to the goods sold under this Agreement or with respect to any labor, tooling or materials used in their production.

4. **Payments.** If Seller extends Buyer credit, Buyer must pay for goods received within 30 days after Buyer is invoiced for them. Seller may revoke credit if Buyer fails to pay for goods shipped in a timely manner, or if, in Seller's sole judgment, Seller determines that Buyer's financial condition has undergone an adverse change. Seller may require Buyer to pay before Seller manufactures or ships goods if Seller elects not to extend credit. Seller may change the amount of terms of credit at any time. If Buyer delays a shipment, Seller may issue Buyer an invoice, and payment will be due 30 days after Seller is prepared to ship.

5. **Security Interest.** As security for the full and prompt payment of all amounts now or thereafter owing by Buyer to Seller, Buyer grants to Seller a present and continuing first priority, purchase money security interest in all items purchased by Buyer from Seller. Buyer agrees to perfect, complete and consummate, and authorize Seller to perfect, complete and consummate, such security interest for Seller's own benefit in accordance with relevant local laws. Buyer irrevocably authorizes, names, appoints and directs Seller as Buyer's true and lawful attorney-in-fact to execute (if necessary) and file any and all Uniform Commercial Code Financing Statements, continuation statements and any other documentation as Seller deems reasonably necessary to effect, protect and continue Seller's security interest.

6. **Collection Costs.** If Buyer does not pay the invoice for the goods in full and on time, Seller may engage attorneys and other agents to help Seller collect amounts owed. Seller may add amounts paid or incurred in pursuing and collecting sums owed under the invoice (including costs and attorney and collection agency fees and their expenses) to the amount of Seller's invoice.

7. **Shipments.** The terms of shipment are CPT (Incoterms 2000) Seller's distribution facility in Wallingford, Connecticut, or such other location or terms as may be agreed upon by the parties in writing.



8. **Excused Nonperformance.** Seller is not responsible for failure to make delivery, delays, or any other deviations in Seller's performance directly or indirectly due to causes beyond Seller's reasonable control. Excused nonperformance includes but is not limited to: fire; floods; accidents; civil unrest; acts of God; war; acts of terrorism; labor or transportation problems; difficulty in obtaining fuel, materials, supplies or power at current prices and quantities through Seller's regular sources of supply; engineering; technical or design difficulties; and the impact on the conduct of Seller's business of any existing or future legislation or governmental orders, rules or regulations. If any such contingencies occur, Seller may allocate production and deliveries among Seller's customers. If Seller determines through Seller's normal accounting procedures that Seller's performance of this Agreement will result in a loss due to causes beyond Seller's control that could not have been reasonably anticipated, Seller may delay, limit or cancel its obligation to deliver the goods.

9. **Delivery Terms.** Seller agrees to ship only on the following terms:

(a) **Installments.** Seller may ship goods in installments and invoice them separately. Buyer will pay for each installment as invoiced without regard to other shipments. Buyer's failure to pay each invoice when due substantially impairs the value of this entire Agreement to Seller and shall excuse Seller from making further shipments.

(b) **Damaged Goods.** If goods arrive in broken or damaged condition, Buyer must refuse delivery until the transportation agent notes the damage on the freight bill.

10. **Warranties.** Buyer shall inspect the goods immediately following their arrival and shall, within 10 days of such arrival, notify Seller promptly in writing of any claim that the goods do not conform to the terms of this Agreement. Buyer expressly waives any right to reject the goods or revoke acceptance after such 10 day period. Buyer assumes all risks and liabilities for the results obtained in Buyer's manufacturing, fabrication or assembly processes by use of the goods or by use of the goods in combination with other machinery, equipment, materials or substances. Because Seller has no control over Buyer's use of the goods, Seller cannot make any performance warranties whatsoever. SELLER DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO OTHER OR FURTHER WARRANTIES REGARDING THE GOODS. BUYER MAY NOT RELY UPON ANY REPRESENTATION OR OTHER ASSERTION REGARDING THE NATURE OR QUALITY OF GOODS. BUYER MUST RELY SOLELY UPON BUYER'S OWN EXAMINATION AND TESTING OF THE GOODS. This warranty may not be assigned or transferred without Seller's prior written consent.

11. **Remedies.** Buyer's remedies are exclusively those stated in this Section 11.

(a) **General.** If Buyer claims that goods are broken or damaged or do not conform to Buyer's order ("nonconforming goods"), Buyer shall give Seller ample opportunity to inspect such goods, or, at Seller's request furnish Seller with a sample of such goods. Buyer's remedies for Seller's breach of any term or condition of this Agreement shall be limited to either (a) the repair or replacement of any nonconforming goods, or (b) the refund of the net invoice price Buyer paid for any nonconforming goods, at Seller's option.

(b) **Limitation of Liability.** Under no circumstances does Seller have any other or further liability or obligation, whether for breach of warranty or for any other claim. UNDER NO CIRCUMSTANCES WILL SELLER BE RESPONSIBLE TO BUYER FOR THE COST OF ANY WORK BUYER DOES WITH OR ON THE GOODS, NOR FOR COSTS OR EXPENSES OF BUYER'S TESTING, INSPECTING THE GOODS OR PROCESSING BUYER'S OWN PRODUCTS, NOR FOR BUYER'S LOST PROFITS, INJURY TO GOODWILL OR ANY OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES. NO CLAIM OF ANY KIND, WHETHER AS TO GOODS DELIVERED OR FOR GOODS NOT DELIVERED, SHALL BE RECOVERABLE IN ANY AMOUNT EXCEEDING THE NET INVOICE PRICE BUYER PAID FOR THE GOODS IN RESPECT OF WHICH THE CLAIMS WERE MADE.



(c) **Time Limit for Claims.** Buyer must notify Seller in writing of any claim of a breach of any of Seller's obligations within 90 days after the breach occurs, regardless of Buyer's lack of knowledge of the breach. Any claim for which notice is not received by Seller within the 90 day period shall be forever barred notwithstanding any longer statutory period of limitations.

12. **Cancellation.** Buyer may not cancel any order or terminate Buyer's obligation to accept and pay for goods under this Agreement, in whole or in part, without Seller's prior written consent. If Seller consents to any cancellation, Buyer shall be liable to Seller for: (a) the full invoice price of goods manufactured before cancellation; (b) as to goods not completed at the time of cancellation, charges for engineering and manufacturing costs, overhead expenses and Seller's reasonable profit, plus Seller's cost of raw materials that may not be returned to the supplier for full credit or, if such materials have not been shipped, Seller's purchase of which may not be cancelled; and (c) all costs of packaging and shipment, plus a handling charge.

13. **Applicable Law.** This Agreement is to be performed in Connecticut and shall be construed and enforced in accordance with the laws of the State of Connecticut, without regard to any such laws as would require reliance on the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the transactions contemplated herein.

14. **Amendments and Changes.** No course of dealing, promise, representation, usage of trade or conduct shall modify or change this Agreement or bind Seller. Any change must be accepted in writing by one of Seller's senior officers.

15. **No Performance Warranties; Use of Goods.** Buyer must ensure that Buyer uses Seller's goods safely. Seller's products are subject to sudden, catastrophic failure, even under ordinary operating conditions. Buyer is solely responsible for installing safety devices to prevent injury in case Seller's goods fail to function in any way, and Buyer is solely responsible for ensuring that the use of any goods furnished hereunder complies with all applicable federal, state, and local laws, regulations, rules, and ordinances. SELLER ASSUMES NO RESPONSIBILITY FOR BUYER'S USE OF SELLER'S PRODUCTS.

16. **Miscellaneous.**

(a) **Entire Agreement.** Except as otherwise expressly provided in a written document signed by Buyer and Seller, this document constitutes the entire agreement between Buyer and Seller and all prior agreements and communications between Buyer and Seller, whether oral or written, are hereby merged into this Agreement.

(b) **Notices.** All notices required hereunder shall be in writing and sent by first class mail, facsimile or overnight carrier (with confirmation signature) to such addressees set forth herein.

(c) **Enforcement.** In case any provision of this Agreement should be or become unenforceable under applicable law, the remaining provisions, stipulations and conditions of this Agreement shall be effected thereby.

(d) **Exports.** Regardless of any disclosure made by Buyer to Seller of an ultimate destination of any good sold hereunder, Buyer shall not export, either directly or indirectly, any good or system incorporating any good in violation of any applicable law or regulation, and, if applicable, without first obtaining a license from the U.S. Department of Commerce or any other agency or department of the United States government, as required by law.

(e) Disputes. (A) Except as otherwise provided in this Section 16, any dispute relating to this Agreement or relating to or arising out of Seller's relationship or the creation or termination thereof that cannot be resolved by good faith negotiations shall be submitted to arbitration by a single arbitrator at the office of the American Arbitration Association in New Haven, Connecticut pursuant to the United States Arbitration Act (9 U.S.C. Section 1) and the rules of the American Arbitration Association. Judgment upon the award of the arbitrator may be entered in any court having jurisdiction thereover. The arbitrator may award attorneys' fees and costs in connection with the arbitration proceeding in addition to any other relief that may be granted. (B) Notwithstanding the foregoing, any action by Seller to enforce payment of any balance owed by Buyer may be brought in state or federal court, and Buyer hereby irrevocably submit to the personal jurisdiction and venue of the trial courts of New Haven, Connecticut for such purposes. Buyer hereby irrevocably waives, to the fullest extent permitted by law, any objection that Buyer may now or hereafter have to the laying of the venue of any such action, suit or proceeding brought in such a court, and any claim that any such action, suit or proceeding brought in such a court has been brought in an inconvenient forum. In the event that Seller commences suit for payment due hereunder, the prevailing party shall be entitled to recover reasonable attorneys' fees from the non-prevailing party.

(f) Confidentiality. Any confidential information (including any trade secrets) furnished by Seller to Buyer in connection with Seller's business relationship shall not be disclosed by Buyer to any third party, in whole or in part, and shall not be used for any purpose other than to evaluate this Agreement. Notwithstanding anything in this Agreement to the contrary, Seller may seek an injunction in state or federal court for the purposes of enforcing Buyer's confidentiality obligations hereunder, and Buyer hereby irrevocably submits to the personal jurisdiction and venue of the trial courts of New Haven, Connecticut for such purposes. Buyer hereby irrevocably waives, to the fullest extent permitted by law, any objection that Buyer may now or hereafter have to the laying of the venue of any such action, suit, or proceeding brought in such a court, and any claim that such action, suit or proceeding brought in such a court has been brought in an inconvenient forum.

(g) Indemnity. Buyer agrees to indemnify and hold Seller and Seller's shareholders, directors, officers, employees, agents, and affiliates harmless from and against all liability, loss, damage, costs, and expenses, including without limitation expenses of litigation (including attorneys' fees), which Buyer incurs as a result of any claim, action, or cause of action, at law or in equity, arising out of or in connection with (A) Buyer's non-compliance with or breach of this Agreement and any representation or warranty contained herein; or (B) any injury (including death) to any person or damage to any property occurring as a result of, or caused in whole or in part by, the acts or omissions of Buyer or Buyer's agents, officers, directors, or employees; or (C) any demand of or proceeding brought by the U.S. government or any agency thereof to impose countervailing duties with respect to the goods sold hereunder, regardless of whether such demand or proceeding is brought prior to or following the delivery of such goods to Buyer. In no event shall Seller be liable to Buyer for countervailing duties related to such goods imposed upon Buyer. BUYER HEREBY WAIVES AND RELEASES SELLER FROM ANY AND ALL RIGHTS OF RECOVERY, CLAIMS, ACTIONS, OR CAUSES OF ACTION WHICH BUYER MAY HAVE AGAINST SELLER WITH RESPECT TO THOSE MATTERS WHICH BUYER HAS AGREED TO INDEMNIFY SELLER HEREUNDER. Notwithstanding the foregoing, Buyer will not be liable to Seller for any loss, damage, cost or expense which is the direct result of Seller's gross negligence or intentional misconduct.

(h) Assignment. This Agreement may not be assigned by Buyer without Seller's prior written consent. This Agreement shall be binding upon and shall inure to the benefit of Seller's successors and assigns and to the benefit of Buyer's permitted successors and assigns.