

TERMS AND CONDITIONS OF SALE

(1) The goods that are the subject of a sale by THE SHEPHERD COLOR COMPANY (“Seller”) to Buyer are referred to as the “Product.” All sales of Product by Seller are governed by and subject to (a) Seller’s quotation, order acknowledgement, or a separate written agreement signed by an authorized representative of Seller, as applicable, and (b) these terms and conditions, whether or not they are specifically referenced in or incorporated by Seller’s quotation, order acknowledgement, or the separate written and signed agreement. Any irreconcilable conflict between these terms and conditions and any terms in Seller’s quotation, order acknowledgement, or the separate written and signed agreement shall be resolved in favor of the quotation, order acknowledgement, or the separate written and signed agreement. Seller’s acceptance of Buyer’s purchase order or commencement of performance shall not constitute acceptance of any of Buyer’s terms and conditions. TERMS ADDITIONAL TO OR DIFFERENT FROM THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO TERMS CONTAINED IN BUYER’S PURCHASE ORDER OR BUYER’S STANDARD TERMS AND CONDITIONS OF PURCHASE, ARE DEEMED MATERIAL AND HEREBY REJECTED UNLESS OTHERWISE ACCEPTED BY SELLER IN WRITING.

(2) Buyer’s assent to these terms and conditions shall be conclusively presumed from Buyer’s (a) receipt of Seller’s order acknowledgement without written objection sent to Seller within ten (10) days after receipt of the order acknowledgement, (b) instructing Seller to begin work or ship any Product after receipt of Seller’s order acknowledgement, (c) acceptance of or payment for all or any part of the Product, or (d) taking any other action evidencing Buyer’s acceptance of the benefits of the agreement between the parties. Seller may commence performance in reliance upon Buyer’s acceptance of these terms and conditions, and Seller will not be obligated to fulfill an order or request for the Product unless Seller affirmatively acknowledges the order. BUYER AND SELLER AGREE THAT THESE TERMS AND CONDITIONS ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS.

(3) Except as otherwise agreed to by Seller in writing, the terms and conditions set forth herein, together with Seller’s quotation, order acknowledgement, or a separate written and signed agreement, as applicable, shall constitute the complete and final agreement between Seller and Buyer (hereinafter, this “Agreement”), superseding completely any prior oral or written communications.

(4) No modification of this Agreement or waiver of any of its terms will be binding on Seller unless clearly expressed in writing and signed by an authorized representative of Seller. This includes, among other things, purported modifications and waivers by oral agreement, course of performance, and usage of trade. Seller and Buyer expressly agree that Seller may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.

(5) The quantity and price of the Product shall be as stated in this Agreement. Unless otherwise provided in this Agreement, Buyer shall pay all taxes, excises, fees or charges with respect to the sale and transportation of all Product shipped to Buyer. If this Agreement provides for multiple future deliveries, Seller reserves the right to effect a general price increase or change

the payment or transportation terms as of the first day of any calendar quarter by written notice to Buyer, dispatched at least fifteen days prior to the first day of that quarter. If Buyer fails to object in writing before the first day of that quarter, the proposed price revision shall become effective. If Buyer raises objection, Seller shall within fifteen days advise Buyer whether Seller will continue to supply at the price in effect at the time of the notice of increase or cancel the Agreement, without penalty, but subject to the price protection set forth below. Seller may at any time without notice decrease the price, and if Seller puts into effect a general price decrease for the Product, shipments made while such reduced price remains in effect will be charged at the lower price. In the event of a price increase, Buyer will receive price protection on volume of one normal month's business (based on an average month calculated from the previous six-month period) for the month during which a price increase becomes effective and for any intervening month between the date of the increase and the beginning of the month during which the price increase becomes effective. If less than six months shipping history exists, then the price protection volume will be based on the monthly rate of the Agreement Term. Shipment of price protected Product must be made prior to the end of the price protection period.

(6) Unless otherwise specified and agreed by Seller, all Product purchased pursuant to this Agreement shall be delivered to Buyer FCA (Incoterms 2020) Seller's plant or warehouse or such other location as Seller may determine. Unless otherwise specified and agreed by Seller, title, liability for and risk of loss to such Product shall pass to Buyer when Product is placed in the hands of the carrier, and Buyer assumes all responsibility for shortages, losses, delays or damages in transit thereafter. Seller will arrange for shipment to Buyer in accordance with Buyer's shipping instructions. If Buyer has not provided shipping instructions, Seller will arrange for shipment to Buyer in such manner as Seller selects, consistent with Seller's ability to schedule manufacturing and shipment. When shipment is made in bulk, certified weights and official sample at point of shipment shall govern. Product shall be shipped by Seller in accordance with Seller's standard shipping practices at Seller's place of shipment. Buyer shall pay the costs of any specialized packing, crating, freight express or cartage requested by Buyer, as may be required by law or if the Product requires specialized packaging. Seller's current price list for certain specialized items, referred to as "Warehouse Costs," is available on Seller's website or upon request. In the event Seller is required to pay fees, demurrage, or costs with respect to the shipping of the Product, Buyer hereby agrees to pay all such fees, demurrage, and other costs, including any subsequent undercharge claims, and to indemnify and hold Seller harmless from any claims for payment of any such fees, demurrage, or other costs unless caused by Seller's negligence or breach of this Agreement.

(7) If this Agreement contemplates multiple deliveries over a specified period of time (the "Term"), then, unless otherwise specified, Product will be delivered ratably in shipment quantities determined by Seller. Buyer agrees that should the Term of this Agreement expire, for any reason, without Buyer having accepted delivery of the full quantity of Product specified in this Agreement, Seller shall notify Buyer of Buyer's failure to purchase such Product in the required quantities and shall give Buyer thirty (30) days to respond to Seller directing Seller where to ship such Product with an invoice to be sent to Buyer. Should Buyer refuse such delivery or fail to respond to Seller within such thirty (30) day period, Seller shall have the right to destroy or otherwise dispose of such Product and Buyer shall pay for such Product, as well as for the destruction costs and storage costs incurred by Seller beyond the Term of this Agreement and any other related costs net of any amounts actually received by Seller if such Product is sold

to another customer if permissible. Buyer shall also be responsible for materials produced or purchased by Seller uniquely for the production of the Product for Buyer including, but not limited to, packaging materials.

(8) Buyer (or Buyer's freight forwarder, if one) shall inspect Product sold hereunder immediately upon receipt of the same at Buyer's or Buyer's freight forwarder's facility. UNLESS WRITTEN NOTICE OF REJECTION, SPECIFYING THE GROUNDS THEREFOR, IS RECEIVED BY SELLER WITHIN TEN (10) DAYS FROM THE DATE OF RECEIPT OF PRODUCT BY BUYER OR BUYER'S FREIGHT FORWARDER, SUCH PRODUCT SHALL AUTOMATICALLY BE DEEMED ACCEPTED. Product, once accepted, may not be returned without prior written approval by Seller and, if Seller provides such approval Buyer agrees to return Product shipped only in its original packaging and to pay a restocking charge of 25% of the invoice price for the returned Product. ANY CLAIM FOR DAMAGES AS A RESULT OF THE RECEIPT OF DEFECTIVE OR OTHERWISE NON-CONFORMING PRODUCT UNDER THIS AGREEMENT MUST BE MADE BY BUYER THROUGH WRITTEN NOTICE TO SELLER WITHIN TEN (10) DAYS FOLLOWING RECEIPT OF THE PRODUCT BY BUYER OR BUYER'S FREIGHT FORWARDER, DESCRIBING THE SPECIFIC DEFECT OR CLAIM ALLEGED. FAILURE TO PROVIDE SUCH WRITTEN NOTICE WITHIN THIS TIME PERIOD SHALL BE DEEMED A WAIVER AND RELEASE OF ANY SUCH CLAIM OR RIGHT OF RECOVERY BY BUYER WITH RESPECT TO ANY SUCH DEFECTIVE OR NON-CONFORMING PRODUCT. SELLER'S LIABILITY FOR ANY AND ALL DAMAGES, ACTIONS OR CLAIMS AS A RESULT OF RECEIPT BY BUYER OF DEFECTIVE OR OTHERWISE NON-CONFORMING PRODUCT, REGARDLESS OF THE NATURE OF SUCH CLAIMS, SHALL IN NO EVENT EXCEED THE PURCHASE PRICE OF THE PARTICULAR SHIPMENT WITH RESPECT TO WHICH A CLAIM IS MADE. SELLER SHALL NOT BE LIABLE FOR LOST PROFITS OR FOR INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR CONSEQUENTIAL DAMAGES.

(9) Seller warrants title and that all Product sold hereunder at the time of shipment shall conform to Seller's standard specifications in effect on the date of shipment or to the attached specifications, if any. SELLER MAKES NO OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCT DESCRIBED HEREIN, AND EXPRESSLY DISCLAIMS ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SELLER SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE DIRECTLY OR INDIRECTLY ARISING FROM BUYER'S PURCHASE OR USE OF SUCH PRODUCT OR FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING THEREFROM. SELLER'S TOTAL LIABILITY TO BUYER FOR ANY BREACH OF THIS LIMITED WARRANTY, OR FOR ANY CLAIM THAT THE PRODUCT DELIVERED HEREUNDER WAS DEFECTIVE OR NON-CONFORMING, SHALL BE LIMITED TO THE INVOICE PRICE OF ANY GOODS SHOWN TO BE DEFECTIVE, NON-CONFORMING, OR IN VIOLATION OF THE LIMITED WARRANTY PROVIDED HEREIN.

(10) Waiver by either party of any default of the other shall not operate to excuse the defaulting party from further compliance with this Agreement. If Buyer fails to make any payment under this Agreement when due, Seller, in addition to other legal remedies, shall have the right to, in its discretion, withhold further shipments, require immediate cash payments for

past and future shipments or require other security satisfactory to Seller before further deliveries shall be made, or to terminate this Agreement.

(11) Seller warrants that the Product to be delivered hereunder does not infringe the claims of any United States patent covering the Product itself; however, this warranty does not include charges of infringement arising by reason of the Buyer's conversion of the Product to another form, or its use in combination with other material, or its use in the operation of any process. In the event any suit or legal proceeding is brought against Buyer based on a claim that the Product furnished hereunder in itself constitutes an infringement of any United States patent, the Seller shall defend at its own expense that portion of any suit or legal proceeding relating to said claim and will pay any damages or costs including attorney's fees awarded on said claim against Buyer, provided Buyer gives Seller prompt written notice of such infringement claim and of the institution of such suit or proceeding and also gives Seller all necessary authority, information and reasonable assistance to enable Seller, at Seller's option, to settle or defend the same as to said claim. The foregoing states the parties' entire agreement as to charges of infringement.

(12) Should Seller's supply of available Product or its ability to make delivery be limited by any factor whatsoever beyond the reasonable control of itself or its affiliated companies, including, but not limited to, labor difficulties, fires, action of the elements, accidents, failure or delay occasioned by carriers, governmental action, whether valid or not, or in the event of inability to obtain on terms deemed by Seller to be practicable any raw material (including energy source), etc., Seller will allocate its supply, available for sale to its customers, on a fair and equitable basis selected by the Seller. Seller shall not be obligated to make up deficiencies in deliveries hereunder due to any such cause. Labor difficulties, fires, action of the elements, accidents, failure or delay occasioned by carriers, governmental action, whether valid or not, or other causes beyond the reasonable control of Buyer which prevent Buyer from receiving and/or using Product covered by this Agreement shall operate to suspend deliveries during the period required to remove such cause. In the event Seller is unable to supply Product to Buyer due to an event of force majeure, Buyer may purchase Product from a third-party supplier for the period of time that such event of force majeure is in effect.

(13) Should Seller elect to discontinue, curtail or limit the production or sale of Product due to the application of any governmental statute, regulation or order including but not limited to price controls, transportation, energy controls, pollution control, or product safety which, in Seller's judgment, will render the production or marketing of the Product economically, technologically or commercially infeasible, Seller may terminate this Agreement upon thirty days prior written notice to Buyer.

(14) Each delivery of Product shall constitute a separate sale with the same effect as though made under a separate contract covering the amount thereof. Any delay or default by Seller with respect to any delivery shall not affect Buyer's obligation to order, accept, and pay for future deliveries.

(15) Unless otherwise specified and agreed by the Seller, payment terms are net 30 days, with no discount allowed on transportation charges. Interest will accrue on invoices unpaid

after the net due date at the annual rate of 12% or the maximum legal contract interest rate, whichever is less.

(16) Whether this agreement refers to manufactured items or to work, Seller warrants and agrees that it has complied, and will comply with (1) Fair Labor Standards Act as amended, and (2) Social Security and Workmen's Compensation Laws as amended, if work is done on Buyer's premises, and (3) all other applicable laws, codes, regulations, rules and orders.

(17) Neither party may assign this Agreement without the express written consent of the other party; provided, however, that either part may assign this Agreement to an affiliated company without restriction.

(18) Unless otherwise specified, this Agreement shall be governed by the laws of the State of Ohio, excluding its "choice of law" or "conflict of law" rules.

(19) The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

(20) Any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be settled by arbitration to be held in Cincinnati, Ohio and administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall not preclude either party from seeking prejudgment security or any other relief in aid of arbitration in any court of competent jurisdiction.

(21) All information provided by Seller hereunder, including, but not limited to, the terms and conditions of this Agreement, must be held in confidence by Buyer. This obligation shall survive the termination or expiration of this Agreement.

(22) Whenever possible, each provision of this Agreement and any invoices or subsequent written contracts executed pursuant to this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any invoice or contract related hereto shall be prohibited by or invalid under such law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or any invoice or contract related hereto. Any failure by Seller to exercise any right or remedy hereunder shall not be construed as a waiver of the exercise of that right or any other right at any subsequent time prior to payment of all amounts due Seller.

(23) This Agreement, together with any invoices issued hereunder and any other written contracts executed pursuant to this Agreement, incorporates all the understandings of the parties with respect to the matters contained herein and supersedes all prior agreements, negotiations or communications, whether oral, written, or implied concerning the subject matter of this Agreement. In the event of any discrepancy between this Agreement and any invoice or other agreement between the parties, the terms of this Agreement shall control.