

## TERMS AND CONDITIONS OF SALE

The following terms and conditions apply to all sales of products by Zeigler Bros, Inc. ("Zeigler") to the customer ("Customer") identified on the face side of this sales contract.

**1. OFFER AND ACCEPTANCE** - The products described on the face side hereof are offered for sale by Zeigler subject to all of the terms and conditions stated herein. This writing constitutes an offer of sale, which is expressly limited to the terms and conditions stated herein. By submitting a purchase order or other written response to this offer of sale, or by accepting delivery of the described products, Customer accepts all of the terms and conditions contained herein. No additional, changed, or conflicting terms and conditions appearing in Customer's purchase order or other written response to this offer shall be binding upon Zeigler unless expressly agreed to, in writing, by an authorized officer of Zeigler.

**2. PAYMENT TERMS** - Subject to credit approval by Zeigler's Credit Dept., terms of payment are as shown on the face side hereof and shall be effective from the date of Zeigler's invoice. Shipments of products shall be subject to the continuing approval of Zeigler's Credit Dept., which may require full or partial payment in advance if the financial condition of Customer (in the sole opinion of Zeigler's Credit Dept.) does not justify continuing to ship products on the terms of payment agreed upon. Should Customer default in the payment of any amount owing for Zeigler products, requiring Zeigler to expend costs or incur expenses in collecting such amount, Zeigler shall be entitled to reimbursement for all such costs of collection (including reasonable attorney fees).

### **3. SHIPMENT AND DELIVERY**

**3.1 Shipment** - Unless otherwise specified on the quotation/proforma, all shipments will be made FOB Zeigler's plant.

**3.2 Title and Risk of Loss** - Title to any products shipped by Zeigler shall pass to Customer upon delivery by Zeigler to the carrier. Risk of loss or damage to products in transit is assumed by Customer, and Customer shall bear responsibility for filing and pursuing any claims for loss or damage with the carrier.

**3.3 Delivery** - Shipping dates are approximate only based upon prompt receipt from Customer of all information and releases required by Zeigler to meet Customer expectations. Zeigler shall not be liable for delays in delivery or failure to ship ordered products where such delay or failure results from: (i) causes beyond the reasonable control of Zeigler, (ii) acts of God, acts of Customer, or acts of civil or military authorities, (iii) inability of Zeigler to obtain necessary labor, materials, components, or facilities, or (iv) any other commercial impracticability. In the event of any such delay, the date of delivery shall be deferred for a period of time equal to the time lost by reason of the delay.

### **4. LIMITED PRODUCT WARRANTY**

**4.1 Limited Warranty** - Zeigler warrants its products to conform to the specifications set forth on the face side hereof, as well as applicable Zeigler product specifications in effect at the time of product shipment. For any product determined by Zeigler to be non-conforming, Zeigler shall, at its option, either: (i) cure such non-conformity, (ii) replace such non-conforming products with similar replacement products, or (iii) refund to Customer the amount paid by Customer for the non-conforming Zeigler product. This warranty shall not apply to any product that has been: (i) subjected to conditions of misuse, negligence or accident; (ii) stored or shipped in an improper manner; or (iii) altered or modified.

**4.2 Warranty Procedures** - If any Zeigler product is believed to be nonconforming, written notice of such warranty claim should be delivered to: Warranty Claim Department, Zeigler Bros., Inc., 400 Gardners Station Road, Gardners, PA 17324. Notification may be made by email, telephone, or facsimile; provided, that confirming written notice is delivered to Zeigler within 24 hours. At its option, Zeigler may request return of any product believed to be non-conforming for purposes of testing and verification.

**4.3 Disclaimer of Further Warranties** - The limited warranty set forth above is the exclusive warrant applicable to this contract, and Zeigler expressly disclaims all other warranties or remedies, including warranties of merchantability and fitness for a particular purpose, whether the same are written, verbal, implied, or statutory. The selection of products by customer and the suitability thereof for customer's specific application shall be the sole responsibility of the customer.

**4.4 Limitation of Liability** - Under no circumstances shall Zeigler be liable for any incidental, consequential, or special damages, losses, or expenses incurred by Customer or any third party arising from this offer of sale or the performance of Zeigler hereunder. Under no circumstances shall the amount of any claim for damages or liability exceed the amount paid by Customer for Zeigler products.

**5. TAXES** - Any taxes which Zeigler may be required to pay or collect, under any existing or future law, with respect to the sale, delivery, storage, or use of any Zeigler product shall be the responsibility of Customer. If not collected by Zeigler as part of its billing hereunder, Customer agrees to reimburse to Zeigler, upon demand, the amount of any such tax determined by any applicable governmental taxing authority to be payable by Zeigler.

**6. DISPUTES** - In lieu of court action, all claims, disputes, and controversies arising out of the performance of Zeigler shall be submitted to arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and any judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof. The site of the arbitration shall be York, Pennsylvania, unless otherwise mutually agreed between the parties. The parties agree that any party to the arbitration shall be entitled to discovery of any other party as provided by the Federal Rules of Civil Procedure; provided, however, that any such discovery shall be completed within four (4) months from the date the Demand for Arbitration is filed with the American Arbitration Association. In any such proceedings, the prevailing party shall be entitled to recover all its costs and expenses (including reasonable attorney's fees).

### **7. ORDER CANCELLATION OR MODIFICATION**

**7.1 Cancellation by Customer** - An order for products may be cancelled either by Customer or by Zeigler upon written notice.

**7.1A Standard Zeigler Products** - Order may be cancelled in writing, by email only, 24 hours prior to manufacturing date without changes or fees being assessed. Orders cancelled between 24 hours prior to the manufacturing date and the date of the scheduled shipment will be subject to a 25% restocking fee. Orders may not be cancelled once the product has left the Zeigler facility. The customer will be billed the full amount of the invoice plus freight charges. Orders ready for shipment which are not shipped within 10 business days from date of availability for shipment will be subject to storage fees. Zeigler may require payment of full contract price as well as storage fees for shipments delayed by customer for more than 10 days from date of availability for shipment.

**7.1B Custom Products** - Order may be cancelled in writing, by email only. All cancelled custom orders prior to manufacturing may be subject to a research and development fee of 25% of the quote price. Once the product has been manufactured the order(s) cannot be cancelled. The customer will be responsible for payment of the full quoted amount. Cancelled orders of stock products with custom packaging will be subject to additional handling fees.

**7.2 Order Modifications** - Customer-requested changes to the order composition, schedule or handling must be made in writing, by email only, and are subject to Zeigler's written approval. Where a proposed change may result in shipment delays or increased production costs, Zeigler may condition its approval upon adjustments in order pricing, scheduling, payment terms or other affected terms and conditions. Zeigler reserves the right to reject any change that it deems incompatible with Zeigler's production capabilities.

### **8. MISCELLANEOUS**

**8.1 Entire Agreement** - When accepted by Customer, this writing constitutes the entire agreement between the parties, and all prior negotiations and representations of the parties are merged herein.

**8.2 Pennsylvania Law to Apply** - Any contract resulting from Customer's acceptance of this offer of sale shall be deemed to have been executed and delivered in Adams County, Pennsylvania, and shall be construed under, and in accordance with, the laws of the Commonwealth of Pennsylvania.

**8.3 Waiver** - One or more waivers of any breach of any term or condition herein shall not be construed as a waiver of any subsequent breach of the same term or condition. The consent or approval by one party of any act done or omitted to be done by another party shall not be deemed to waive or render unnecessary the consent or approval of any subsequent similar acts or omissions.