

# FYTERTECH NONWOVENS, LLC

## TERMS AND CONDITIONS OF SALE



**1. Agreement.** These terms and conditions of sale ("Terms") are the only terms that govern the sale and supply of all products (collectively, "Products") by FyterTech Nonwovens, LLC ("Supplier"). The accompanying quote, proposal, purchase order, sales order or invoice ("Order") and these Terms (together, the "Agreement") comprise the entire agreement between the parties, and supersede all prior or contemporaneous communications, understandings or agreements (whether verbal or written). These Terms prevail over any of Customer's general terms or conditions of purchase regardless of whether or when Customer submitted its order or alternate terms. Neither the failure of Supplier to object to Customer's terms and conditions nor the fulfillment of Customer's order will (i) constitute acceptance of Customer's terms and conditions or (ii) serve to modify or amend these Terms. If there is any conflict or inconsistency between these Terms and those set forth in the Order, then the specific modification(s) noted in the Order will govern and control.

**2. Price; Payment Terms.** All prices are as quoted by Supplier for specific Products. All prices are quoted and to be paid in U.S. Dollars and are exclusive of taxes. Unless Customer has been approved for credit by Supplier (which such approval Supplier may revoke at any time), all payments shall be made by Customer on a cash, credit card or check basis. Supplier reserves the right to require a Standby Letter of Credit until Customer develops adequate credit history. If Customer is approved for credit, Customer will pay all invoiced amounts on a Net 30 basis (due within 30 days of the date of Supplier's invoice). Customer will pay interest on late payments at the lesser of 1.5% per month or the highest rate permissible under applicable law. Customer will reimburse Supplier for all costs incurred for collection of late payments, including attorneys' and collection agencies' fees. In addition to all other remedies under these Terms or at law (which Supplier does not waive by exercise of any rights hereunder), Supplier may require COD or suspend the delivery or pick up of any Products if Customer fails to pay any amounts when due hereunder. Customer will not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Supplier.

**3. Delivery Terms.** Unless otherwise agreed in the Order, Products will be delivered within a reasonable time after receipt of Customer's order. Supplier will use reasonable efforts to meet the estimated date of delivery set forth in the Order. Supplier does not guarantee delivery dates and will not be liable for any delays, loss or damage in transit. Delivery will be made F.O.B. Supplier's facility, or such other shipping point set forth in the Order. Title and risk of loss shift to Customer upon delivery of Products by Supplier to the designated carrier. Customer will be responsible for all costs and expenses of Product shipment (including loading, freight and insurance) or storage and re-delivery costs if Customer fails to timely accept delivery.

**4. Inspection and Acceptance.** Customer will inspect the Products within five (5) days of receipt (the "Inspection Period"). Customer will be deemed to have irrevocably accepted the Products unless it notifies Supplier in writing of any alleged shortage, error in delivery or defective or non-conforming Product during the Inspection Period and provide Product samples or other evidence or documentation as required by Supplier.

**5. Limited Warranty.** Supplier warrants that the

Products will be free from defects in material and workmanship for a period of one (1) year from the date of delivery. In the event of an alleged breach of this limited warranty, Customer shall notify Supplier in writing within five (5) days of receipt of the Products, and any claim shall be deemed waived by Customer if not made in writing within such five (5) day period. NOTWITHSTANDING ANYTHING CONTAINED IN THESE TERMS TO THE CONTRARY, THE SOLE AND EXCLUSIVE REMEDY OF CUSTOMER UNDER THIS LIMITED WARRANTY SHALL BE REPLACEMENT OF THE PRODUCTS WITHOUT CHARGE TO CUSTOMER. This limited warranty shall be void and unenforceable, and Supplier shall have no obligation to Customer under this limited warranty, in the event Customer: (i) uses, combines or comes into contact with the Products with other products; or (ii) fails to comply with all applicable federal, state and local laws, ordinances, rules and regulations regarding the use, transport, storage and handling, as applicable, of the Products. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, SUPPLIER AND CUSTOMER AGREE THAT THE LIMITED WARRANTY SET FORTH ABOVE IS THE EXCLUSIVE WARRANTY GIVEN BY SUPPLIER AND SUPPLIER DISCLAIMS, AND CUSTOMER HEREBY WAIVES, ALL IMPLIED WARRANTIES FOR THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE; WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**6. Indemnification.** To the fullest extent permitted by applicable law, Customer will indemnify and hold Supplier harmless from and against any and all loss, injury, death, damage, liability, claim, deficiency, action, judgment, interest, award, penalty, fine, cost or expense, including reasonable attorneys' fees arising out of or occurring in connection with (i) the shipment, storage, particular use (beyond the standard use(s) that are expressly authorized or approved in writing by Supplier from time to time) or disposal of the Products by the Customer, its customers or any end user (collectively, the "Customer Parties"), (ii) the negligence or willful misconduct of any Customer Parties, or (iii) the Customer's breach of this Agreement.

**7. Limitation of Liability.** IN NO EVENT WILL SUPPLIER BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE OR PROFIT, OR FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT SUPPLIER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. THE PRODUCTS ARE NOT SOLD AS A "MEDICAL ABSORBENT FIBER" OR ANY OTHER TYPE OF REGULATED MEDICAL DEVICE. IN NO EVENT WILL SUPPLIER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PRODUCTS SOLD HEREUNDER EXCEED THE TOTAL AMOUNT PAID TO SUPPLIER PURSUANT TO THE ORDER FOR THE PRODUCTS GIVING RISE TO THE CLAIM.

**8. Insurance.** During the term of the business relationship

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between the parties, each of the parties shall procure and maintain insurance coverage in such amounts as is usual and customary for the industry in which such party operates.

**9. Confidential Information.** All non-public, confidential or proprietary information of Supplier, including but not limited to information regarding Supplier's Products, suppliers, pricing, discounts or rebates, and any other proprietary business and technical information, documents or data disclosed by Supplier (the "Confidential Information") to Customer, whether disclosed verbally or in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as "confidential" in connection with this Agreement is confidential, solely for the use of performing this Agreement and may not be disclosed or copied unless authorized in advance by Supplier in writing. Upon Supplier's request, Customer will promptly return all documents and other materials received from Supplier. This Section does not apply to information that is: (a) generally available to the public without breach of this Agreement by Customer; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non-confidential basis from a third party. Supplier will be entitled to injunctive relief for any violation of this Section.

**10. Intellectual Property.** Supplier is and will remain the sole and exclusive owner of all intellectual property rights in and to its Product, Confidential Information and any related specifications, instructions, documentation or other materials made available to Customer (through its website or otherwise), including but not limited to, any idea, concept, design, prototype, product configuration, invention, patent or patentable subject matter, method, process, technique, procedure, system, plan, model, program, software or code, data, specification, drawing, print, model, diagram, flow chart, documentation, know-how, trade secret, work of authorship, copyright or copyrightable subject matter, derivative work, trademark or trade name, improvement, modification, and any subject matter, material, or information that otherwise qualifies for protection under any law providing or creating intellectual property rights that relates to, contains, embodies, or is derived from Supplier's Products or Confidential Information.

**11. Force Majeure.** Supplier will not be liable to Customer (or to any third party), nor be deemed to have defaulted or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement when and to the extent such failure or delay is caused by or results from acts or circumstances beyond Supplier's reasonable control, including, but not limited to, acts of God, fires, floods, earthquake, explosion, acts or omissions of any governmental authority, war, insurrection, terrorist threats or acts, riots or other civil unrest, national emergency, lockouts, strikes or labor difficulties, or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, breakdown of essential equipment or telecommunication breakdown or power outage.

**12. Relationship of Parties.** The relationship between the parties is that of independent contractors. Nothing contained in this Agreement will be construed as creating any agency, partnership, joint venture or other form of joint enterprise or fiduciary relationship between the parties, and neither party will have authority to contract for or bind the other party in any manner whatsoever. This Agreement is for the sole benefit of the

parties hereto and nothing herein, express or implied, is intended to or will confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**13. Termination.** Supplier may terminate this Agreement with immediate effect upon written notice to Customer, if Customer: (i) fails to pay any amount when due under this Agreement; (ii) has not otherwise performed or complied with any of these Terms, in whole or in part, within ten (10) days after notice from Supplier of such breach; or (iii) becomes insolvent, files a petition for bankruptcy or commences or has commenced against it proceedings relating to bankruptcy, receivership, reorganization or assignment for the benefit of creditors. Customer agrees to pay all costs and expenses, including reasonable attorneys' fees, incurred by Supplier in enforcing this Agreement.

**14. Compliance with Law; International Trade.** Each party shall at all times comply with all laws, rules and regulations applicable to this Agreement, such party's performance of its obligations hereunder, and such party's manufacture, marketing, sale, use or resale of the Products. Without limiting the generality of the foregoing, each party shall (i) at its own expense, maintain all certifications, approvals, credentials, licenses, permits and other authorizations necessary to conduct its business related to the manufacture, marketing, sale, use or resale of the Products, and (ii) not engage in any activity or transaction involving the Products that violates any applicable laws, rules or regulations. Customer shall comply with all applicable federal and foreign export and import laws of all countries involved in the sale of the Products under this Agreement or any resale of the Products by Customer, and complete all required undertakings (including obtaining any necessary export or import license or other governmental approval) including, without limitation, the Export Control Reform Act of 2018, the Export Administration Regulations, the International Traffic in Arms Regulations and the economic and trade sanctions and embargoes administered and enforced by the Office of Foreign Assets Control (collectively, the "Export Laws"). Notwithstanding anything in this Agreement to the contrary, Customer assumes all responsibility for shipments to any non-U.S. jurisdiction requiring any government import clearance and shall be responsible for compliance with all other laws, rules and regulations of such non-U.S. jurisdiction.

**15. Miscellaneous.** No modification of the Agreement will be binding unless in writing and signed by both parties. Customer will not assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of Supplier. Any purported assignment or delegation in violation of this Section is null and void. All matters arising out of or relating to this Agreement are governed by and construed in accordance with the laws of the State of Wisconsin, without giving effect to any choice or conflict of law provision. Any legal suit, action or proceeding arising out of or relating to this Agreement will be instituted in the United States District Court for the Eastern District of Wisconsin, located in Green Bay, Wisconsin, or in the Circuit Court for Brown County, Wisconsin. If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Provisions of these Terms which by their nature should survive will remain in force after delivery of the Products and any termination or expiration of this Agreement.