



**PRESIDIUM**  
Disruptive Engineered Materials

**PRESIDIUM USA, INC.**  
**TERMS AND CONDITIONS OF SALE**

1. **AGREEMENT OF SALE** - Each sale of goods or services by Presidium USA, Inc. ("Seller") is limited to the terms and conditions herein ("Terms") and any other documents specifically agreed to in writing, such as specifications. These Terms comprise the sole basis for the sale of goods and services by Seller, unless otherwise specifically provided for in a writing signed by an authorized representative of Seller, and shall apply to the exclusion of any inconsistent or additional terms and conditions contained in Buyer's order, acknowledgement, request for quote or other such documents. These Terms and any other conditions agreed to in writing shall be the binding contract between the parties (the "Agreement"). Any contract made for the sale of goods or services by Seller is expressly conditional on Buyer's assent to the Terms stated herein. Buyer's acceptance of these Terms shall be conclusively presumed by Buyer's submission of a purchase order. These Terms shall also apply to any future sale of goods or services to Buyer.
2. **PRICES** - Prices are subject to change prior to acceptance of Buyer's order by Seller. The quotation price does not include applicable taxes such as city, state and federal, sales, use, excise taxes, shipping charges, or any other services of work not specifically described in a quotation. All such taxes and charges shall be Buyer's responsibility and may be added to the invoice as a separate and additional charge to Buyer unless an appropriate exemption certificate is presented which is acceptable to Seller. Seller also shall have the right at any time to separately invoice Buyer for any such taxes and charges that the Seller may be called upon to pay, and Buyer shall be obligated to reimburse Seller for all such amounts.
3. **PRICE ADJUSTMENT** - The prices shall be firm for all goods delivered by Seller during the Agreement. Notwithstanding the foregoing, Seller may increase the prices for the goods based on price changes to Seller's raw material and manufacturing costs by giving notice to Buyer at least sixty (60) days prior to the effective date of such change.
4. **PAYMENT TERMS** - Payment terms shall be net thirty (30) days from date of invoice, unless stated differently. Interest may be charged at the rate of 1½% per month beginning the first of the month following the due date. Seller reserves the right to modify these terms for export business and/or special projects. Payments on all invoices shall be in U.S. dollar funds.
5. **DELIVERY** - All shipments are F.O.B. shipping point. When requested by Buyer, shipment will be held for maximum weight and will be routed as specified. When shipping instructions do not appear on order, shipment will be made according to Seller's discretion. Insuring of parcel post shipments may be done at Buyer's request and expense. Parcel post shipments without insurance will be at Buyer's risk. Deliveries by messenger service may be made on request, but at Buyer's expense. Whether or not credit terms are specified elsewhere, Seller may, at its option, condition shipments under any order accepted by Seller upon receipt of satisfactory security or of cash before shipment. If, at Buyer's request, shipment of products on an order accepted by Seller is delayed after an agreed shipment date, or the date products are ready for shipment, whichever is later, Seller may require immediate payment in full and/or assess additional charges for storage and other expenses incident to such delay and, during such time, the goods will be stored at Buyer's sole risk.
6. **WARRANTY** - Seller warrants to the Buyer that goods delivered by Seller shall be manufactured to agreed upon specifications specifically incorporated into the Agreement. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ALSO DISCLAIMS AND EXCLUDES ALL LIABILITY FOR INCIDENTAL AND CONSEQUENTIAL DAMAGES FOR BREACH OF WARRANTY OR OF CONTRACT OR OTHERWISE. FURTHER, SELLER PROVIDES NO WARRANTY AND NO WARRANTY SHALL EXIST, FOR GOODS OR SERVICES USED BY BUYER CONTRARY TO SELLER'S INSTRUCTIONS OR AFTER THE EXPIRATION DATE OF ANY GOOD. Any claim for breach of Seller's warranty must be made in writing to the Seller setting forth in sufficient detail to permit identification of the defect. Any claim for breach of warranty must be made within twelve (12) months after shipment. If not made within the twelve (12) month period it shall be conclusively deemed to have been waived.
7. **NON-CONFORMING PRODUCTS** – Except as otherwise specifically provided in the Agreement, Buyer's sole remedy for goods or services that do not conform to the warranties in Section 6 will be to (1) reject the non-conforming goods or services; or (2) require Seller, at Seller's option and expense (including applicable shipping costs), to either repair or replace the non-conforming goods or services.
8. **LIMITATION OF LIABILITY** - EXCEPT AS OTHERWISE EXPRESSLY AUTHORIZED IN THE AGREEMENT, ALL INDIRECT, SPECIAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR MARKET SHARE OR DAMAGE TO BRAND VALUE), INCIDENTAL, PUNITIVE, AND EXEMPLARY DAMAGES, WHETHER OR NOT FORESEEABLE, ARE EXCLUDED UNDER THESE TERMS TO THE EXTENT PERMITTED BY APPLICABLE LAW. NOTWITHSTANDING ANYTHING IN THE AGREEMENT TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF SELLER UNDER ANY THEORY OF LAW SHALL NOT EXCEED THE TOTAL AMOUNT INDICATED IN THE PURCHASE ORDER FOR THE GOODS AND SERVICES IN QUESTION.
9. **INDEMNIFICATION** - Buyer agrees to indemnify, hold harmless and defend Seller against any and all claims arising from the execution of this Agreement or from the exercise of any rights under this Agreement, including without limitation, against any damages, losses or liabilities whatsoever for death, injury to person or damage to property, or for the infringement of third party intellectual property rights, as a result of the making, use, importation, sale, development, design, promotion, possession, operation or other disposition of any good or service sold or licensed by Seller to Buyer (including but not limited to all of its parents, assigns, successors, officers, trustees, personnel, agents, and employees), its affiliates, customers, assignees, or other transferees.



10. **DELAY AND FAILURE TO DELIVER** - Seller shall not be liable in any respect for failure to ship or for delay in shipment where such failure or delay shall have been due in whole or in part to shortage or curtailment of material, labor, transportation or utility services, or to any labor or production difficulty in Seller's plant or those of its suppliers, or to any cause beyond Seller's control including, but not limited, to acts of God, fires, explosions, natural disasters, embargoes, or wars, provided however that upon learning of a situation under this Section 10 that may impact Seller's ability to deliver Seller shall notify Buyer in writing as promptly as possible of the reason for such delay or failure to deliver.
11. **TERMINATION FOR DEFAULT** – In the event Buyer breaches any material term of this Agreement, the Seller may terminate this Agreement upon thirty (30) days prior written notice to the other party; provided, however, that during any such notice period, the party in default may cure its default and thereby abate the termination. Notwithstanding the foregoing, Seller may terminate this Agreement effective immediately upon written notice to Buyer in the event (a) Buyer fails to pay any Seller invoice within the time provided in this Agreement, (b) Buyer generally fails to pay its debts as they become due, (c) Seller reasonably believes Buyer is insolvent (whether based on the reasonable belief by Seller that Buyer's liabilities exceed its assets; the existence of a bankruptcy, assignment for the benefit of creditors or other similar proceeding involving Buyer; a liquidation of a significant portion of the assets of Buyer; or otherwise), (d) of a sale of a majority of the assets, or a change of control of ownership of Buyer, or (e) Buyer fails to provide adequate assurance of performance under the Agreement after written demand by Seller. If Buyer is in default hereunder, including by failure to pay invoices, Seller may suspend shipments of goods until all invoices are current and Seller receives adequate assurance of future performance. In the event that Seller uses legal proceedings for collection of sums owing on account or any other cause of action, Seller shall be entitled to reimbursement for all costs, including actual attorney's fees.
12. **CROSS DEFAULT** - Notwithstanding anything to the contrary contained in this Agreement or any other related or companion documents or agreements between the parties, a breach or default by Buyer of any covenant or other term or condition contained in any of its agreements with Seller, after the passage of all applicable notice and cure or grace periods, shall, at the option of the Seller, be considered a default under this Agreement and any other agreements, in which event the Seller shall be entitled (but in no event required) to seek all rights and remedies under the terms of this Agreement and any other agreements by reason of a default under said other agreement or hereunder.
13. **PROPERTY AND PATENT RIGHTS** - Seller retains for itself any and all property rights in and to all designs, engineering details, rights of discovery, inventions, copyrights, patent rights and other data pertaining to any good delivered by Seller to Buyer. Except for the right of Buyer to use the good purchased from Seller or unless otherwise agreed in writing, Seller transfers no license to Buyer to use any technical information, know how, copyright or patent rights owned or controlled by Seller to make, have made, use or sell any good provided by Seller under this Agreement.
14. **CONFIDENTIAL INFORMATION** - Trade secrets, specifications, drawings, notes, instructions, engineering data and analysis, financial data, and other technical and business data (collectively "Confidential Information") which are supplied or disclosed by Seller in connection with the Agreement will be deemed confidential and proprietary and remain the sole property of Seller. The Buyer may not disclose this Confidential Information or use it for any purpose other than is contemplated under the Agreement without written consent from the Seller. Upon request by Seller, the Buyer will promptly return or destroy the original and all copies of the Confidential Information.
- Confidential Information will not include information that (1) is or becomes generally available to the public other than as a result of a violation of this Section by Buyer, (2) was obtained by Buyer on a non-confidential basis from a third party who had the apparent right to disclose it, or (3) is legally required to be disclosed. Buyer will use the same degree of care to safeguard Confidential Information that it uses to protect its own confidential information from unauthorized access or disclosure (but not less than a reasonable degree of care).
15. **CANCELLATION** - In the event Buyer requests Seller to stop work or cancel an order or any part thereof, cancellation charges will be paid to Sellers as follows:
- a. Any and all work that is complete or scheduled for completion within thirty (30) days of the date of notification in writing to stop work or to cancel, shall be invoiced and paid in full.
  - b. Work on the balance of the order will be stopped as promptly as reasonable. For work in process, other than covered by item (a), and any materials and supplies procured, or for which definite commitments have been made by Seller in connection with Buyer's order, the Buyer will pay the actual costs and overhead expenses.
  - c. Buyer will promptly instruct Seller as to the disposition of the goods. If instructions are not received within thirty (30) days from advice of cancellation charges, disposition will be made by the Seller at no value to the Buyer. Any items that Seller can use economically to fill other active orders will be restocked at a 2% handling charge.
  - d. If Buyer fails to cancel a purchase order within 48 hours of such purchase order's written acceptance by Seller, a minimum cancellation charge of 10% will be due and payable on all cancellations received by Seller.



## 16. BUYER WARRANTIES -

- a. Buyer warrants that it has no knowledge that any good, or part of any good, will be utilized in any type of (1) nuclear use whatsoever; (b) weapons systems or other similar military use; (c) medical, food processing or FDA regulated use; or (d) in the case of isocyanate or polyaspartic goods sold by Buyer in an unreacted state, any "do-it-yourself" or domestic consumer markets; unless otherwise explicitly stated in this Agreement; otherwise Buyer will immediately notify Seller in writing upon obtaining such knowledge; and regardless of whether or not explicitly stated in this Agreement, shall abide by all U.S. and any other applicable law(s) regarding such uses. Buyer further warrants that it will not use the goods, or any part of the goods, in the formulation of a "pesticide product," as those terms are defined in 40 C.F.R. § 152.3 and will notify Seller in writing immediately upon obtaining knowledge that the goods, in whole or part, are used in such formulations. Breach by Buyer of this Section shall be considered a material breach of this Agreement, and Buyer shall indemnify and hold harmless Seller in the event of such a breach.
- b. Buyer represents and warrants that (a) it understands the nature and characteristics of the goods and any hazards associated with their use; and (B) it will adequately instruct and warn all persons, including all third parties, who may come in contact with, or be in the vicinity of the goods in the proper safe use and handling of the goods. Appropriate literature has been assembled which provides information concerning the health and safety precautions that must be observed when handling the goods. Before working with the goods, Buyer acknowledges it has read and is familiar with the available information on the goods' hazards, proper use, and handling.

17. SETOFF - Buyer may not setoff or deduct from sums owed to Seller those sums owed or allegedly owed by Seller to Buyer unless Seller consents in writing. Buyer may not setoff or deduct amounts owed or allegedly owed to Buyer by Seller's affiliates or others who are not parties to the Agreement unless Seller consents in writing.

18. ASSIGNMENT - Buyer shall not assign or delegate any of its duties or obligations under this Agreement without the prior written consent of Seller, which consent may be withheld in Seller's sole discretion. Any sale or other transfer of stock or other securities of Buyer that would result in a change in control of Buyer shall be deemed an assignment under this Agreement. Any assignment under this Agreement shall not prohibit Seller from enforcing its rights against Buyer or the assignee, including, without limitation, Seller's rights to setoff and recoupment, all of which rights of Seller against Buyer or assignee are senior to any rights of such assignee. Seller may freely assign to any third party its rights and obligations under this Agreement without the consent of Buyer.

19. WAIVER - The failure of Seller to enforce any right or remedy provided in the Agreement or by law on a particular occasion will not be deemed to be a waiver of the right or remedy on a subsequent occasion or a waiver of any other right or remedy.

20. SEVERABILITY - A finding that any provision of this Agreement is invalid or unenforceable will not affect the validity or enforceability of any other provision of the Agreement.

21. NOTICES - Any notice or other communication required or permitted in the Agreement or by law must be in writing and will become effective on the date of actual receipt if the date of actual receipt is a business day or on the next business day if the actual receipt is not a business day. Notice must be communicated to:

Presidium USA, Inc.  
Attn: Legal Compliance  
874 Walker Road, Suite C  
Dover, DE 19904

22. GOVERNING LAW; JURISDICTION; VENUE – The Agreement shall be governed by the internal laws of the State of Delaware without regard to any applicable conflict of laws provisions. The United Nations Convention on Contracts for the International Sale of Goods is expressly excluded and will not apply to this Agreement.

Buyer consents to the exclusive jurisdiction of the federal court in the U.S. District Court for the District of Delaware or of the appropriate state court that serves Dover, Delaware, for any legal or equitable action or proceeding arising out of, or in connection with, this Agreement. Buyer specifically waives any and all objections to venue in such courts.

23. COMPLETE AGREEMENT – The Agreement constitutes the entire contract between the Buyer and Seller. This Agreement supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. No alteration or addition to this Agreement will bind the Seller unless an authorized individual for the Seller expressly assents in writing to such alteration or addition. Notwithstanding the foregoing, Buyer's obligations set forth in Section 14 shall be in addition to, and not to the exclusion of, any pre-existing non-disclosure agreement between the parties, which agreement(s) shall continue in full force and effect for the full term set forth in the agreement(s).