

TERMS & CONDITIONS OF SALE

In these Terms and Conditions of Sale (“**T&Cs**”) Baralan USA, Inc. is referred to as “**Baralan USA**” and the customer or person or entity purchasing Baralan USA’s products (the “**Goods**”) and/or services (the “**Services**”) from Baralan USA is referred to as the “**Buyer**”.

These T&Cs, together with Baralan USA’s Order Confirmation (as defined below), constitute the complete and exclusive agreement and understanding governing the sale of Goods and/or the provision of Services by Baralan USA to Buyer (the “**Agreement**”). The Agreement shall constitute the entire agreement between the parties and shall supersede and prevail over any and all prior agreements, understandings, “handshakes” and/or representations, whether written or oral, among the parties with respect to such matters, including any additional, inconsistent and/or conflicting terms and conditions set forth in any invoice, correspondence (including, without limitation, e-mails and/or text messages), acknowledgment, packaging and/or any other document(s) that may be exchanged, at any time, between the parties and/or their respective affiliates.

Specifically: (i) in the event of any additional, conflicting and/or other inconsistent terms among a Buyer’s purchase order, a Buyer’s documents and/or a Buyer’s correspondence and the Agreement, the Agreement shall prevail and control over any such additional, conflicting and/or inconsistent terms, and (ii) in the event of any additional, conflicting and/or other inconsistent terms among these T&Cs and Baralan USA’s Order Confirmation, Baralan USA’s Order Confirmation (rather than these T&Cs) shall prevail and control over any such additional, conflicting and/or inconsistent terms.

BY RECEIVING BARALAN USA’S ORDER CONFIRMATION AND/OR INSTRUCTING BARALAN USA TO SHIP GOODS AND/OR PERFORM SERVICES (EITHER BY PHONE, FACSIMILE, E-MAIL COMMUNICATION, TEXT AND/OR INSTANT MESSAGING AND/OR OTHER ELECTRONIC MEANS) AND/OR BY ACCEPTING DELIVERY OF ANY GOODS AND/OR THE PERFORMANCE OF SERVICES, BUYER UNEQUIVOCALLY AND IRREVOCABLY ACCEPTS, AGREES AND ACKNOWLEDGES THAT THE AGREEMENT SHALL GOVERN THE PURCHASE OF THE GOODS, THE PROVISION OF SERVICES AND THE RELATIONSHIP BETWEEN BARALAN USA AND BUYER.

Baralan USA reserves the right to reject any order for Goods and/or Services, in Baralan USA’s sole discretion. No order is accepted by Baralan USA until: (i) Baralan USA provides Buyer with a written Order Confirmation on Baralan USA’s letterhead via Baralan USA’s online platform (if any) or via Baralan USA’s e-mail system showing Baralan USA’s correct e-mail address and/or via Baralan USA’s fax, and (ii) if required by Baralan USA, Buyer signs and/or acknowledges Baralan USA’s Order Confirmation in acknowledgment, acceptance and agreement, and returns such Order Confirmation, duly signed by Buyer, to Baralan USA.

For the purposes of the Agreement, Baralan USA’s “*Order Confirmation*” shall mean Baralan USA’s confirmation of an order sent to a Buyer: (i) via Baralan USA’s e-mail system showing Baralan USA’s correct e-mail address and showing “ORDER CONFIRMATION” in either the subject line and/or body of such e-mail, (ii) via Baralan USA’s online platform (if any), and/or via Baralan USA’s fax showing Baralan USA’s correct fax number and showing “ORDER CONFIRMATION” in either the subject line and/or body of such fax.

1. **PRICES:** All prices for Goods and/or Services, including, but not limited to, those specified in Baralan USA’s price list or schedule, if any, website and/or written quotation, if any, are subject to change without notice. Unless otherwise provided in Baralan USA’s Order Confirmation, such prices shall be automatically adjusted to reflect Baralan USA’s prices for Goods and/or Services as in effect at the time of the requested shipment date, and each shipment will be invoiced at such adjusted prices. Unless otherwise provided in Baralan USA’s Order Confirmation, all prices are EX WORKS BARALAN USA WAREHOUSE(S) (which shall have the same meaning as in the Incoterms 2020 published by the International Chamber of Commerce), exclusive of any applicable taxes, duties, sales taxes, transportation and insurance costs or charges (collectively “**Charges**”), which Charges are to be borne exclusively by Buyer.

2. TERMS OF PAYMENT; RETENTION OF TITLE

2.1 Unless otherwise provided in Baralan USA’s Order Confirmation, the purchase price for all orders shall be paid in full in advance of shipment. In the event that Baralan USA agrees in writing, in Baralan USA’s Order Confirmation, that the purchase price shall not be paid in full in advance of shipment and shall be paid within a certain term (e.g., within 30 days) and/or in installments, then: (i) Buyer shall make payments in accordance with Baralan USA’s instructions, and (ii) in addition to all other remedies available to Baralan USA either at law or in equity, Baralan USA shall retain title to the Goods as described in this Section 2.

If any payment(s) owed to Baralan USA is not paid when due, it shall accrue interest at the rate of the lesser of: (i) 15% per annum, or (ii) the maximum amount permitted by applicable law, from the date on which such past due amount is due until the past due amount is paid in full. Buyer shall not be entitled to claim any set-off against

Baralan USA. Should Buyer’s financial condition become unsatisfactory to Baralan USA, cash payments or security (e.g., a letter of credit, and/or personal and/or corporate guaranty) satisfactory to Baralan USA may be required by Baralan USA for future deliveries or purchases and for the Goods and/or Services theretofore delivered and/or performed. If such cash payment or security is not provided, in addition to Baralan USA’s other rights and remedies, Baralan USA may discontinue deliveries and/or performance of Services. Baralan USA also reserves the right to cancel, reject and/or refuse to process and/or complete Buyer’s future purchase order(s). Unless otherwise provided in Baralan USA’s Order Confirmation, all payments must be made in U.S. currency.

2.2 Baralan USA reserves a security interest in the Goods sold and delivered by Baralan USA to Buyer to secure Buyer’s payment of the purchase price and any other charges owed by Buyer. Buyer agrees that Baralan USA may (but is not obligated to) take such action(s) as Baralan USA deems advisable to evidence and perfect such interest in the Goods and that Buyer shall cooperate with Baralan USA in the taking of such actions including, without limitation, the signing by Buyer of financing statements. In the event Buyer fails to make any payment(s) when due, Baralan USA shall have the right, in addition to all other remedies available to Baralan USA either at law or in equity, to either terminate the Agreement immediately, without notice, or to suspend further performance under the Agreement. Baralan USA shall also be entitled (but is not obligated to) enter Buyer’s premises, without prior notice, to repossess any unpaid Goods. In the event that Buyer becomes insolvent after the Goods have been delivered, but are not yet paid for, Baralan USA shall have the right to reclaim the goods from Buyer. Buyer shall be liable for all expenses, including reasonable attorneys’ fees, relating to the collection of past due amounts and repossession of the Goods.

2.3 Without prejudice to, and supplementing the provisions of Sections 2.1 and 2.2 above, legal and beneficial title to the Goods shall remain with Baralan USA until Baralan USA shall have received full payment in cleared funds of all its claims against Buyer. Notwithstanding the foregoing, all risk of damage, loss or destruction of the Goods shall pass to Buyer upon delivery of the Goods in accordance with Section 3 below.

Buyer, acting as bailee, shall keep any unpaid Goods free from any adverse lien, security interest or encumbrance and shall not store or use any unpaid Goods in violation of any statute or ordinance.

Unless and until title to the Goods passes to the Buyer as set forth in the Agreement:

- a. In the event that Buyer fails to make any payment(s) when due, Baralan USA may at any time, in Baralan USA’s discretion, inspect, move, retake possession of, sell, dispose of or otherwise deal with the Goods;
- b. In the event that Buyer fails to make any payment(s) when due, Baralan USA, its agents and other authorized representatives may at any time and without notice enter any premises at which the Goods are situated or kept or at which Baralan USA believes the Goods are situated or kept for the purpose of exercising its rights;
- c. In the event that Buyer fails to make any payment(s) when due, Buyer shall procure and provide Baralan USA, on demand, with all such access, facilities, resources and assistance as Baralan USA may require in order to exercise its rights pursuant to this Section 2 and, at the request of Baralan USA, Buyer shall, at its own cost, deliver the Goods to Baralan USA or its nominee at such place or places as Baralan USA shall specify;
- d. In the event that the purchase price shall not be paid in full in advance of shipment and shall be paid within a certain term (e.g., within 30 days) and/or in installments, then Buyer, shall at all times maintain adequate insurance insuring the Goods for their full replacement value with a reputable insurer, and shall immediately, upon demand by Baralan USA, provide Baralan USA with a copy of the relevant certificate of insurance;
- e. In the event that the purchase price shall not be paid in full in advance of shipment and shall be paid within a certain term (e.g., within 30 days) and/or in installments, Buyer shall not sell or otherwise dispose of, pledge, charge, encumber or create any security or any indebtedness over or in respect of any unpaid portion of the Goods;
- f. Buyer shall store the Goods in a way which allows the Goods to be readily located, identified and differentiated from goods of, and/or supplied to Buyer by, parties other than Baralan USA. Buyer shall not remove or make unreadable any mark placed on the Goods or the packaging of Goods by Baralan USA and shall ensure that the Goods are at all times marked as the property of Baralan USA or stored in such a way as to make it obvious that the Goods are the property of Baralan USA; and
- g. In the event that the purchase price shall not be paid in full in advance of shipment and shall be paid within a certain term (e.g., within 30 days) and/or

in installments, Buyer shall not affix, attach or incorporate the Goods to or into any land, buildings, structure or premises or into any goods or products or use the Goods to manufacture or produce any other goods or products.

2.4 In the event that the purchase price shall not be paid in full in advance of shipment and shall be paid within a certain term (e.g., within 30 days) and/or in installments then, in addition to all other remedies available to Baralan USA either at law or in equity, Baralan USA and/or its affiliates shall have the right to file UCC-1 financing statements to secure the payment of the purchase price.

2.5 In the event Buyer fails to fulfill its payment obligations, in addition to all other remedies available to Baralan USA and/or its affiliates, either at law or in equity, Baralan USA shall have the right to sell any and all Goods, including Goods bearing Buyer's trademark(s), logo(s), copyright(s) or other intellectual property, FREE AND CLEAR of any and all claims, liens, encumbrances or other interests of Buyer, its affiliates, customers and/or their respective successors and/or assigns. In the event Buyer fails to fulfill its payment obligations, Buyer shall: (i) release Baralan USA, its principals, directors, officers, agents, employees, affiliates, representatives and/or their respective successors and/or assigns from any and all claims in connection with any loss, damage, act, claim, suit, action and/or proceeding which may arise out of or in connection with Baralan USA's and/or its affiliates' selling the Goods to any third parties following Buyer's failure to fulfill its payment obligations, and (ii) indemnify, defend and hold Baralan USA, its principals, directors, officers, agents, employees, affiliates, representatives and/or their successors and/or assigns harmless from any and all losses, claims, damages, judgments, expense or other cost (including reasonable attorneys' fees) incurred by any of them in connection with any loss, damage, act, claim, suit, action and/or proceeding which may arise out of or in connection with Baralan USA's and/or its affiliates' selling the Goods to any third parties following Buyer's failure to fulfill its payment obligations. The provisions of this paragraph shall survive any expiration or termination of the Agreement.

3. **SHIPMENT AND DELIVERY:** Unless otherwise expressly agreed in writing by Baralan USA, shipments are made EX WORKS BARALAN USA WAREHOUSE(S) (INCOTERMS 2020). The risk of loss or damage and responsibility shall pass from Baralan USA to Buyer upon delivery of the Goods to the carrier. The carrier shall thereafter be deemed to be the agent of Buyer and the terms of payment for the Goods shall not be affected by damage to or destruction of the Goods sold. Upon receipt of payment in full by Baralan USA, title shall also pass to Buyer, subject to any interest of Baralan USA reserved to secure Buyer's payment or performance. Any claims for shortages or damages suffered in transit are the responsibility of Buyer and shall be submitted by Buyer directly to the carrier. Shortages or damages must be acknowledged and signed for at the time of delivery. While Baralan USA will use all reasonable commercial efforts to maintain the delivery date(s) acknowledged or quoted by Baralan USA, all shipping dates are approximate and not guaranteed. Neither Baralan USA nor its affiliates shall be liable for any loss or damage, including loss of income and/or profits, special, incidental, or consequential damages, resulting from Baralan USA's and/or its affiliates' delayed performance in shipment and delivery of the Goods and/or performance of Services. Baralan USA reserves the right to make partial shipments. Buyer shall accept and pay for partial deliveries and/or performance of Services in accordance with the prices and terms of Buyer's Agreement with Baralan USA. Baralan USA, at its option, shall not be bound to tender delivery of any Goods and/or perform any Services for which Buyer has not provided accurate shipping instructions. If the shipment of the Goods and/or performance of Services is/are postponed or delayed by Buyer for any reason, including but not limited to, Buyer providing Baralan USA with inaccurate shipping instructions, then Buyer agrees to reimburse and indemnify Baralan USA for any and all transport and/or storage costs and other additional and incidental expenses resulting therefrom.

4. **LIMITED WARRANTY: INSPECTION:** Subject to the limitations set forth in Section 5 below, Baralan USA warrants that the Goods shall be in compliance with inspections performed under Military Standard 105 E (MIL-STD-105 E). Baralan USA's liability for any breach of this limited warranty shall be limited to, at Baralan USA's option, the repair or replacement of any part or parts which are determined to be defective in accordance with MIL-STD-105 E inspections.

This limited warranty does not extend to any defects, failures, losses or damages due to misuse or improper use or operation, including but not limited to, any operation beyond rated capacity, use of the Goods not in compliance with product specifications, service manuals and/or instructions, and/or use of the Goods by untrained or unqualified persons; substitution of parts or other alteration or modification carried out without Baralan USA's prior written consent; repairs carried out by Buyer or third parties which in Baralan USA's judgment adversely affect the Goods; erosion; corrosion; accident; abuse; neglect; normal wear and tear; negligence; or faulty or improper installation, maintenance or application of the Goods. This limited warranty also does not apply to defects arising out of material provided, or out of a design stipulated by Buyer. To the extent that Buyer or its agents have supplied specifications, information, representation of operating conditions or other data to Baralan USA in the selection or design of the Goods and the preparation of Baralan USA's quotation, and in the event that actual operating conditions or other conditions differ from those represented by Buyer, any warranties or other provisions contained herein which are affected by such conditions shall be null and void.

BARALAN DOES NOT GUARANTEE THE GOODS' COMPATIBILITY WITH ANY FILLER PRODUCT CHOSEN AND/OR OTHERWISE INTENDED TO BE USED BY BUYER IN CONNECTION WITH THE GOODS, IT BEING UNDERSTOOD AND AGREED THAT, NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THE AGREEMENT OR ELSEWHERE, BUYER SHALL BE SOLELY RESPONSIBLE TO ENSURE THAT ANY GOODS AND/OR COMPONENTS DESIGNED, MANUFACTURED AND/OR SUPPLIED BY BARALAN USA IS COMPATIBLE WITH ANY FILLER PRODUCT CHOSEN AND/OR OTHERWISE INTENDED TO BE USED BY BUYER IN CONNECTION WITH THE GOODS

EXCEPT AS SET FORTH ABOVE, BARALAN USA MAKES NO OTHER WARRANTIES CONCERNING THE GOODS AND/OR SERVICES WHATSOEVER. THE LIMITED WARRANTY (MIL-STD-105 E) DESCRIBED IN THIS SECTION 4 IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY BARALAN USA AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING WITHOUT LIMITATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WHETHER OR NOT THE PURPOSE OR USE HAS BEEN DISCLOSED TO BARALAN USA BY BUYER, AND WHETHER OR NOT THE GOODS ARE SPECIFICALLY DESIGNED AND/OR MANUFACTURED FOR BUYER'S (OR ANY SUBSEQUENT TRANSFEREE'S, AS DEFINED BELOW) USE OR PURPOSE. OTHER THAN EXPRESSLY PROVIDED IN THIS SECTION 4, BARALAN USA MAKES NO WARRANTY OR REPRESENTATION THAT THE GOODS AND/OR SERVICES COMPLY WITH ANY REQUIREMENTS OF FEDERAL, STATE OR LOCAL LAWS, REGULATIONS, RULES AND/OR INDUSTRIAL CODES.

BUYER HEREBY ACKNOWLEDGES THAT, IN BUYING THE GOODS AND/OR SERVICES FROM **BARALAN USA**, BUYER IS NOT RELYING UPON ANY REPRESENTATION OR WARRANTY OF **BARALAN USA AND/OR ANY AFFILIATES THEREOF**, OTHER THAN AS EXPRESSLY SET FORTH IN THE AGREEMENT.

OTHER THAN REPRESENTATIONS OR WARRANTIES MADE BY BARALAN USA AND/OR ITS AFFILIATES IN THEIR LITERATURE AND/OR PACKAGING, NO REPRESENTATION OR WARRANTY OF ANY KIND REGARDING THE GOODS AND/OR SERVICES MADE BY ANY PERSON OR ENTITY INCLUDING, BUT NOT LIMITED TO, INDEPENDENT DISTRIBUTORS AND SALES REPRESENTATIVES, SHALL BE BINDING UPON BARALAN USA.

IF YOU ARE A CONSUMER, AND SHOULD ANY APPLICABLE LAW PROHIBIT THE DISCLAIMER OF IMPLIED WARRANTIES SET FORTH ABOVE, THEN ANY IMPLIED WARRANTIES FOUND TO EXIST SHALL BE STRICTLY LIMITED TO THE DURATION OF THE LIMITED WARRANTY SET FORTH ABOVE.

Buyer must notify Baralan USA of any defects in the Goods and/or Services in writing, via email and certified mail to Baralan USA, Inc., 120-19 89th Ave, Richmond Hill, New York, NY 11418 within ten (10) calendar days of Buyer's receipt of the Goods. The writing shall contain sufficient detail to permit identification of the defect, including, without limitation, dated photographs and sample of defective Goods and/or Services. Buyer's failure to notify Baralan USA of any defects within ten (10) calendar days shall be deemed a waiver of Buyer's right to inspect and reject any nonconforming Goods.

Upon receiving Buyer's notice of defect, Baralan USA shall, at its option, repair or replace the Goods EX WORKS BARALAN USA WAREHOUSE (INCOTERMS 2020). Failure by Buyer to give such written notice of defect within the applicable time period (i.e., 10 calendar days) shall be conclusively deemed to be an absolute and unconditional waiver of Buyer's claim for such defects, and the warranty shall be conclusively deemed to have expired.

Notwithstanding the foregoing, Buyer shall be deemed to have accepted the Goods and absolutely and unconditionally waived its rights to claim for any defects: (i) upon use, installation or attempted installation of the Goods, or (ii) if the Goods are otherwise used or altered in any way.

Buyer assumes all other responsibility for any loss, damage, or injury to persons or property arising out of, connected with, or resulting from the use of Goods, either alone or in combination with other products/components. Buyer's responsibility hereunder includes, but is not limited to, any claims, losses or damages that arise as a result of Buyer's failure to comply with the safety provisions of Section 10 below.

This Section 4 also applies in the event that any entity or person (other than Buyer) buys, acquires or uses the Goods, including, but not limited to, any entity or person who obtains the Goods from Buyer (any of them a "**Subsequent Transferee**"). Buyer hereby covenants and agrees to provide such Subsequent Transferee with conspicuous written notice of the provisions set forth in Sections 4 and 5 of these T&Cs. Buyer, furthermore, covenants and agrees that it shall not make any representation or warranty whatsoever regarding the Goods and/or Services to any

third party (either on behalf of Baralan USA or on its own account), other than the limited warranty of Baralan USA set forth in this Section 4. **BUYER HEREBY COVENANTS AND AGREES THAT, SHOULD BUYER FAIL TO COMPLY WITH THE PROVISIONS OF THIS LAST PARAGRAPH OF SECTION 4, BUYER SHALL DEFEND, INDEMNIFY, AND HOLD BARALAN USA, ITS SHAREHOLDERS, DIRECTORS, OFFICERS, EMPLOYEES, AFFILIATES, AGENTS, SUCCESSORS AND ASSIGNS HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, EXPENSE (INCLUDING REASONABLE ATTORNEYS' FEES), OR CLAIMS FOR INJURY OR DAMAGES (INCLUDING, BUT NOT LIMITED TO GENERAL, CONSEQUENTIAL, INCIDENTAL AND PUNITIVE DAMAGES) ARISING OUT OF OR IN CONNECTION WITH BUYER'S OR BUYER'S EMPLOYEES', AGENTS', REPRESENTATIVES' AND/OR INDEPENDENT CONTRACTORS' BREACH OF THE AGREEMENT.**

5. LIMITATION OF REMEDY AND LIABILITY: THE SOLE AND EXCLUSIVE REMEDY FOR BREACH OF ANY WARRANTY HEREUNDER SHALL BE LIMITED TO REPAIR OR REPLACEMENT OF PARTS, IN ACCORDANCE WITH SECTION 4 ABOVE.

UNDER NO CIRCUMSTANCES SHALL BARALAN USA AND/OR ITS AFFILIATES BE LIABLE FOR DAMAGES CAUSED BY DELAY IN PERFORMANCE AND IN NO EVENT, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, INFRINGEMENT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE), SHALL BARALAN USA'S AND/OR ITS AFFILIATES' LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXCEED THE PURCHASE PRICE (AND ADDITIONAL COST OF SHIPMENT, INSURANCE, ETC.) PAID BY BUYER FOR THE SPECIFIC GOODS AND/OR SERVICES PROVIDED BY BARALAN USA GIVING RISE TO THE CLAIM OR CAUSE OF ACTION. BUYER AND ANY SUBSEQUENT TRANSFEREE AGREES THAT IN NO EVENT SHALL BARALAN USA'S AND/OR ITS AFFILIATES' LIABILITY TO BUYER AND/OR ANY SUBSEQUENT TRANSFEREES EXTEND TO INCLUDE INCIDENTAL, CONSEQUENTIAL AND/OR PUNITIVE DAMAGES.

The term "consequential damages" shall include, but not be limited to, loss of anticipated profits, loss of business opportunity, business interruption, loss of use or revenue, cost of purchasing substitute goods from a different supplier, professional fees, cost of capital or loss or damage to property or equipment.

It is expressly understood that any technical advice furnished by Baralan USA and/or its affiliates with respect to the use of the Goods is given without charge, and neither Baralan USA nor any of its affiliates assumes any obligation or liability whatsoever for the advice given, or results obtained, all such advice being given and accepted at Buyer's own risk.

6. EXCUSE OF PERFORMANCE: Neither Baralan USA nor its affiliates shall be liable for delays in performance or for non-performance due to, without limitation, acts of God; acts of Buyer or Buyer's employees, representatives, agents and/or independent contractors; epidemics; pandemics; mandatory closures or "pause"; war; fire; flood; weather; sabotage; strikes or labor disputes; civil disturbances or riots; governmental requests, restrictions, allocations, laws, regulations, orders or actions; unavailability of or delays in transportation; default of suppliers; material fluctuations in the exchange rate between currencies; or unforeseen circumstances or any events or causes beyond Baralan USA's and/or its affiliates' reasonable control. Deliveries or other performance may be suspended for an appropriate period of time or canceled by Baralan USA upon notice to Buyer in the event of any of the foregoing. If Baralan USA determines that its ability to supply the total demand for the Goods and/or Services, or to obtain material used directly or indirectly in the manufacture of the Goods and/or performance of Services, is hindered, limited or made impracticable due to causes set forth in the preceding paragraph, Baralan USA may allocate its available supply of Services, Goods and/or such material (without obligation to acquire other supplies of any such Goods or material) among its purchasers on such basis as Baralan USA determines to be equitable without liability for any failure of performance which may result therefrom.

7. CANCELLATION: Buyer may cancel orders only upon reasonable advance written notice and upon payment to Baralan USA of Baralan USA's cancellation charges which include, among other things, all costs and expenses incurred, and to cover commitments made by Baralan USA and a reasonable profit thereon. Baralan USA's determination of such cancellation charges shall be conclusive. **PROVIDED, HOWEVER, THAT ANY CANCELLATION MUST BE MADE BEFORE THE GOODS HAVE BEEN SHIPPED.**

Without prejudice to the foregoing, in the event of "blanket orders", "call-off orders", "requirement contracts" et similia (each a "**Blanket Order**") - which allow multiple delivery dates over a period of time and/or otherwise require Baralan USA to supply as much of a Good and/or Service as is required by a Buyer upon such Buyer's request - if a Buyer then cancels or otherwise interrupts any such Blanket Order, then Buyer shall pay liquidated damages to Baralan USA in an amount equal to: (i) the full purchase price of any Goods and/or Services already manufactured and/or provided for, but not yet paid by, such Buyer in connection with any such Blanket Order, plus

(ii) storage and handling charges equal to \$10.00 per pallet per month, if the Goods are not picked up by Buyer EX WORKS BARALAN USA WAREHOUSE(S) (INCOTERMS 2020) within thirty (30) calendar days of Buyer's cancellation or interruption any Blanket Order.

Baralan USA may cancel or terminate all or part of the Agreement with Buyer immediately upon the happening of any of the following: Buyer's material delinquency of any of its obligations hereunder or with respect to any other order or transaction with Baralan USA; the insolvency of Buyer; the appointment of a trustee or equivalent, and/or a receiver under Title 11 U.S.C. (or equivalent), as amended (the "**Bankruptcy Code**"); the insolvency of Buyer and/or the commencement of a case under any chapter of the Bankruptcy Code or foreign equivalent, by or against Buyer; Buyer's suspension or termination of business or assignment for the benefit of creditors; or any event, whether or not similar to the foregoing, which in Baralan USA's good faith belief materially impairs the prospect of payment or performance by Buyer hereunder. Baralan USA's rights to cancel or terminate herein may be exercised by Baralan USA without liability.

8. CHANGES: Buyer may request changes or additions to the Goods and/or Services consistent with Baralan USA's specifications and criteria. In the event such changes or additions are accepted by Baralan USA in writing, Baralan USA may revise the price and dates of delivery accordingly. Baralan USA reserves the right to change designs and specifications for the Goods and/or Services without prior notice to Buyer, except with respect to Goods being made-to-order for Buyer.

9. PRODUCT LABELS, INFORMATION: Buyer acknowledges that it has received and is familiar with Baralan USA's and/or its affiliates' labeling and literature concerning the Goods and shall forward such information to its employees, agents, independent contractors and customers.

10. SAFETY PRECAUTIONS: Buyer shall require its employees, agents, representative and/or independent contractors to use all safety devices, guards and proper safe operating procedures as set forth in manuals and instruction sheets furnished by Baralan USA and/or its affiliates. Buyer shall not remove or modify any such device, guard or sign. It is the responsibility of Buyer to provide all the means that may be necessary to effectively protect all of its employees, agents, representative and/or independent contractors from serious bodily injury which otherwise may result from the method of particular use, operation, set-up or service of the equipment. It is the responsibility of Buyer to provide proper training to each employee, agent, representative and/or independent contractor using the equipment or to use only employees, agents, representatives and/or independent contractors that are sufficiently experienced in the use of such equipment. Buyer is also responsible for adequately safeguarding the equipment to conform to any and all federal, state and local government safety standards and industry safety standards, including the Occupational Safety and Health Act of 1970 (OSHA) or foreign equivalent. If Buyer fails to comply with the provisions of this paragraph or the applicable standards or regulations aforementioned, Buyer shall defend, indemnify and hold harmless and Baralan USA and its affiliates from and against any and all claims, losses or damages arising therefrom, as provided in Section 11 below.

11. INDEMNIFICATION: Buyer hereby covenants and agrees to defend, indemnify and hold harmless Baralan USA, its shareholders, principals, directors, officers, agents, employees, affiliates, successors, assigns and representatives (collectively, the "Indemnitees**") from and against, and pay or reimburse the Indemnitees for any and all claims, liabilities, obligations, losses, fines, costs, royalties, proceedings, deficiencies or damages (whether absolute, accrued, conditional or otherwise and whether or not resulting from third party claims), including out-of-pocket expenses and reasonable attorneys' and accountants' fees incurred in the investigation or defense of any of the same or in asserting any of their respective rights hereunder (collectively, "**Losses**"), resulting from or arising out of: (i) Buyer's breach of any provision or covenant set forth in the Agreement; (ii) Buyer's making of any representation to any third party regarding the Goods and/or Services other than the limited warranty set forth in Section 4 above; and/or (iii) any alleged infringement of any United States patent, trademark and/or any other intellectual property of Baralan USA and/or its affiliates. The provisions of this paragraph shall survive the acceptance and payment of the Goods and/or Services, and/or the expiration and/or termination of the Agreement.**

12. CONFIDENTIAL INFORMATION: Buyer shall treat all information furnished by Baralan USA and/or its affiliates to be confidential and proprietary, including, but not limited to pricing and volume data, manufacturing techniques, trade secrets and "know how", etc. Buyer shall use reasonable care, and in no event less care than it uses to safeguard and protect its own confidential information, to protect the information of Baralan USA and/or its affiliates and shall not use any such information for any purpose other than to discharge its obligations under the Agreement.

13. INTELLECTUAL PROPERTY; LICENSE TO USE BUYER'S IP; IP CERTIFICATIONS:

- a. Buyer shall defend, indemnify and hold harmless the Indemnitees from and against any and all claims, demands, lawsuits, liability and judgment for loss, costs, damages, fines, penalties and expenses of every kind and nature, threatened, incurred, arising out of or in connection with any alleged infringement of any trademark, copyright, trade dress, patent, or any other intellectual property or foreign equivalent, by any Goods supplied by Baralan USA and/or its affiliates hereunder and made specially for Buyer; provided that Baralan USA shall give prompt notice to Buyer of any such claim, etc., and an opportunity to settle or defend the same as Buyer may see fit; and provided further that Baralan USA shall render every reasonable assistance which Buyer may require of it in connection with such claim, etc. Baralan USA reserves the right to cancel any order, without liability with respect to any Goods, the manufacture, sale and use of which in the opinion of Baralan USA would infringe any such intellectual property.
- b. Buyer hereby acknowledges and agrees that Baralan USA shall have a revocable, royalty-free license to use, including the right to sublicense to Baralan USA's affiliates and/or vendors worldwide the use of, Buyer's trademarks, brands, logos, image, copyright, trade dress and any other intellectual property right(s) of Buyer that are necessary for Baralan USA, its affiliates and/or vendors worldwide to manufacture and deliver the Goods and/or provide the Services (collectively, the "**IP License**").
- c. Buyer further acknowledges and agrees that: (i) Baralan USA, its affiliates and/or vendors worldwide may require evidence and/or written confirmation of the IP License from Buyer in connection with, without limitation, regulatory compliance, governmental regulations and/or controls (e.g., on counterfeit products), customs clearance and/or other legal requirements, and (ii) Buyer shall promptly cooperate with Baralan USA, its affiliates and/or vendors worldwide and provide evidence of the IP License upon demand, it being understood and agreed that: (x) Buyer's delay in providing same may result in a delay in the delivery of Goods and/or Services, and (y) in the event that Buyer's failure to provide the IP License when requested results in a delay in the delivery of Goods and/or Services, Baralan USA shall not be liable for any cost, expense, damage and/or loss caused by such delay.
14. **STATUTORY COMPLIANCE:** Baralan USA continues to attempt to comply with all applicable laws, standards and specifications. However, neither Baralan USA nor its affiliates shall be responsible for compliance with any laws, standards or specifications applicable to the Goods, their delivery, use, handling, labeling, transportation or disposal, whether of general or particular application, in any jurisdiction.
15. **ASSIGNMENT:** Buyer shall not assign its rights or delegate its duties hereunder or any interest herein without the prior written consent of Baralan USA, and any such assignment, without such consent, shall be void.
16. **GENERAL PROVISIONS:** No change, modification, rescission, discharge, abandonment, or waiver of the Agreement shall be binding upon Baralan USA unless made in writing and signed on its behalf by a duly authorized representative of Baralan USA. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, or supplement the Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification or additional terms shall be applicable to the Agreement by Baralan USA's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy, and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Baralan USA in any quotation, acknowledgment or publication are subject to correction.
17. **SEVERABILITY:** If any provision of the Agreement shall be held invalid or unenforceable by competent authority, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of the Agreement shall not affect the other provisions hereof and the Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.
18. **GOVERNING LAW AND JURISDICTION:** The Agreement shall be governed by and construed in accordance with the laws of the State of New York without giving

effect to its conflict of laws principles. Except to the extent provided in Section 23 below, any legal action or proceeding with respect to the Agreement or any document related thereto shall be brought exclusively in the courts of the State of New York located in New York County or of the United States of America for the Southern District of New York, and, by execution and delivery of the Agreement, each of the Parties hereto hereby accepts for itself and in respect of its property generally and unconditionally, the exclusive jurisdiction of the aforesaid courts. Each of the Parties hereto hereby irrevocably waives any objection, including, without limitation, any objection to the laying of venue based on the grounds of forum *non conveniens*, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdictions. EACH PARTY TO THE AGREEMENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THE AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND, THEREFORE, EACH SUCH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THE AGREEMENT, OR THE BREACH, TERMINATION OR VALIDITY OF THE AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED BY THE AGREEMENT. EACH SUCH PARTY CERTIFIES THAT THEY HAVE NOT RELIED UPON ANY REPRESENTATION OR INDUCEMENT OF THE OTHER PARTY IN AGREEING TO THIS PROVISION AND THAT THEY FREELY, KNOWINGLY AND VOLUNTARILY WAIVE THEIR RIGHT TO A JURY TRIAL. **THE PARTIES HEREBY EXPRESSLY EXCLUDE THE APPLICATION OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS (CISG), THE UNIFORM LAW ON THE SALE OF GOODS AND THE UNIFORM LAW ON THE FORMATION OF CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

19. **U.S. EXPORT CONTROL REGULATIONS:** All Goods and/or Services sold to Buyer are subject to the export control laws of the United States and Buyer agrees not to re-sell or divert any Goods contrary to such laws.

20. **RETURNED GOODS:** Except as otherwise provided in Section 4 above with respect to warranty defects, no Goods may be returned to Baralan USA.

21. **NO THIRD-PARTY RIGHTS:** The Agreement creates no third-party rights between Baralan USA and/or any person other than Buyer, including but not limited to, any Subsequent Transferee. It is understood and agreed that, except for Baralan USA's parents and affiliates, the parties hereto do not intend that any third party be a beneficiary of the Agreement.

22. **NOTICES:** Any and all notices provided for in the Agreement shall be sent in writing by registered or certified mail (return receipt requested) or sent by courier, confirmed by receipt to the following address:

If to Baralan USA:

Baralan USA, Inc.
120-19 89th Ave.
Richmond Hill, NY 11418

If to Buyer: the address provided by Buyer to Baralan USA in any purchase order.

Such notice shall be deemed given upon confirmed receipt at the address of the party stated above, or at any other address specified by such party to the other party in writing, except that if deliver is refused or cannot be made for any reason, then such notice shall be deemed given on the third day after it is sent.

23. **INJUNCTIVE RELIEF:** Buyer acknowledges and agrees that breach by Buyer of the Agreement could cause irreparable harm to Baralan USA and/or its affiliates, for which monetary damages may be difficult to ascertain or may be an inadequate remedy. Buyer, therefore, agrees that Baralan USA and/or its affiliates shall have the right, in addition to any other rights or remedies available to it at law or in equity, to apply for injunctive relief in any court of competent jurisdiction for any breach or threatened breach of the Agreement without posting bond, or by posting bond at the lowest amount required by law.

24. **BINDING ON SUCCESSORS AND ASSIGNS:** The Agreement shall be binding upon and inure to the benefit of the permitted successors and assigns of each of Baralan USA and Buyer.