



## RADIAC TERMS AND CONDITIONS OF SALE

**1. Agreement.** These Terms and Conditions of Sale are referred to herein as the "Terms." The Terms along with any other contract document, including, without limitation, any purchase orders, any purchase order revisions, schedules, exhibits, or other documents incorporated by reference by such document shall be deemed to incorporate by reference these Terms (the "Agreement"). Unless both parties have signed a written agreement that has not expired or been terminated, regarding the sale and purchase of product(s) (or any incidental services related to the product(s)) of Radiac Abrasives, Inc. (hereinafter "Radiac") that are the subject of this Agreement (the "Product(s)"), then this Agreement supersedes and replaces all prior agreements, representations, and understandings, whether oral or written, and contains the entire agreement between the parties regarding the purchase and sale of the Product(s). If any term, condition, or other provision contained in a schedule, exhibit, or other document expressly incorporated herein by reference is in any way inconsistent with, or adds additional terms to, these Terms, these Terms shall control. Radiac's offer to sell the Product(s) to the purchaser of the Product(s) (the "Buyer") is expressly made conditioned upon Buyer's assent to the Agreement.

The first occurring expression of acceptance of this Agreement by Buyer, including Buyer's (i) written acceptance, (ii) payment of the Product(s), and/or (iii) conduct that indicates Buyer's acceptance, shall constitute an acceptance of Radiac's offer. A signed acceptance of this Agreement is not required and Buyer specifically waives any such requirement and any defense to the validity and enforceability of this Agreement arising from the electronic transmission of this Agreement to Buyer and Buyer's acceptance in accordance with this paragraph 1. If Buyer objects to this Agreement, Buyer's objections are deemed waived if Buyer directs the commencement of the Product(s), upon the delivery of the Products, or Buyer subsequently accepts the Products, without an express written modification made by Radiac. Any acceptance of this Agreement is limited to and conditional upon Buyer's acceptance of the Terms. Any proposal for additional or different terms or any attempt by Buyer to vary any of the Terms, whether in Buyer's request for quotation, purchase order form, correspondence or otherwise, shall be deemed material and is hereby objected to and rejected by Radiac, but any such proposal or attempted variance shall not operate as a rejection of this Agreement if Buyer accepts Radiac's offer by directing the commencement of the work, delivery of the Product(s) or acceptance of the Product(s), in which case this Agreement shall be deemed accepted by Radiac without any additional or different terms or variations whatsoever. This Agreement does not constitute an acceptance of any prior request or offer by Buyer, and any reference in this Agreement to any such prior request or offer is solely to incorporate the description or specifications of the Product(s) in such request or offer, but only to the extent that such description or specifications are not directly in conflict with the description and specifications in this Agreement. If this Agreement is found to be an acceptance of any prior request or offer by Buyer, such acceptance shall be limited to the Terms. Any additional or different terms in such prior offer or proposal shall be deemed material and are hereby objected to and rejected by Radiac.

**2. Placing Orders.** Any offer or quotation by Radiac is subject to change, even if in response to a request for quotation by Buyer, until accepted by Radiac is covered by the terms of the Agreement. An order for Product(s) from Buyer is only valid and effective, unless, and until, accepted in writing by Radiac

from its order management department in Oswego, Illinois. If an order is rejected by Radiac, any deposit received by Radiac from Buyer shall be returned to Buyer.

**3. Shipment.** Unless otherwise stated herein in writing, the Product(s), or any related items shipped with the Product(s) and are the subject of this Agreement, is sold EXW Radiac's Dock (Incoterms 2020). If Buyer requires special packaging for the Product(s), then Buyer must specify such requirements prior to Radiac's acceptance of the order for Product(s). Any such special packaging for the Product(s) shall be at Buyer's cost. If Radiac assumes responsibility for payment of freight, Radiac may select the carrier and routing and shall invoice Buyer for the cost of the freight.

**4. Title Transfer/Risk of Loss.** Unless otherwise stated herein in writing and notwithstanding the applicable Incoterms to the contrary, title and risk of loss of the Product(s) shall pass to Buyer at Radiac's Dock.

**5. Price.** All prices for the Product(s) herein stated, previously quoted, or agreed upon at the time of the acceptance of an order are subject to adjustment to Radiac's prices in effect at time of shipment, including, without limitation, increases in raw material costs, freight (to the extent provided by Radiac), or any other cost incurred by Radiac in the sourcing, production, or shipment of the Product(s). Buyer agrees to pay such increased prices for the Product(s) as though part of the Agreement at the time the order is accepted by Radiac.

**6. Payment/Credit.** Unless stated otherwise in the Agreement, all payment shall be due within thirty (30) days of the date of each invoice, without discount. Any cash discount provided on the sale of the Product(s) will only apply to the price of the Product(s) and not to any other items, including without limitation, taxes, storage, freight, or other similar items. All payments not received on the due date set forth herein, shall be charged an additional one and one-half percent (1 1/2 %) interest rate per month or the maximum amount allowed under applicable law. In addition, any collection costs incurred in collecting past-due invoices, including attorney's fees, shall be the responsibility of Buyer. If Buyer fails to pay Radiac in accordance with the payment terms set forth herein, or if, in the opinion of Radiac, Buyer's financial condition, or Buyer's ability to perform under this Agreement, is impaired or unsatisfactory, then Radiac, at its option and without prejudice to its other rights and remedies, may, without further notice to Buyer: (A) suspend performance, including any pending shipments, until all indebtedness is paid in full; and/or (B) place Buyer's shipments on a cash-in-advance basis until arrangements are made for security or other assurances, satisfactory to Radiac.

**7. Taxes.** Any taxes that Radiac may be required to pay or collect, under applicable law, upon, or with respect to the sale, purchase, delivery, storage, use or transportation or any Product(s), or related item covered by this Agreement, including taxes upon or measured by the receipts of the sale thereof, shall be invoiced to Buyer, who shall promptly pay the amount thereof in accordance with the terms of this Agreement.

**8. Delivery.** Radiac shall use commercially reasonable efforts to ship any Product(s) covered by this Agreement on or before the shipping date set forth in the Agreement (or as subsequently agreed to in writing between authorized



## RADIAC TERMS AND CONDITIONS OF SALE

personnel of the parties). NOTWITHSTANDING THE FOREGOING, RADIAC SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE OR COSTS (INCLUDING LIQUIDATED DAMAGES) OF BUYER RESULTING FROM ANY DELAY OR FAILURE TO MAKE DELIVERY OF ANY PRODUCT(S) FOR ANY REASON, INCLUDING DUE TO ACTS OF GOD, WAR, ACTS OF TERRORISM, RIOT, CIVIL COMMOTION, SABOTAGE, GOVERNMENTAL ACTION, PANDEMIC, EMBARGO, STRIKES, LABOR DISPUTES, FLOOD, TRANSPORTATION SHORTAGES OR DELAY, MATERIAL SHORTAGES, LABOR SHORTAGES, OR OTHER CAUSES BEYOND THE REASONABLE CONTROL OF RADIAC. If the Product(s) are delayed through no fault of Radiac (including because of the actions of Buyer), Buyer agrees to accept title to, and make payment for, any such Product(s) as if shipped by Radiac on the date the Product(s) due under this Agreement. Buyer further agrees to pay for all storage, handling and other costs related to such delay caused through no fault of Radiac. All Product(s) shall be furnished subject to customary manufacturing and commercial variations and practices of Radiac. Radiac reserves the right to ship amounts less than, over than, the amount or Product(s) ordered in accordance with Radiac's customary practices.

**9. Cancellation/Termination>Returns** Orders for non-custom Product(s) may be cancelled, terminated, or returned to Radiac by Buyer for a credit against future purchases, less a twenty-five percent (25%) surcharge for re-stocking. No returns will be accepted thirty (30) days after shipment of the Product(s). Any orders for custom Product(s) may not be cancelled, terminated, or returned under any circumstances. From the moment Buyer accepts the order for the Product(s), custom Product(s) must be accepted by Buyer, even if the Product(s) have not yet been manufactured or delivered to the Buyer.

**10. Allocation.** If sufficient Product(s) are not available for any reason, Radiac may allocate Product(s) for its (and its affiliates) needs and among its customers. Radiac will make reasonable efforts to obtain additional Product(s) from other sources for delivery to Buyer, provided Buyer agrees to pay all additional costs associated with such Product(s). Allocation of Product(s) pursuant to this Section shall completely satisfy and discharge Radiac's supply obligations.

**11. Warranty/Disclaimers.** Radiac warrants that the Product(s) shall be free from defects in material or workmanship for a period of six (6) months from the date of purchase. Radiac's sole obligation with respect to a breach of this warranty shall be to be to repair or replace the Product(s), and if the foregoing are not commercially feasible, return the price paid for the Product(s) less any depreciation. The warranty does not apply to: (i) reasonable wear and tear of the Product(s); (ii) use of Product(s) with other products or components to the extent prohibited by, or inconsistent with, Radiac's Product documentation or Technical Advice (as defined below); (iv) defects caused by persons other than the Radiac, including improper installation of the Product(s); or (v) misuse, abuse, vandalism, neglect, or force majeure events. RADIAC MAKES NOT OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY PARTICULAR PROPERTY RIGHT OF ANY THIRD-PARTY, OR WARRANTIES AS TO QUALITY OR CORRESPONDENCE WITH PRIOR DESCRIPTION OR SAMPLE, AND BUYER ASSUMES ALL

RISK AND LIABILITY WHATSOEVER RESULTING FROM THE USE OF SUCH PRODUCT(S), WHETHER ALONE OR IN COMBINATION WITH OTHER SERVICES. Radiac's sole responsibility and obligation under this warranty shall become effective only upon full and final payment for the Product(s) furnished by Radiac (late payment shall not extend the warranty period).

**12. Technical Advice Disclaimer.** If Radiac furnishes technical or other information or advice to Buyer either through its website, in-person, or other method, whether at Buyer's request or payment (the "Technical Advice"), such Technical Advice is not a substitute for the sound professional judgement (including, without limitation, engineering advice) of the use, and Radiac cannot anticipate all conditions or variables for any of Buyer's uses of the Product(s). AS A RESULT, RADIAC DISCLAIMS ANY LIABILITY RELATED TO THE TECHNICAL ADVICE AND BUYER ASSUMES ALL RISKS RELATED, SUCH TECHNICAL ADVICE. Buyer should always verify any Technical Advice with a qualified professional. Any reference to other third-party products in connection with the Technical Advice is neither a recommendation, nor an endorsement of any such third-party products and does not imply that such third-party products are compatible with the Product(s).

**13. Indemnity.** Subject to the Limitation of Liability set forth in this Agreement, each party hereto, shall defend, indemnify, and hold harmless the other party from and against all actual or alleged liability, loss, or damage to third parties resulting from or arising out of the indemnifying party's negligent handling, installation or use of the Product(s). The Product(s) shall be deemed to be in the other party's possession or control upon transfer of risk of loss.

**14. Limitation of Liability.** IN NO EVENT SHALL RADIAC BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE LOSS OR DAMAGE, OR CONSEQUENTIAL LOSS, INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF BUSINESS AND BUSINESS INTERRUPTION, OR ANTICIPATED PROFIT, REGARDLESS OF WHETHER SUCH DAMAGES ARISE FROM A TORT (INCLUDING NEGLIGENCE), CONTRACT STRICT LIABILITY OR OTHER THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE OR IF SUCH LOSS OR DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. RADIAC'S TOTAL LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CAUSE OF ACTIONS ASSOCIATED WITH THIS AGREEMENT, WHETHER BASED IN TORT, CONTRACT, STRICT LIABILITY OR ANY OTHER LEGAL THEORY IS EXPRESSLY LIMITED TO THE LOWER OF EITHER: (A) THE REPAIR OR REPLACEMENT OF THE PRODUCT(S) THAT DO NOT MEET THE WARRANTY HEREIN WITHOUT COST TO BUYER, OR (B) THE PURCHASE PRICE ACTUALLY PAID FOR THE PRODUCT(S) THAT GAVE RISE TO THE LIABILITY.

**15. Compliance with Laws.** Each party agrees to comply with all applicable laws, rules, and regulations ("Laws"), from whatever authority they may emanate, provided they are not in conflict with U.S. Law. Moreover, each party agrees to comply with all applicable U.S. Laws, including but not limited to those Laws administered or enforced by the following U.S. departments and agencies: EPA, OSHA, Commerce Department, State Department and Treasury Department. Furthermore, Buyer shall comply with all applicable export



## RADIAC TERMS AND CONDITIONS OF SALE

control and trade embargo Laws (including but not limited to the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, the regulations administered by the Department of the Treasury's Office of Foreign Assets Control and the U.S. Foreign Trade Statistics Regulations), and shall not resell, export, re-export, distribute, transfer or dispose of the Product(s), directly or indirectly, without first obtaining all necessary written consents, permits, authorizations, and licenses and completing such formalities as may be required by any such Laws. Failure by Buyer to comply with such Laws shall constitute a material breach of this Agreement. Buyer agrees to impose this same compliance requirement in its contracts with third parties pertaining to the Product(s). In the event this Agreement, or any material obligation or action herein imposed upon either party hereto, shall at any time conflict with any such Law, such that a material change to the terms of this Agreement would be required to restore compliance with Law, then the party affected by such change shall have the right to terminate this Agreement by notice to the other party. Such termination shall not relieve Buyer of its obligation to pay in full any unpaid balances due hereunder; Radiac shall be relieved of any obligation to make additional deliveries hereunder as of the date of such termination.

**16. Governing Law/Waiver of Jury Trial/Consent to Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (regardless of the laws that might otherwise govern under applicable Illinois conflicts of laws principles) as to all matters, including matters of validity, construction, effect, performance, and remedies. Each party hereto irrevocably consents to the jurisdiction of the courts of the State of Illinois and of any federal courts located in Kendall County, Illinois in connection with any action, suit or other proceeding arising out of or relating to this Agreement or any action taken or omitted hereunder and waives any claim of forum non convenient and any objections as to laying of venue. Each party further waives personal service of any summons, complaint or other process and agrees that service thereof may be made by certified or registered mail directed to such party at such party's address for purposes of notices hereunder. Each party hereby waives its right to a trial by jury of any claim arising under or in connection with this Agreement.

**17. Assignment** This Agreement shall not be assigned by either party without the written consent of the other, except to its successor-in-interest by operation of law or to the transferee of all or substantially all the party's assets to which this Agreement relates. In addition, Radiac may, without the consent of Buyer, assign its rights to collect and receive payment of amounts due hereunder in connection with a factoring, securitization, or other similar arrangement regarding some or all of Radiac's receivables.

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

**19. Waiver.** Except as expressly provided in this Agreement, no amendment or waiver of this Agreement shall be binding unless executed in writing by the party to be bound thereby. No waiver of any provision of this Agreement shall constitute

a waiver of any other provision nor shall any waiver of any provision of this Agreement constitute a continuing waiver unless otherwise expressly provided.

**20. Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**21. Notices.** All notices required hereunder shall be given by (i) telephone (confirmed promptly in writing) or shall be in writing and personally delivered, (ii) sent by facsimile transmission (during business hours) if the sender on the same day sends a confirming copy of such notice by reputable overnight delivery services (charges prepaid), (iii) reputable overnight delivery service (charges prepaid) or (iv) certified United States mail, postage prepaid return receipt requested, and addressed to the respective parties at their addresses set forth in the Agreement, or at such other address as any party shall hereafter inform the other party by written notice given as aforesaid. All written notices so given shall be deemed effective upon receipt.

**22. Construction of Agreement/Headings.** No rule of construction requiring interpretation against the drafting party hereof shall apply in the interpretation of this Agreement. The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

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