



**SA-99011, General Terms and Conditions of Sale  
(Revised 6.13.2018)**

**1. Acceptance of Orders.** All orders or other proposed agreements are subject to acceptance by AGY Holding Corp. (the "Seller") and are not binding on the Seller unless so accepted. These terms and conditions of sale are applicable to all quotations and purchase orders and are the only terms and conditions applying to the sale of Seller's goods or services except those which additionally relate to (i) price, (ii) quantity, (iii) delivery schedule, (iv) payment terms, and (v) the description and specifications of the goods or services provided. Except as set forth in the previous sentence, Seller hereby expressly objects to and rejects any terms and conditions proposed by Buyer which are different from or in addition to the terms contained herein, unless expressly agreed to in writing by the Seller. Buyer's acceptance of goods or services described in Buyer's order shall constitute its unqualified acceptance of the terms and conditions contained herein.

**2. Delivery/Risk of Loss/Transportation/Insurance.** Seller shall use reasonable commercial efforts to make delivery or perform services within the time requested. Standard shipping and delivery times require a minimum of 48 hours notice. Orders required with shorter notice may incur an additional \$250 administration fee in addition to any expedited freight costs subject to AGY's discretion. All terms and conditions regarding transportation shall be set forth using Uniform Commercial Code conventions. Unless the parties specifically agree to other transportation terms, deliveries shall be paid by the customer and added to the invoice price. In the case where the Seller agrees to setup the shipment using the Buyers account with a specific carrier, the Sellers responsibility and liability for the shipment will end when the material leaves the Sellers dock. Seller reserves all rights with respect to delivered goods as permitted by law, including, without limitation, the right of rescission, repossession, resale and stoppage in transit until the full amount due from Buyer in respect of the delivered goods has been paid. Seller has the right to make partial deliveries when Seller reasonably deems appropriate, and in cases of such partial delivery, unless otherwise agreed to by the parties, Buyer agrees to pay to Seller a prorated price for such goods on the payment terms set forth in Section 13 hereof. Unless otherwise agreed to by the parties, Seller has no obligation to obtain insurance for Buyer covering the goods while they are being transported, and Buyer shall insure each shipment of goods with a reputable insurer for the full invoice of such shipment unless otherwise noted and specified per agreed upon incoterms.

**3. Prices/Taxes.** Prices and charges for Seller's goods and/or services shall be invoiced at Seller's prices and charges in effect at time of shipment. In the case of a price decrease, adjustments will not be allowed on goods in transit or held in inventory of Buyer. In the case of a price increase, Buyer will be given notice thereof and, if the new price is unacceptable, Buyer may cancel any order or portion thereof with respect to goods not yet delivered to the carrier. Unless otherwise provided by law, Buyer shall pay to Seller any and all taxes, excises or other charges which are based upon or measured by the sale, transportation, delivery or use of the goods sold and delivered hereunder or upon the services performed by Seller. In addition, Buyer agrees that any claim regarding overpayment must be asserted in writing within one (30) days from the date such goods were invoiced to Buyer or the date such services were performed. All claims not asserted in writing within this time period shall be deemed irrevocably waived.

**4. Freight.** All freight shipments shall be made by Seller's routing. Rail freight will be used at the discretion of the Seller. Seller reserves the right to add freight surcharges for less than truckload quantities. This cost will be in addition to the sales price. If Buyer requests different transportation arrangements, any additional transportation costs resulting from Buyer's request or from any general increase in transportation or fuel costs, will be added to the invoice, as will any extraordinary transportation costs charged to Seller. An extra freight charge may be applicable for specific shipping destinations and may be applied at the Sellers discretion. For customer pick-up requests, the Buyer is to make all arrangements for pick-up.

**5. Cancellation.** Buyer's wrongful nonacceptance of goods, or cancellation or repudiation of an agreement to purchase goods or services shall entitle Seller to recover, in addition to any incidental damages caused by Buyer's wrongful nonacceptance, cancellation or repudiation, either (i) Up to 50% of the product cost for products that are made to order (MTO), or up to 20% of the value of the product for stock products. Application of these charges is made at the sole discretion of the Seller.

**6. Modifications.** No amendment or modification of these terms and conditions shall be valid unless made in a writing signed by authorized representatives of both parties. If Buyer has ordered or acknowledges this sale transaction on its own terms, the Seller hereby expressly and specifically rejects all of Buyer's terms and conditions that are in addition to or different from the terms and conditions herein. No course of prior dealings and no usage of the trade shall be relevant to supplement, vary or explain any terms

used in this agreement. A waiver by either party of any breach or failure to enforce any term or condition of these terms and conditions shall not create any modification or amendment to these terms and conditions.

**7. Quantity Variations.** On any individual order or release against an order for goods both stocked and made to order, the Seller reserves the right to ship and invoice for a quantity of goods, which may vary up to 10 percent over or under the quantity specified on the individual order or release and the Buyer shall accept delivery and pay for such revised quantity. This accommodation is being requested to eliminate the need to break pallets. Shortages or errors in quantity of goods must be reported within thirty (15) days from receipt of shipment to secure an adjustment. In addition, claims for proof of delivery of a shipment must be made within fifteen (15) days from the scheduled delivery date. A minimum \$750 charge per item will be added to all orders less than a full pallet.

**8. Force Majeure/Allocation of Goods.** Seller will not be responsible for any failure or delay in the performance of all or any part of this agreement caused by acts of God and nature, intervention of government, war or threat of war, conditions similar to war, sanctions, blockades, embargoes, strikes, lockouts or other causes or circumstances beyond the reasonable control of Seller. However, Seller shall use commercially reasonable efforts to give written notice to the Buyer whenever such contingency or other act becomes reasonably foreseeable, and shall give written notice to the other party of the cessation of such contingency. Seller shall not be required to resolve a strike, lockout or other labor problem in a manner which it does not, in Seller's sole discretion, deem advisable. Whenever the Seller determines its ability to supply the total demands for goods covered by an order or release against an order is insufficient to meet current shipping requirements or in the event of any contingency mentioned above, the Seller may allocate any goods affected first for its own use, for its subsidiaries and affiliates and the remainder among its customers (including those not under contract at the time of the contingency) on such basis as the Seller in the exercise of its sole discretion may determine, and in such event the Seller shall not be liable to Buyer for failure to deliver all or any part of the quantities sold hereunder. The provisions of this Section 8 shall be effective even though the circumstance or contingency invoked by the Seller shall have been in effect on the date a particular order was accepted.

**9. Limited Warranty/Disclaimer of Warranties.** In the case of goods sold by Seller with a separate written warranty that warranty shall apply. Otherwise, the Seller warrants only that (i) goods shall be manufactured in accordance with Seller's specifications and (ii) services shall be performed as specified. THE WARRANTY REFERENCED OR PROVIDED ABOVE IS THE ONLY WARRANTY PROVIDED BY SELLER AND IS IN PLACE OF AND TO THE EXCLUSION OF ANY OTHER WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ALL OF WHICH ARE EXPRESSLY EXCLUDED. In no event shall Seller be responsible for goods manufactured by other parties; such goods shall carry only the warranty of the manufacturer.

**10. Buyer's Remedies/ Limitation of Liability**

(a) Buyer's sole and exclusive remedy and the limit of Seller's liability for goods or services proven to be other than warranted, whether based upon breach of warranty, negligence, strict liability, tort, breach of contract or any other legal theory, shall be, at Seller's option, (a) replacement of the goods or services, without charge, carriage paid to Buyer's facility; or, (b) provided that the non-conforming goods are returned to Seller, at Seller's cost, if Seller so requests, refund of the purchase price paid in respect of such goods or services, plus commercially reasonable charges in connection with the return or disposition of goods. To effect this sole and exclusive remedy, Buyer must make its claim for breach of warranty in writing within 6 (six) months of the date of shipment of the goods or performance of the services, and any such claim not made within such a 6 (six)-month period shall be irrevocably waived.

(b) Seller's sole liability with respect to the goods and services, for any and all loss or damage to Buyer, or any other loss, damage, expense or claim, resulting from any cause whatsoever (whether based on damaged or defective goods, irrespective of whether such damages or defects are discoverable or latent, or Seller's limited warranty shall fail of its essential purpose, or any other reason), and whether based upon breach of warranty, negligence, strict liability, tort, breach of contract or any other theory, shall in no event exceed the aggregate purchase price of the particular goods or the price of the services with respect to which losses, damages, expenses or costs are claimed. Seller shall have no liability to any person other than Buyer by virtue of the sale of the goods, provision of services, or any other matters contemplated by this agreement and Buyer shall add Seller as a party protected by Buyer's warranty and limit of liability provisions in Buyer's terms of sale. The limitation of liability set forth in this paragraph shall survive termination or cancellation of this agreement.

(c) THE FOREGOING IS THE ENTIRE OBLIGATION OF SELLER. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT OR PUNITIVE DAMAGES TO ANY PERSON, WHETHER BASED UPON BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, TORT, BREACH OF

CONTRACT OR ANY OTHER THEORY, REGARDLESS OF WHETHER THE REPLACEMENT OR REFUND REMEDY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE OR FOR ANY OTHER REASON WHATSOEVER.

No statement or recommendation made or assistance given by Seller, or its representatives, either oral or in any literature or other documentation, to Buyer, its customers or any other persons in connection with the purchase, use or installation by Buyer, its customers or any other persons, of any Product sold hereunder, shall constitute a waiver by Seller of any provision hereof or affect Seller's liability as herein defined; and no such statement, recommendation or assistance that is not expressly required by the provisions of this agreement shall subject Seller to any liability of any nature whatsoever.

**11. Safety and Health Information.** The Seller has supplied or made available to Buyer information (including but not limited to Safety Data Sheets) and warnings concerning the safety and health aspects of its goods. Buyer agrees to communicate such information and warnings to Buyer's employees, agents, contractors and customers, and to require such persons to further communicate such information and warnings to all persons that they may reasonably foresee will be exposed to or handle such goods.

**12. Trademarks.** The purchase of goods or Services shall not entitle Buyer to use, or otherwise identify Buyer or its business with the name, trademark, service mark or other identity of the Seller. Should Buyer violate this provision, the Seller may avail itself of all remedies provided for by law or in equity, including, without limitation, injunctive relief.

**13. Export Sales.** Buyer represents and warrants that it has complied and/or will comply with all applicable laws, rules and regulations pertaining to the export, import and movement of the goods sold hereunder. All drawbacks of duties paid on items used in the manufacture of the goods delivered hereunder shall accrue to the Seller, and Buyer agrees to furnish the Seller with all documents and cooperation necessary to obtain payment of such drawbacks. In absence of agreed incoterms, the Seller will determine the terms and conditions of sale.

**14. Terms of Payment.** Unless otherwise stated general payment terms are Net 30 days, and 1% discount for payment within 15 days. The discount is calculated only on the value of the merchandise. For products shipments that include freight paid by the seller the freight cost will be deducted prior to applying the 1% discount. If at any time the Buyer's credit is unsatisfactory to the Seller or is in any way impaired, the Seller reserves the right, among other remedies; to terminate this contract, suspend further deliveries, or, to require payment of cash in advance.

**15. Return of Goods.** Goods sold by the Seller may not be returned for credit unless permission is granted by the Seller in writing within six (6) months from the date of delivery of the goods. Only standard goods regularly maintained in stock by the Seller and in resalable condition will be considered by it for return by the Buyer for credit. If permission is granted, such goods must be returned to Seller in good resalable condition, freight prepaid and credit will be allowed depending on the condition upon receipt by Seller. As with cancellation of orders as outlined in section 5 **all products are subject to up to a 50% restocking fee at the Sellers discretion.**

**16. General.**

(a) The remedies of the parties hereunder shall be cumulative and not alternative. Except as set forth in Section 10 hereof, the remedies set forth in this agreement are not exclusive, and the parties may enforce their rights under this agreement at law, including under applicable provisions of the Uniform Commercial Code of the State of South Carolina, or in equity.

(b) By acceptance of an order, the Seller agrees to comply to the best of its ability with the provisions of any applicable law, and all valid regulations and orders thereunder to the extent required thereby. Any such provisions which are required to be included herein shall be deemed incorporated herein by reference. If Buyer specifies in its order that this agreement will create a subcontract under a contract with any governmental entity, Buyer must note the government contract number on the face of the order and list any provisions which must under applicable law be included in such subcontract. Seller shall review and advise whether Seller will accept Buyer's order.

(c) To the extent that there is any conflict between any general term and condition set forth herein and any specific form or terms agreed to by the parties, the specific term and condition shall control. All notices or agreements hereunder must be in writing to be enforceable.

(d) This agreement shall be governed by the laws of the State of South Carolina, but excluding its conflict of law's provisions.

(e) The invalidity or unenforceability of any term or condition set forth herein shall not affect the validity or enforceability of the remaining terms and conditions hereof. Any provision held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

(f) Except as otherwise expressly provided herein, a cause of action for breach of the terms and conditions stated herein or as to price, quantity or quality must be commenced by Buyer within 6 (six) months from the date of delivery of the goods or conclusion of services.

(g) Buyer shall not assign the whole or any portion of this agreement without the prior written consent of Seller; any assignment or other transfer of any rights or obligations hereunder that occurs without the consent of Seller shall constitute a default. Seller reserves the right to assign and delegate its rights and obligations hereunder to any of its affiliates or any purchaser of substantially all of its assets, whether by way of asset purchase, stock purchase, merger or otherwise.

(h) Each shipment by the Seller shall be deemed a separate and independent transaction and payment therefor shall be made accordingly.

(i) Except insofar as this agreement references other written agreements and writings of and between the parties, this agreement contains the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior representation or agreement between the parties, whether written or oral.

(j) A waiver by either party of any breach or failure to enforce any term or condition of this agreement shall not in any way affect, limit or waive such party's right at any time to enforce strict compliance with that or any other term or condition of this agreement. Except as stated expressly herein, no delay by either party in enforcing its rights hereunder shall operate as a waiver of those rights.

(k) With regard to all the time periods set forth herein, time is of the essence.

(l) Returnable Tubes / Beams / Pallets will not be charged at the time of shipment. However, they should be returned using AGY's designated carrier to the plant of origin, preferably in truckload quantities, and in a timely manner. Returns that arrive without AGY coordination are subject to being returned at the customer's cost. For Bobbins, the Bill-of-Lading should have the following statement shown, "Bobbins, plastic in boxes with density of 4 to 6 pcf." If not returned in good condition in six (6) months, title shall be deemed to pass to buyer at which time the buyer will be invoiced at \$1.50 per Bobbin. If beams are retained for more than ninety (90) days, \$1,500 per beam and \$500 per rack will be charged. The returnable/ reusable plastic units employed for shipments of 8542, and 8571 bobbin yarn are to be returned to the Aiken plant within six (6) months. Cost for each RRP is \$250 per unit not returned and will be billed if not returned. NOTE: This RRP unit can also be used as a vehicle to return empty the same empty bobbins. All charges are subject to refund when returned in good condition.

(m) All conditions of the obligations of the parties and all undertakings set forth in this agreement are solely and exclusively for the benefit of the parties hereto and their successors and permitted assigns, and no other person or entity shall be deemed a third a third party beneficiary of such conditions or undertakings.

(n) The provisions of Sections 3, 5, 9, 10, 12, 13, 14 and 17 shall survive the termination of this agreement indefinitely. All conditions of the obligations of the parties and all undertakings set forth in this agreement are solely and exclusively for the benefit of the parties hereto and their successors and permitted assigns, and no other person or entity shall be deemed a third party beneficiary of such conditions or undertakings.