

## TERMS AND CONDITIONS OF SALE

The following standard Terms and Conditions of Sale shall govern all transactions except as otherwise specifically agreed in writing between the person, firm, company or other organization to whom the goods are sold (the “Buyer”) and VOGELSANG CORPORATION (the “Seller”).

**1. TERMS OF DELIVERY AND PAYMENT:** All sales are subject exclusively to our terms of delivery and payment, which our customer accepted when placing the order. This also applies to future transactions, even if they are not particularly referred to, but if the purchaser has received them in connection with an order confirmed by us. If the order is placed under variant terms of delivery and payment, only our terms of delivery and payment shall apply, even if we do not object. Thus deviations shall only apply, if they are expressly accepted by us in writing.

**2. PRICES:** For all orders, prices are in US Dollars. Buyer is responsible for all shipping charges incurred by either party, unless otherwise agreed and documented on Seller’s Sales Order Acknowledgement.

**3. ASSIGNABILITY:** We are entitled to assign the claims resulting from our business relationships.

**4. EXPORT COMPLIANCE:** All commodities are provided in accordance with the export administration regulations. Export or diversion contrary to U.S. law is prohibited.

**5. MATURITY OF THE FACTOR’S CLAIMS AGAINST THE DEBTOR:** If the purchaser is in arrears with any payments due to us, all existing claims are payable immediately.

**6. CANCELLATION:** Once order is placed with and accepted by Seller, cancellations can be made only with Seller’s written consent and on terms that will indemnify Seller against loss in manufacturing and related costs.

**7. PERFORMANCE:** All payments with debt discharging effect are exclusively payable to the bank accounts of Coface Finanz GmbH, Isaac-Fulda-Allee 1, 55124 Mainz (Germany), to whom we have assigned our present and future claims arising from our business relationship. We have also assigned the reservation of ownership to this institute.

**8. BUYER’S BREACH:** The Seller reserves the right (without prejudice to any of its rights against the Buyer) by notice in writing to the Buyer, to rescind any contract between the Seller and the Buyer, or suspend delivery, should the Buyer be in breach of any term of the same or any other contract with the Seller.

### **9. DELIVERY:**

9.1 All international shipments will be delivered pursuant to Incoterms 2010 rules for Ex Works, Seller’s Facility, Mount Sterling, Kentucky, unless agreed and documented on Seller’s Sales Order Acknowledgment. All domestic shipments will be delivered pursuant to Incoterms 2010 rules for Ex Works, Seller’s Facility, Mount Sterling, Kentucky, unless agreed and documented on Seller’s Sales Order Acknowledgment.

9.2 Seller reserves the right to make partial shipments, other than stated above, for good and valid reasons.

**10. FORCE MAJEURE:** Seller will not be responsible for failure or delay, owing to any act of God, war, strikes, government regulation of orders, national emergencies, preference given to orders of the Government of the United States, any instrumentality thereof for national

defense, lockouts, fire, flood, drought, tempest, breakdowns, delay of carriers, limited production or any other cause (whether or not of like nature) beyond the control of the Seller or owing to any inability by the Seller to procure materials or articles required for the performance of the contract and in any event, for any consequential damages to Buyer for Seller's failure or delay in delivery.

**11. PAYMENTS:**

11.1 Shipments made, at all times, will be subject to the approval of Seller's Credit Department.

11.2 If the financial responsibility of the Buyer becomes impaired, or unsatisfactory to Seller, or if Buyer fails to make payment in accordance with aforesaid terms, then in any such event, Seller may defer or decline to make any shipments hereunder, except upon receipt of satisfactory security or cash payments in advance.

11.3 Service charges will be billed on all overdue balances as of the last day of each month.

**12. MECHANICAL PROPERTIES:** All data from mechanical and chemical analysis are the results of tests performed on a sample taken from a specific location on the material in accordance to Seller's sampling procedures. This sample procedure is representative of the expected properties found throughout the coil but, does not guarantee that the results will not have some degree of variance.

**13. WARRANTY AND CLAIMS:**

13.1 Limited Warranty: Seller warrants that the product hereby purchased is, upon delivery, free from defects in material and workmanship and that any such product which is found to be defective in such workmanship or material will be repaired or replaced by Seller (pursuant to the delivery terms stated in Section 9 of this agreement); provided, however, that this warranty applies only to materials found to be so defective within a period of 90 days from the date of manufacture by the Seller. Seller has the right to inspect the materials to determine whether a defect in material or workmanship has occurred. Buyer will be responsible for all shipping charges related to the return of the materials for inspection by Seller. Seller shall not be obligated under this warranty for alleged defects which examination discloses are due to tampering, misuse, neglect, improper storage, and in any case where products are disassembled or modified by anyone other than authorized Seller's representatives. Except for the limited warranty of repair and replacement stated above, Seller disclaims all warranties whatsoever with respect to the product, including all implied warranties of merchantability or fitness for any particular purpose.

13.2 SHORTAGE: Any claim, for shortage or any other cause, must be reported to Seller within thirty (30) days of receipt of products.

**14. LIMITATION OF SELLER'S LIABILITY:**

14.1 Seller's liability to Buyer for any loss or claim, including liability incurred in connection with (I) breach of any warranty whatsoever, expressed or implied, (II) a breach of contract, (III) a negligent act or acts (or negligent failure to act) committed by Seller, or (IV) an act for which strict liability will be inputted to Seller, is limited to the "limited warranty" of repair and/or replacement as so stated in our warranty of product. In no event shall the Seller be liable for any special, indirect, consequential or other damages of a like general nature, including, without limitation, loss of profits or production, or loss or expenses of any nature incurred by the Buyer or any third party. In no event will Seller's liability exceed the purchase price paid by Buyer for

such materials.

14.2 Advice by Seller regarding designs or wordings on wrappers, cartons, labels or other materials sold to Buyer, which relate to products of Buyer, shall not impose any liability on Seller, or relieve Buyer of any duty, under contracts, laws or regulations relating to products of Buyers.

14.3 Parts listed on the Sales Order Acknowledgement and/or Invoice(s) are similar in terms of fit, form and function as the parts requested, however, please note that the Buyer is responsible to ensure compatibility and suitability to his application. In case of any doubt, please check with the Seller, or its authorized representative.

14.4 The Seller shall not be bound by any oral condition, warranty or representation given or made on its behalf, nor by any express or implied term, condition of warranty, whether arising by statute or common law or by usage, or custom, except as expressly provided by the Seller in writing.

**15. RETURNS:** Seller will not accept the return of materials for any reason, unless otherwise agreed by Seller in writing. Buyer will be responsible for all shipping charges related to the return of the materials.

**16. TAXES:** Prices do not include Federal, Country, Provincial, State, or Local duties or taxes based on, or measured by, sales. Such tax or taxes, where applicable, will be added to the prices, unless exemptions are supported with resale number on the face of the order. For export shipments, custom clearance and local duties and charges applicable at destination country are not included for and must be arranged by the Buyer, unless agreed by Seller in writing.

**17. INSURANCE AND CLAIMS FOR LOST, DAMAGED AND DELAYED SHIPMENTS:**

17.1 For all shipments, transit insurance shall be arranged by Buyer, unless requested by the Buyer and accepted by Seller.

17.2 In international transactions, the risk in goods contracted to be sold by the Seller shall pass to the Buyer (or to such person whom the Buyer may reasonably direct) when the goods (or any part thereof when there is more than one delivery under the contract) are made available by the Seller at the Seller's facility in Mount Sterling, Kentucky.

In domestic transactions, the risk in goods contracted to be sold by the Seller shall pass to the Buyer (or to such person whom the Buyer may reasonably direct) when the goods (or any part thereof when there is more than one delivery under the contract) are loaded into the carrier's possession, except as otherwise noted in 17.3 or by agreement of the parties in writing.

17.3 Based on a compelling business reason, the Buyer may request that the Seller postpone the shipping date of the goods once they are completed. If Seller agrees to accommodate Buyer's request, the risk in goods contracted to be sold by the Seller shall pass to the Buyer when the goods are made available by the Seller in the Seller's facility in Mount Sterling, Kentucky. The Buyer is responsible for making full payment for the goods at the time the goods are made available by the Seller. The Buyer is responsible for notifying Seller of a fixed delivery schedule, which must include a reasonable delivery date.

17.4 As an accommodation to Buyer, and if so requested by Buyer, Seller may agree to act on Buyer's behalf in arranging for the boxing, inland and ocean transportation of the products from Seller's Facility, Mount Sterling, Kentucky, pursuant to the terms stated in Section 17.2, to (ex-

ship) dock, port of entry of the importing country. This accommodation may include the Seller signing documents necessary for shipment on the Buyer's behalf. Nothing in this subsection shall alter the parties' agreement that the rights, risks, and responsibilities for shipment are governed by the Ex Works shipping agreement, and are not altered by any action the Seller takes related to the shipment as an accommodation to the Buyer. In addition, Buyer retains responsibility for transportation and handling of the products beyond said ex-ship location to the project site.

17.5 Special care is exercised in packing for shipment, however, the Seller assumes no responsibility for delay, breakage or damage that occurs in loading, shipping, or delivery.

All claims for breakage and damage should be made directly to the carrier. The Seller will render all reasonable assistance in securing satisfactory adjustments to such claims.

**18. PACKAGING & DOCUMENTATION:**

18.1 Seller will use commercially reasonable packaging. Any special packaging and/or markings must be agreed upon and documented on the Sales Order Acknowledgement and/or Invoice(s).

18.2 When special certificates, etc., are required, they must be ordered separately and documented on the Sales Order Acknowledgement and/or Invoice(s).

18.3 Any third party inspections or other logistically related costs are not included. Such costs must be prearranged with Seller and documented on the Sales Order Acknowledgement and/or Invoice(s).

**19. EXPORTS:**

19.1 Payment arrangements must be satisfied, and export license(s), if required, must be secured prior to manufacturing.

19.2 Destination control statement: These commodities were exported from the United States in accordance with the export administration regulations. Diversion contrary to U.S. Law is prohibited.

19.3 Counteroffers: If the terms and conditions of this document differ in any way from the terms and conditions of Buyer's order, this document will be construed as a Counteroffer and will not be effective as an acceptance of Buyer's terms and conditions which conflict herewith. The terms and conditions contained herein will be the complete and exclusive statement of the terms of the agreement between the parties. Buyer's acceptance of the goods sold hereunder will manifest Buyer's assent to the terms and conditions hereof. No addition to or modification of any of these terms and conditions will be effective unless made in writing and signed by Seller.

**20. LIMITATION ON TIME TO MAKE A CLAIM:** Claims by Buyer must be made within 90 days of the receipt of shipment by Buyer, which the Buyer and Seller agree is a reasonable time, or Buyer's claims shall be forever barred. No rejections will be honored unless the products are returned in the form originally sold. In the event a claim is made, Seller reserves the right to cancel the contract and any other contract with the Buyer. Seller must be given an opportunity to investigate a claim before Buyer disposes of or modifies the materials or else Buyer's claim will be forever barred. Buyer and Seller agree that any action for breach of this contract must be brought within one year of when the cause of action accrues.

**21. ARBITRATION:** Any dispute arising under or out of or relating to this service agreement, or its negotiation, performance, breach, or termination, shall be finally resolved by binding

arbitration. The parties acknowledge that this Agreement evidences a transaction involving interstate commerce. The Federal Arbitration Act, 9 U.S.C. § 1 et seq., shall govern the interpretation and enforcement of and the proceedings pursuant to this arbitration provision. The arbitration shall be administered by the American Arbitration Association (“AAA”) under its Commercial Arbitration Rules (the “Rules”) except to the extent modified by this arbitration provision. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. The arbitration hearing will take place in Mount Sterling, Kentucky, and shall be governed by substantive law of the Commonwealth of Kentucky, without regard to its conflict of laws provisions. There shall be one neutral, impartial arbitrator, selected in accordance with the Rules. Any dispute regarding discovery, or the scope thereof, shall be determined by the arbitrator, whose determination shall be conclusive. The award shall be made no later than twelve months after the filing of the demand for arbitration, and the arbitrator shall agree to comply with this schedule before accepting appointment. This time limit may only be extended by agreement of the parties. The award of the arbitrator shall be in writing, shall be signed by the arbitrator and shall be accompanied by a statement of the reasons for the disposition of each claim. The arbitrator shall have no authority to award punitive, special or other damages not measured by the prevailing party’s actual damages, except as may be required by statute, or to award consequential or incidental damages. Each party shall bear its own attorneys’ fees, costs and expenses and an equal share of the arbitrator’s fees and the administrative fees of arbitration.