

ETIMINE USA, INC. General Terms and Conditions of Sale

APPLICABILITY OF THE TERMS OF SALE: These Terms and Conditions of Sale ("Terms of Sale") shall govern and exclusively apply to the all sales and deliveries of Etimine USA (the "Seller") products ("Products") to the Buyer specified in the attached Purchase Order Agreement and/or Proposal/Order Confirmation defined below. (the "Buyer") except to the extent that Seller and Buyer have otherwise agreed in attached written documents. Seller and Buyer may also be referred to as a "Party" or collectively as the "Parties". The attached proposal, order confirmation, or Purchase Order Agreement (hereinafter jointly and/or separately referred to "Proposal/Order Confirmation") that are incorporated in this Terms of Sale by reference and these Terms of Sale comprise the entire agreement between the Parties and supersede any and all other written and/or oral agreements between the Parties concerning the subject matter stated herein. Buyer's purchase and/or acceptance delivery of Products signifies its agreement to these Terms of Sale. **PRICES:** All prices are quoted, orders accepted, and billings rendered for the Products as set forth in the attached Proposal/Order Confirmation, and unless otherwise stated in the attached Proposal/Order Confirmation, are exclusive of all Federal, State or local excise, sales, use, and other similar taxes, levies, and fees, all import, export or customs duties, tariffs, or other charges of any kind imposed by any governmental authority and/or agency, all of which shall be the sole responsibility of the Buyer. Buyer shall pay all freight charges associated with the purchase of Products by Buyer, including but not limited to routine shipping charges, charges for special packaging, shipping and handling required to comply with manufacturers' specifications, applicable DOT or other regulations, or to meet Customer requirements unless otherwise agreed between the Parties in the attached Proposal/Order Confirmation in writing. **TITLE, DELIVERY AND RISK OF LOSS:** Unless otherwise expressly agreed in writing the attached Proposal/Order Confirmation, title and risk of loss of the Products shall pass to the Buyer upon delivery of Products to carrier, even if Seller may prepay freight charges or assume any other responsibility in connection with shipping. For the purpose of these Terms of Sale, delivery of Products to carrier shall constitute delivery to the Buyer and delivery date shall be the date the Products are shipped from Seller's facility ("Date of Delivery"). If delivery to carrier is delayed by Buyer for any reason, including but not limited to Buyer's failure to provide shipping instructions, then title and risk of loss shall pass upon notice in writing by Seller to Buyer that goods are held for Buyer's account and disposal. Seller shall have the right to reflect any costs and/or expenses incurred as a result of Buyer's delay in duly picking up the Products prepared for Buyer. **TERMS OF PAYMENT:** Unless otherwise agreed in writing in the attached Proposal/Order Confirmation, Seller's standard terms of 30 days net are applicable to all shipments. Partial shipments shall be allowed, at Seller's option, and payment therefore shall be made when due, without regard to subsequent shipments. All invoices are payable, without set-off of any kind or for whatever reason, in United States currency. Seller reserves the right to collect interest at a rate equal to the highest applicable law interest rate on invoiced amounts not paid within thirty (30) days of invoice date, with interest to accrue monthly until full payment is received. **DELIVERY DATE AND INSTALLATION:** Unless otherwise agreed in writing in the attached Proposal/Order Confirmation, delivery dates and times are approximate and are dependent upon prompt receipt by Seller of all necessary shipping information and documentation necessary to proceed with the delivery without interruption. **WEIGHTS AND SAMPLING AND ANALYSIS:** Unless otherwise agreed in writing in the attached Proposal/Order Confirmation, the weighing, sampling, and analysis of the Products shall be carried out at the time the Products are loaded or packaged by Seller, whichever is earlier, but prior to shipment. Unless otherwise agreed in writing in the attached Proposal/Order Confirmation, the results of the weight and sample certificates reflected in the Certificate of Analysis by Seller shall be deemed to be accurate, complete, and final. **LIMITED PRODUCT WARRANTY & LIABILITY:** Seller warrants all Products supplied by Seller against defects in material and workmanship for a period of ninety (90) days from the date of shipment from Seller ("Warranty Period"). Seller warrants to Buyer that during the Warranty Period, Seller shall upon prompt notification and compliance with Seller's instructions, repair or replace, at Seller's sole option, any Product which is defective in material or workmanship. No employee, agent, or representative of Seller has the authority to bind Seller to any oral representation or warranty concerning any Product sold. Any oral representation or warranty made prior to the purchase of any Product and not set forth in writing in the attached Proposal/Order Confirmation shall not be enforceable by Buyer. Seller makes no warranty and shall have no obligation with respect to expendable or consumable parts and supplies nor with respect to damage caused by or resulting from accident, misuse, neglect or unauthorized installation, alterations or repairs to the Products. Seller makes no representation or warranty concerning the eligibility of its Products under the Buy American Act or Trade Agreements Act. Seller also expressly disclaims all other warranties not stated in the attached Proposal/Order Confirmation and/or conditions whether express, implied, or statutory, including but not limited to any implied warranties of merchantability, fitness for a particular purpose/use. Seller shall not be liable for any damage whether special, indirect, incidental, consequential, or punitive damages, loss, cost or expense, or breach of warranty except those expressly stated in the attached Proposal/Order Confirmation as a result of the sale, delivery, non-delivery, servicing, use or loss of use of the Products or any part thereof. Seller neither assumes nor authorizes any person to assume on its behalf any obligation or liability other than as herein expressly stated. Buyer by accepting delivery of the Products waives all claims for general, consequential, direct, indirect, incidental, punitive or special damages, loss and any penalties of any kind, any loss of profits, or any other economic loss, whether or not foreseeable, and agrees that Seller's liability and Buyer's sole and exclusive remedy against Seller is expressly limited to the replacement or repair of any products in accordance with the terms stated herein, and in no event shall Seller's aggregate liability arising out of or related to these terms of sale, whether arising out of or related to breach of contract, tort (including negligence,) or otherwise exceed the purchase price for the Products purchased by the Buyer in this specific transaction. **INDEMNIFICATION:** Buyer agrees to indemnify, defend and hold harmless Seller and Seller's members, officers, agents, employees, affiliates, successors, assigns and suppliers ("Seller's Indemnified Parties") from and against any and all direct and indirect claims, debts, actions, causes of action, liabilities, losses, damages, costs, suits, demands, fines, penalties, judgments, claims, omissions, damages or expenses whatsoever, including, without limitation, attorneys' fees and costs incurred by or against Seller or any of Seller's Indemnified Parties due to or arising out of, in connection with, resulting from or relating to: (i) Buyer's breach of any obligation of this Terms of Sale; (ii) any violation by Buyer of any law or regulation; (iii) any improper use of the Products provided to Buyer by Seller; (iv) any resale or redistribution of Products; and, (v) patent infringement due to Buyer's alteration, use, reformulation or reprocessing of the Products. Buyer's sole and exclusive remedy against Seller is expressly limited to the replacement of Products as per Section 7 of this Terms of Sale. Except as otherwise expressly set forth herein, Seller disclaims any obligation to defend, indemnify, or hold harmless Buyer, its officers, agents, or employees, affiliates, successors, assigns and third-party suppliers from any losses, damages, liabilities, costs or expenses which may arise out of Seller's acts or omissions or the sale or use of the Products. **SELLER'S RIGHTS OF POSSESSION & LIEN:** The Seller may without prejudice to Seller's other rights and remedies at law or in equity, suspend or discontinue any further work/performance; and/or repossess, or retake the Products (subject to applicable state and federal laws) for credit reasons (or lack thereof) or because of the Buyer's default(s); and/or terminate Seller's obligations under these Terms of Sale; and/or withhold shipments in whole or in part, recall goods in transit, retake, and repossess all goods in Buyer's possession or control or which may be stored with the Seller for the Buyer's account, without the necessity of instituting any other proceedings, and the Buyer consents that all of the Products so recalled, retaken, or repossessed shall become the rightfully and legally owned property of the Seller, provided that the Buyer is given the corresponding credit therefore. In the event of bankruptcy or insolvency, liquidation event or similar proceeding relating to the Buyer and/or its property, Seller shall be subordinated to the top priority payment and entitled to receive payment of principal and interest (if applicable) in full. Seller claims a lien upon all Products subject to this Agreement and proceeds (as defined under Article 9 of the Uniform Commercial Code) therefrom, for all lawful charges for storage and preservation of Products allocated for Buyer, and upon all lawful claims for money advanced, interest, insurance, transportation, labor, weighing, analysis, and other charges and expenses in relation to such Products, and for the balance on any other accounts that may be due. **ESCALATION CLAUSE:** In the event that there is a substantial change in Seller's cost due to increase in price of materials or labor, regulatory duties or taxes, or because of changes in foreign exchange rates, Seller reserves the right to adjust the contract price to reflect the net cost of such increase or change. **RETURN PRODUCTS POLICY:** Products described below may be returned to Seller within 15 (fifteen) days from the date of shipment for replacement or adjustment. To assure prompt handling, Buyer must obtain a return Products authorization number from Seller and reference this number on return shipping documents. Returns made without the authorization number will be returned to the Buyer freight collect, or a re-stocking fee shall be reflected to Buyer at Seller's sole option. Seller reserves the right to reverse any credit issued to Buyer: (i) for any Product not returned after authorization and request by Seller; or (ii) if, upon return, such Product is determined by Seller, in its sole and absolute discretion, not to be defective. Products acceptable for full credit: Products deviates from the agreed specifications in the Proposal/Order Confirmation ("Non-conforming Products"); and, Products which are defective at the time of receipt by the Customer. Products not acceptable for credit shall include but not limited to the following: (i) Discontinued products; (ii) Personalized or customized Products; (iii) Non-Seller line products supplied to Buyer as an accommodation, including, without limitation, third party purchases; (iv) Products not purchased from Seller; (v) Shelf-worn, used, or defaced Products. **BUYER AS END USER/COMPLIANCE WITH UNITED STATES' EXPORT LAWS:** Unless otherwise agreed in writing in the attached Order/Proposal Confirmation, Seller shall not and cannot sell Buyer's Products to any third party, whether within the continental United States or elsewhere in the world, and the Buyer, hereby, agrees, understands, and acknowledges that the Products are being purchased by Buyer for its sole and internal use. Moreover, Buyer agrees that it shall adhere to all relevant export control laws, sanctions laws, and other relevant rules and regulations, assume any and all responsibility to comply with such laws and shall not export or re-export any Products to any proscribed government, individual or entity that is located on the Office of Foreign Asset Control's ("OFAC") SDN List or other prohibited persons list without having obtained and/or executed proper export licenses from the United States Government. If so requested by Seller, Customer shall provide documentation satisfactory to verify delivery to the final destination. This provision shall be binding upon and inure to the benefit of and be binding upon, the Parties hereto and their respective permitted successors, assigns, heirs, legatees and/or personal representatives. **FORCE MAJEURE:** All obligations of Seller hereunder (except the payment of money) shall be suspended while, but only so long as and to the extent that, such Party is prevented from complying with such obligations in whole or in part by force majeure events, including, but not limited to acts of God or acts of war or terrorism, floods, fire, unusually severe weather, epidemics, strikes, or other labor disturbances, riots, accidents, embargoes, delays of carriers, failure of power, or of regular sources of supply, failure or disruptions of the Internet, unavailability of telecommunication services, introduction by third parties of computer viruses, freight embargoes, sanctions, earthquake, insurrection or mob violence, laws, actions of or failure to act of any state, federal or local government, requirements or regulations of any state, federal or local government body, or any other matters beyond the reasonable control of said Party (for purposes of this section, a "Force Majeure Event") which cannot be overcome by Seller by means normally employed in the performance of its obligation. In the event of Seller's inability, due to Force Majeure Event, to supply all of the Products to be provided for under the Proposal/Order Confirmation, Seller reserves right to allocate its available supply of Products, in its sole discretion among its customers or any other purchasers without liability to Buyer for any failure of performance which may result therefrom. In the event of Force Majeure Event, Seller shall promptly and timely notify Buyer of the existence thereof ("Force Majeure Notice"). This provision shall survive the termination or expiration of these Terms of Sale. **LIMITATION OF ACTIONS:** Any cause of action under these Terms of Sale must be brought by Buyer, if at all, within 1 (one) year from the date the cause of action accrued. Any discrepancy in Seller's pricing or other charges shall be deemed waived by Buyer unless Buyer notifies Seller thereof, in writing, within 90 (ninety) days from the date of the invoice on which such disputed transaction is reflected. **ASSIGNMENT:** Buyer shall not assign or otherwise transfer (i) all or any part of its rights or obligations under this Terms of Sale or Proposal/Order Confirmation, or (ii) any of its rights or obligations hereunder without the express, written consent of Seller. Any attempted assignment or delegation by Buyer shall be null and void for all purposes unless made in conformity with this paragraph. **GOVERNING LAW:** This quotation and Terms of Sale, and the attached Proposal/Order Confirmation; shall be governed by, and shall be construed according to, the laws of the of New Jersey. Any legal action brought to enforce a right of any party to this Terms of Sale and/or Proposal/Order Confirmation or any dispute arising hereof shall be exclusively brought in, and only in, the courts of the State of New Jersey or the United States District Court for the District of New Jersey (if jurisdiction is otherwise appropriate in such Federal Court) and the Parties hereto expressly consent to this provision. **EXPENSES AND ATTORNEY FEES:** If either Party defaults and the matter is referred to a third party for collection, or suit is brought at law or in equity to enforce any term or provisions herein, the prevailing Party shall, in addition to any other relief to which such party may be entitled, be awarded against the non-prevailing party, his or its attorney's fees as well as court costs, fees, and expenses. **NOTICES:** Any notices, request, consents, claims, demands, waivers, payments, and/or other information (each a "Notice" or collectively "Notices") herein contemplated to be given, made or delivered to Seller or Buyer hereunder shall be sufficient and effective if personally delivered, mailed, Electronic-mailed or sent by electronic facsimile at the address of each Party set forth in the Proposal/Order Confirmation or to such other address as a Party may from time to time designate to the other in writing. **MISCELLANEOUS:** These Terms of Sale together with the attached Proposal/Order Confirmation and any other documents incorporated herein, constitute the sole and the entire agreement between the Parties and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and/or oral with respect to the subject matter that are not fully expressed therein. Any term appearing in any Proposal/Order Confirmation that would modify or conflict with the terms and conditions set forth herein are expressly incorporated herein and shall prevail over any of these general terms and conditions. No course of prior dealings between the Parties and no usage of the trade shall be relevant to supplement or explain any term used herein. If any provision of these Terms and Conditions, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remaining provisions shall remain in full force and effect. None of the terms and conditions contained herein may be added to, modified, superseded or otherwise altered except by written instrument signed by a duly authorized representative of Seller and Buyer. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this agreement operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. In case any provision in these Terms of Sale or the attached Proposal/Order Confirmation shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby. 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.