

TERMS AND CONDITIONS OF SALE

The sale of all products and services by the seller ("Seller") to the purchaser ("Customer") shall be subject to and governed by these terms and conditions of sale (these "Terms and Conditions"). Seller's acceptance of any order or other offer by Customer (whether in writing, by telephone or otherwise) for any products or services shall be conditioned upon Customer's assent to these Terms and Conditions. Such assent shall be deemed given upon the earlier of: (i) Customer's acceptance of these Terms and Conditions pursuant to a credit application containing or referencing these Terms and Conditions; (ii) Customer's acceptance of these Terms and Conditions pursuant to a separate agreement by and between Seller and Customer containing or referencing these Terms and Conditions (a "Separate Agreement"); (iii) Customer ordering products or services from Seller based on a Seller quotation or proposal, or by means of purchase order submitted by Customer and accepted by Seller, in any case containing or referencing these Terms and Conditions; (iv) delivery of products or services to Customer where Customer has received written notice of these Terms and Conditions, however gained, including, without limitation, in a Seller quotation, proposal, acknowledgement, bill of lading, invoice or any other writing (including, without limitation, electronic correspondence) containing or referencing these Terms and Conditions; or (v) payment by Customer to Seller for Seller's products or services where Customer has received written notice of these Terms and Conditions, however gained, including, without limitation, in a Seller quotation, proposal, acknowledgement, bill of lading, invoice or any other writing (including, without limitation, electronic correspondence) containing or referencing these Terms and Conditions. No additional or different terms or conditions, whether contained in a purchase order or any other communication from Customer (whether written or oral and whether previously given or later asserted), shall be binding upon Seller (unless specifically agreed to in writing by an executive officer of Seller), and Seller objects to and rejects any provision additional to or different from these Terms and Conditions. The failure of Seller to object to any such additional or different terms or conditions shall not be a waiver of these Terms and Conditions or an acceptance of such additional or different terms or conditions. No modification or amendment of, or addition to, these Terms and Conditions or any Customer order accepted by Seller shall be binding unless in writing and signed by an executive officer of Seller.

Customer Acknowledgements. Customer acknowledges that it is responsible for the safe selection, unloading, handling, storage, use and disposal of the products. Customer warrants that it will:

- familiarize itself with, and follow recommendations contained in, product information supplied by Seller at any time;
- follow safe handling, use, selling, storage, transportation and disposal practices and ensure that all employees, contractors, agents and customers follow these practices;
- take action to avoid spills or other dangers to persons, property or the environment, and in the event of such occurrence, take immediate action, at its own expense, to abate or otherwise address the spill or other danger;
- without limiting any other terms hereunder, indemnify Seller against any claim, loss, liability and expense (including reasonable attorney fees) on account of any damage to property or injury or death of persons (including without limitation Customer's employees and other personnel) arising out of Customer's unloading, handling, storage, use, sale or disposal of the products or the failure of Customer to comply with any of the obligations set forth in these Terms and Conditions;
- in any action against Seller for personal injury or death of Customer's employees, expressly waive, as to Seller, the exclusive defense under any Workers Compensation Act if Customer fails to comply with any of the obligations set forth in these Terms and Conditions; and
- comply with all federal, state, and local laws, rules and regulations concerning the transportation, storage, use, sale and disposal of products including all safety and environmental laws, rules and regulations.

Customer Warranty and Obligations. Customer warrants that it has received and is familiar with product information published by Seller, that it has used its own independent skill and expertise in connection with the selection and use of the products and that it possesses skill and expertise in the handling, storage, transportation, treatment, use and disposal of the products. To the extent Customer requires Seller, and Seller agrees, to affix or provide Customer's label to products ordered, Customer warrants that said label is accurate for the product ordered. Customer shall determine the suitability of the products for their purpose and assume the responsibility for all risks and liabilities which may result from their use.

Payment. Customer will pay for the products and services on the terms set forth in a Separate Agreement, a Seller quotation or proposal, a purchase order submitted by Customer and accepted by Seller, or a Seller acknowledgement, bill of lading or invoice, as applicable. If payment terms are not set forth in any such document, payment must be received by Seller net 30 days from invoice date. Unless otherwise agreed in writing by Seller and Customer, Seller will invoice Customer upon shipment of products or commencement of services. All payments shall be made in the currency listed in any such document, as applicable, or, if not so listed, then in U.S. dollars. Seller, or its assignee, may charge the maximum interest allowed by law on all overdue amounts. If payments are not paid on time, or if Seller has reason to believe that Customer's financial status is unsatisfactory, Seller may defer shipments, accelerate due dates on all amounts owed, and/or require cash or other security. Customer agrees to pay all of Seller's collection costs (including reasonable attorney fees) incurred as a result of Customer's failure to make payment in accordance with applicable payment terms.

Delivery. Unless otherwise stated in a Separate Agreement, a Seller quotation or proposal, a purchase order submitted by Customer and accepted by Seller, or a Seller acknowledgement, bill of lading or invoice, as applicable, (i) all products will be delivered to Customer EX Works the manufacturing facility of the products (the "Facility"); and (ii) the provisions of the most current version of INCOTERMS, International Chamber of Commerce Publication, are incorporated herein by reference. Seller shall use reasonable efforts to meet Customer's requested delivery date, but Seller does not guarantee a specific delivery date. For international shipments, Seller may, in its sole discretion, agree to clear goods for export, provided that all related fees will be charged to the Customer. In the case of international sales, unless otherwise agreed by Seller, Customer shall be solely responsible for: (i) providing to Seller, prior to shipment and in writing, the ultimate destination and identity of the end-user; (ii) paying all duties, taxes and other charges imposed by any government on products or on the purchase, exportation, importation or re-exportation of products; and (iii) for compliance with all applicable laws, including but not limited to export control laws, and applicable regulations which may be issued from time to time concerning the exporting, importing and re-exporting of products. In addition, for U.S. export licensing purposes, Customer shall provide to Seller any and all documentation required to complete any and all applicable United States of America State Department or Commerce Department license applications.

Title; Risk of Loss. Title to the products shipped hereunder and the risk of loss shall pass to Customer upon Seller's delivery to a carrier or into Customer's transport.

Right to Inspect; Notice of Rejection. Customer shall have the right to inspect the products upon tender by Seller or the carrier. The failure of Customer to inspect any particular shipment within thirty (30) days after tender to Customer shall constitute a waiver of Customer's rights to inspect that shipment and shall constitute an acceptance of such products. All claims for shortages, defects or other non-conformities in products delivered shall be made in writing by Customer to Seller within thirty (30) days after their tender to Customer and shall fully specify the nature of such claims and the basis thereof. Failure to so notify Seller in writing of any claim within thirty (30) days after tender to Customer shall constitute an irrevocable acceptance of the products and an admission by Customer that the products comply fully with all terms, conditions and specifications of the corresponding order.

If Customer rejects any products tendered, Customer shall fully specify the nature and basis of all claimed defects and other non-conformities in the notice of

rejection sent to Seller within such thirty (30) day period. The failure to specify any particular defect or other non-conformity shall constitute a waiver by Customer of that defect or other non-conformity. If Customer rejects any tender of products in accordance herewith, Customer shall reship the products within a reasonable period of time to the place designated by Seller; provided, however, in no event are products to be returned by Customer without in each instance obtaining Seller's prior written authorization, and Seller reserves the right to refuse any products returned for credit without such prior written authorization. Customer expressly waives its right to a security interest in the products under Section 2-711 of the Uniform Commercial Code or under any other law.

Upon Customer's rejection of defective or non-conforming products and Seller's written authorization to return such products, in each case in accordance herewith, Seller shall, at Seller's sole option and as Customer's sole and exclusive remedy, either (i) repair the defective or non-conforming products, (ii) replace the defective or non-conforming products, or (iii) provide to Customer a refund or credit in the amount of the purchase price paid by Customer for the defective or non-conforming products. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to replace defective or non-conforming products in the prescribed manner.

Return of Conforming Products. Because of the nature of Seller's products, such products are non-returnable; however, from time to time and subject to Seller's prior written approval (in Seller's sole discretion), within ninety (90) days of purchase, Seller may permit Customer to return conforming products to Seller and receive, in Seller's sole discretion, a refund or credit in the amount of the purchase price for such products, minus a restocking fee equal to 20% of the original purchase price, provided that: (i) such products are in original condition and have not been modified or customized by or for Customer; (ii) such products are in their original packaging; and (iii) such products are returned to Seller within thirty (30) days after Seller's written authorization of such return, freight prepaid by Customer.

Products. For purposes of these Terms and Conditions, the following terms shall have the following meanings:

- "Finished Products" means products, other than Install Products, OEM Products, TyrFil® Products and Rubber Products (as defined below), comprised of several materials and/or components that have been manufactured and/or assembled by or on behalf of Seller, that are ready for sale by Seller and that are ready for immediate use or application as a stand-alone product by Customer, its customers or other end users;
- "Install Products" means products comprised of several materials and/or components that have been manufactured and/or assembled by or on behalf of Seller, that are ready for sale by Seller and that are ready for installation, as a component of a wider system, by Seller or Customer; and
- "OEM Products" means chemical products that have been formulated and produced by or on behalf of Seller, that are ready for sale by Seller and that are ready for use as a raw material by Customer, its customers or other end users.
- "TyrFil® Products" means TyrFil® brand flatproofing products that have been produced by or on behalf of Seller, that are ready for sale by Seller under the "Accella Tire Fill Systems" name and that are ready for immediate use or application by Customer, its customers or other end users.
- "Rubber Products" means rubber products and related products that have been produced by or on behalf of Ultimate RB, Inc. (as "Seller" hereunder), that are ready for sale by Seller and that are ready for immediate use or application as a stand-alone product by Customer, its customers or other end users.

Limited Warranty. Seller warrants that (i) the products conform to Seller's specifications at the time of shipment, (ii) it shall have full, free and clear title to the products and that it will convey the products to Customer hereunder free of liens, security interests, and other encumbrances, and (iii) with respect solely to Rubber Products, as warranted pursuant to the applicable "Warranty" for each specific Rubber Product available at <http://www.ultimaterb.com/literature/>. The foregoing warranties will last for the following periods, as applicable (in each case, the "Warranty Period"): (i) for Finished Products, twelve (12) months after the date that such products are delivered by Seller; (ii) for Install Products, six (6) months after the date of manufacture by or on behalf of Seller, provided that Install Products remain in original, unopened packaging until used during such Warranty Period; (iii) for OEM Products, at and only at the moment of shipment by or on behalf of Seller (and for no additional period after such time); (iv) for TyrFil® Products, twelve (12) months after the date of manufacture by or on behalf of Seller, provided that TyrFil® Products remain in original, unopened packaging until used during such Warranty Period; or (v) for Rubber Products, such period set forth in the applicable "Warranty" for each specific Rubber Product available at <http://www.ultimaterb.com/literature/>. If during the applicable Warranty Period any products prove upon examination by Seller not to meet the warranties set forth above, Seller shall, at Seller's sole option and as Customer's sole and exclusive remedy, either (i) repair the defective or non-conforming products, (ii) replace the defective or non-conforming products, or (iii) provide to Customer a refund or credit in the amount of the purchase price paid by Customer for the defective or non-conforming products. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as Seller is willing and able to replace defective or non-conforming products in the prescribed manner. Any replacement products will be warranted for the unexpired portion of the Warranty Period applicable to the particular products. CUSTOMER ACKNOWLEDGES AND AGREES THAT EXCEPT AS EXPRESSLY SET FORTH IN THIS PARAGRAPH, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES RELATED TO THE PRODUCTS OR THE SERVICES AND THAT THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR USE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.

Seller will not be responsible for transportation costs or for the costs of removal, installation, re-installation or making of access of any products or items, where such transportation, removal, installation, re-installation or making of access is required to repair or replace any defective products. Furthermore, Seller will not be responsible for and assumes no liability for materials or workmanship, labor costs or other related expenses for any work performed by third parties in the repair or replacement of defective products or the re-performance of services.

The warranties provided in these Terms and Conditions will be voided if (i) the products have not been stored, installed, maintained or operated in accordance with accepted industrial practice, original manufacturer's instructions or any specific instructions provided by Seller; (ii) the products have been subjected to any accident, misapplication, environmental contaminant, corrosion, damage, debris, abuse or misuse; (iii) Customer has modified the products without Seller's prior written consent; (iv) Customer has used or repaired the products after discovery of the defect without Seller's prior written consent; (v) Customer refuses to permit Seller to examine the products and operating data to determine the nature of the defect claimed; or (vi) Customer is in breach of its obligations under these Terms and Conditions.

CUSTOMER'S REMEDIES ARE SPECIFICALLY LIMITED TO THE REPAIR OR REPLACEMENT, OR REFUND OR CREDIT IN THE AMOUNT OF THE PURCHASE PRICE, OF THE PRODUCTS, AS APPLICABLE, DURING THE WARRANTY PERIOD, AND ARE EXCLUSIVE OF ALL OTHER REMEDIES. SHOULD THESE REMEDIES BE FOUND INADEQUATE OR TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE FOR ANY REASON WHATSOEVER, CUSTOMER AGREES THAT RETURN OF THE AMOUNT PAID BY CUSTOMER TO SELLER UNDER THESE TERMS AND CONDITION SHALL PREVENT THE REMEDIES FROM FAILING OF THEIR ESSENTIAL PURPOSE.

Indemnity and Hold Harmless Obligations. Customer agrees to protect, defend, indemnify and hold harmless Seller and its affiliates, and each of Seller's and its affiliates' directors, managers, officers, employees and/or agents (each a "Seller Indemnitee" and collectively, "Seller Indemnitees"), from and against all claims, demands, causes of action, losses, damages, costs, liability and expenses which may be asserted against or incurred by a Seller Indemnitee or Seller Indemnitees arising out of the manufacture and/or sale of any products or provision of services furnished to or for Customer in compliance with Customer's specifications, including any claim, demand, or liability arising out of a breach of Customer's obligations set forth in these Terms and Conditions or on account of actual alleged infringement of any United States patent or trademark.

LIMITATION OF LIABILITY. THE CUMULATIVE LIABILITY OF SELLER AND ITS AFFILIATES FOR ANY CLAIM OF ANY KIND OR FOR ANY LOSS OR DAMAGE RELATING TO THE PRODUCTS OR SERVICES SHALL IN NO EVENT EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS OR SERVICES WHICH GIVE RISE TO ANY SUCH CLAIM, LOSS OR DAMAGE, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES WHATSOEVER. SELLER WILL NOT BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROFITS OR REVENUES, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE (INCLUDING NEGLIGENT MISREPRESENTATION), STRICT LIABILITY, INDEMNIFICATION, OR ANY OTHER CAUSE OR COMBINATION OF CAUSES, INCLUDING ANY THEORIES OF CONCURRENT LIABILITY ARISING FROM A DUTY OF CARE BY OPERATION OF LAW OR OTHERWISE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FUNDAMENTAL BREACH OR FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. CUSTOMER'S REMEDIES ARE LIMITED TO THOSE REMEDIES STATED HEREIN AND THESE REMEDIES SHALL NOT FAIL THEIR ESSENTIAL PURPOSE BECAUSE CUSTOMER IS LIMITED TO THE EXCLUSIVE REMEDIES AS STATED HEREIN.

Shipping.

Instructions: Seller shall not be bound to tender delivery of any quantities for which Customer has not given written shipping instruction.

Containers: Where shipment requires use by Seller of tanks, cylinders, drums, barrels or other returnable containers, title to such container shall remain in Seller and a deposit in the amount required by Seller may be required at the time the product is paid for to insure the return of the container to point of shipment. Customer shall not permit any encumbrance, lien, or levy to be made on such containers. Such containers must be kept in good condition and may not be used for any material other than that shipped therein, and must be returned upon demand of Seller. Customer assumes the entire risk of loss to such containers from hazard. On such containers being so returned in good condition, a refund or credit of the deposit will be made.

Weights: In case of bulk carload, tank truck or tank car shipments, Seller weights, certified or sworn to by a weighmaster, shall govern.

Freight rates: Any increase in freight rates paid by Seller on shipments covered by these Terms and Conditions may, at Seller's option, be added to the price of the products shipped under these Terms and Conditions.

Cancellation of Orders by Customer for Convenience. Customer may cancel, for its convenience, orders for products prior to shipment of such products upon the following conditions: (i) for stock products held in inventory and distributed by Seller on a regular basis and in Seller's ordinary course of business, Customer may cancel orders at any time up to forty-eight (48) hours prior to the scheduled shipment of such products; and (ii) for non-stock, custom products, Customer may cancel orders at any time prior to shipment provided that Customer shall be responsible, and shall reimburse Seller, for all work in process and all materials purchased by Seller and/or its suppliers for the production of such products, and Customer shall pay Seller an equitable adjustment for all other costs incurred by Seller in relation to the fulfillment by Seller of such orders.

Assignability. These Terms and Conditions shall bind the successors and assigns of the parties hereto at the option of the Seller. The rights and duties hereunder are not assignable or transferable by Customer, in whole or in part, by operation of law or otherwise, without the prior written consent of Seller that may be granted or withheld in its sole discretion. Any assignment or attempted assignment in contravention of the foregoing shall be null and void, shall be considered a breach of these Terms and Conditions and shall permit Seller, in addition to any other rights which it may have, to terminate the contract between Seller and Customer. Seller shall have the right to assign any rights or obligations hereunder to any third party.

Tax and other Charges. Unless otherwise stated in a Separate Agreement, a Seller quotation or proposal, a purchase order submitted by Customer and accepted by Seller, or a Seller acknowledgement, bill of lading or invoice, as applicable, Seller's price does not include: (a) transportation, handling, crating or packaging charges, or (b) sales, harmonized sales, goods and services, use or value-added tax or any other tax, excises, duties, tariffs, fees or other governmental charges that Seller may be required to pay or collect under any existing or future law, with respect to the import/export, sale, transportation, delivery or storage of any products or the provision of any services sold by Seller. Any tax or governmental charge or increase in the same hereafter becoming effective increasing the cost to the Seller of producing, selling, or delivering the products or of procuring materials used therein, and any tax now in effect or increase in same payable by the Seller because of this sale, such as Sales Tax, Use Tax, Retailer's Occupational Tax, Gross Receipts Tax, may at Seller's option, be added to the price herein specified.

Severability. If any provision of these Terms and Conditions is held invalid, such invalidity shall not affect other provisions or applications of these Terms and Conditions.

Entire Agreement. These Terms and Conditions, along with the applicable Separate Agreement, Seller quotation or proposal, purchase order submitted by Customer and accepted by Seller, and/or Seller acknowledgement, bill of lading or invoice, constitutes the complete and exclusive agreement between Seller and Customer concerning the products or services sold hereunder. Any additional or different terms are objected to and shall not be binding unless expressly agreed to by Seller in writing.

Law Governing; Jurisdiction and Venue. The terms hereof shall be governed by and construed in accordance with laws of the State of Missouri. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. WITH RESPECT TO ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING FROM THE SALE OF PRODUCTS OR SERVICES BY SELLER TO CUSTOMER, SELLER AND CUSTOMER IRREVOCABLY AGREE THAT JURISDICTION AND VENUE IN ANY SUCH DISPUTE, CONTROVERSY, OR CLAIM SHALL PROPERLY AND EXCLUSIVELY LIE IN THE CIRCUIT COURT FOR ST. LOUIS COUNTY, MISSOURI, OR THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI, AND SELLER AND CUSTOMER IRREVOCABLY AGREE THAT VENUE WOULD BE PROPER IN SUCH COURT AND HEREBY WAIVE ANY OBJECTION THAT SUCH COURT IS AN IMPROPER OR INCONVENIENT FORUM FOR THE RESOLUTION OF SUCH ACTION.

Exporting of Goods. Unless specified herein or otherwise agreed in writing, the products are provided to Customer for consumption in the United States of

America, and Customer shall not transship or otherwise ship the products in violation of any export control law or regulation.

Independent Contractors. Seller and Customer are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated hereunder or otherwise, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability shall exist between the parties under these Terms and Conditions or otherwise at law.

Attorneys' Fees. IN CONNECTION WITH ANY LITIGATION ARISING FROM THE SALE OF PRODUCTS OR SERVICES BY SELLER TO CUSTOMER, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES AND EXPENSES FROM THE NON-PREVAILING PARTY AS PART OF THE SAME LITIGATION; PROVIDED, HOWEVER, IF A PARTY PREVAILS ON SOME, BUT NOT ALL, OF ITS CLAIMS, SUCH PARTY SHALL BE ENTITLED TO RECOVER AN EQUITABLE AMOUNT OF SUCH FEES, COSTS AND EXPENSES, AS DETERMINED BY THE APPLICABLE COURT COMMENSURATE WITH ITS DEGREE OF SUCCESS AGAINST THE NON-PREVAILING PARTY.

Force Majeure. Force Majeure means any circumstances beyond the reasonable control of either party, including without limitation fire, explosion, breakdown of machinery or equipment, plant shutdown, strikes or other labor disputes, acts of terrorism or war, riots or other civil disturbances or voluntary or involuntary compliance with any law, order regulation, recommendation or request of any governmental authority, inability to obtain materials necessary for manufacturer of the products, total or partial failure of any of Seller's usual means of transportation of the products, or for failure to obtain necessary governmental approvals, permits or licenses. Neither party will have any liability, other than for the payment of monies owing, for their failure to perform any of their contractual obligations arising out of or in connection with events of Force Majeure.

Waiver. The failure by Seller at any time to enforce any of the provisions of these Terms and Conditions, or to require performance by Customer of any of the provisions of these Terms and Conditions, shall in no way be construed to be a waiver of such provisions or to affect either the validity of these Terms and Conditions or any part hereof, or the right of Seller thereafter to enforce each and every provision in accordance with these Terms and Conditions.