

CALYXO, INC. STANDARD TERMS & CONDITIONS OF SALE
FOR DIRECT CUSTOMERS IN THE UNITED STATES

1. General Principles. These Terms and Conditions (the “Terms”) are applicable to any proposition, offer, order and agreement relating to the sale of products (collectively “Products”) marketed by Calyxo, Inc., acting as principal or sales representative (hereinafter “Company”) to the Purchaser (hereinafter “Purchaser”). These Terms do not apply to sales to distributors. On the basis solely of a purchase order or invoice settlement for the products, Purchaser is irrevocably deemed to have acknowledged and agreed to be legally bound to the Terms. Company will not be bound by, and specifically objects to, any term, condition, or other provision which is different from or in addition to the provisions of these Terms (whether or not it would materially alter these Terms) which is proffered by Purchaser in any purchase order, receipt, acceptance, confirmation, correspondence, or otherwise, unless Company specifically agrees to such provision in a written instrument signed by Company. Company’s acceptance of any order by Purchaser is expressly conditioned by Purchaser’s assent to the terms and conditions of these Terms.

2. Order and Delivery.

2.1 Orders. Orders may be placed by contacting:

Calyxo Customer Service
Tel.: 833-214-3354
Fax.: 925-481-5533
Email: customerservice@calyxoinc.com

2.2 Purchase and Sale. Company will sell to Purchaser and Purchaser will accept and pay for all Products ordered by Purchaser pursuant to an order which has been accepted by Company. All orders are subject to acceptance by Company, which may be in writing or electronic record delivered to Purchaser or by shipping Products. Company may accept any order in whole or in part and Company’s shipment of less than all Products ordered shall constitute acceptance of the order only as to those Products shipped.

2.3 Shipment. Company will make every reasonable effort to meet the delivery dates quoted or acknowledged and will not be liable for any failure to meet such dates. Company reserves the right to make partial shipments. Company will deliver the Products FOB Origin. Company’s only responsibility is to make the Products available at the Company’s premises. Purchaser bears full costs and risks of moving the Products from there to destination. Purchaser hereby acknowledges and accepts responsibility to promptly reimburse Company for all shipping charges, including but not limited to, premiums for freight insurance, inspection fees, assessments, express delivery charges and all other costs incurred in transporting the Products to the shipping destination. Company assumes no liability for products damaged during transit but will extend assistance to help settle claims.

2.4 Inspection and Acceptance. Purchaser shall inspect all shipments within one business day after arrival and notify Company in writing promptly of any damage, shortages, or other failures to conform to these Terms which are reasonably discoverable upon arrival. Purchaser shall allow Company a reasonable opportunity to inspect such Products to enable Company to verify the alleged damaged or nonconformity. Purchaser’s failure to timely notify Company in writing of any alleged nonconformity of the Products or any co-mingling of the Products shall constitute an acceptance of the Products.

2.5 Direct Delivery. Company may directly deliver Products to Purchaser by prior arrangement with Purchaser. Section 2.2 applies but Section 2.3 does not apply to direct delivery. Inspection and acceptance pursuant to Section 2.4 must be done immediately upon delivery.

3. Payment

3.1 Prices. Unless specified otherwise in these Terms the purchase prices for the Products shall be as specified by Company at its then-current standard price list. Company may change its prices at any time without 30 days’ notice to Purchaser. The prices payable under this paragraph 3.1 do not include sales, goods and services, value added or other taxes. Purchaser will pay or reimburse Company for all such taxes, or other amounts payable to governmental authorities on account of the sale of the Products or will provide Company with an exemption certificate satisfactory to Company.

3.2 Payment. Company will issue invoices for all amounts payable under these Terms. Purchaser will pay the amount set forth on Company’s invoice within thirty (30) days from the date of such invoice unless specified otherwise in a written agreement signed by Company. All amounts payable under these Terms are in US dollars.

3.3 Payment of Undisputed Invoices. Invoices issued by Company for whole or partial shipments of the Products shall be paid by the Purchaser regardless of disputes relating to other invoices, and Purchaser waives the right to assert offsets or counterclaims with respect to such invoices. Purchaser shall promptly notify Company customer service of any disputed invoice and confirm such notice in writing. Any amounts not paid when due will be subject to a past due payment fee computed daily at a rate equal to one- and one-half percent (1.5%) per month or the highest rate permissible under applicable law, whichever is lower. Purchaser agrees to pay Company’s reasonable attorneys’ fees and other costs incurred in collection of any amounts not paid when due, whether suit commences.

3.4 Purchaser’s Financial Condition; Insecurity. If Purchaser’s financial condition creates objective doubt regarding Purchaser’s ability to perform of any obligation under these Terms, Company may accelerate and demand immediate payment of any amounts owed Company, suspend performance, or cancel these Terms.

3.5 Security for Payment of Purchase Price. Purchaser hereby grants Company a security interest in the Products and proceeds thereof to secure payment of the purchase price and all of Purchaser’s related and incidental obligations to Company. Company may file these Terms as a financing statement.

4. Product Return and Warranty.

4.1 Limited Warranty. Company warrants to Purchaser that the Products substantially conform to Company’s material published specifications and are free from any defects in material or workmanship through: (i) the expiration date for disposable Products stated on the Product packaging, or (ii) a two-year warranty period for reusable Products. Purchaser’s exclusive remedy for Company’s breach of the foregoing warranty shall be, at Company’s option, the replacement of a confirmed defective Product, the refund of the purchase price paid by Purchaser, or a credit of the purchase price paid by Purchaser. For reusable Products, replacement Products may be refurbished Products. This

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warranty is contingent upon proper use of Products in the application for which they were intended as indicated in the instructions for use thereof. This warranty shall not apply to Products that were reused or reprocessed, modified by Purchaser, subject to improper storage by Purchaser, or subject to unusual physical or environmental stress.

4.2 Disclaimer and Release. THE WARRANTIES, OBLIGATIONS AND LIABILITIES OF COMPANY AND THE REMEDIES OF PURCHASER SET FORTH IN THIS SECTION 4 ARE EXCLUSIVE AND IN SUBSTITUTION FOR, AND PURCHASER HEREBY WAIVES, RELEASES, AND DISCLAIMS ALL OTHER TERMS, REPRESENTATIONS, CONDITIONS, WARRANTIES, OBLIGATIONS AND REMEDIES OF PURCHASER AGAINST COMPANY, EXPRESS OR IMPLIED, ARISING BY LAW OR OTHERWISE, WITH RESPECT TO THE PRODUCTS AND ANY OTHER GOODS OR SERVICES DELIVERED UNDER THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO: (A) ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; (B) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (C) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT, WHETHER OR NOT ARISING FROM THE NEGLIGENCE (WHETHER ACTIVE, PASSIVE, OR IMPUTED), PRODUCT LIABILITY OR STRICT LIABILITY OF COMPANY; AND (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR INFRINGEMENT. COMPANY MAKES NO REPRESENTATION REGARDING COMPLIANCE WITH ANY STATE, PROVINCIAL, OR LOCAL LAW, CODE OR ORDINANCE RELATING TO THE OPERATION OF THE PRODUCTS ("LOCAL LAWS"). PURCHASER HEREBY ACKNOWLEDGES THAT PURCHASER IS SOLELY RESPONSIBLE FOR COMPLIANCE WITH SUCH LOCAL LAWS.

4.3 Excused Performance. Company will not be responsible for or be in breach of or default under these warranty terms on account of any cause beyond Company's reasonable control or not occasioned by Company's fault or negligence, including, but not limited to, Company's inability, after due and timely diligence, to procure materials, parts, equipment, or services.

4.4 Third Party Beneficiaries. There are no third-party beneficiaries of the warranty granted by Company herein.

4.5 Implied Warranties. These Terms will be subject to any applicable laws in the territory where the Products are used and impose implied warranties, conditions or obligations upon Company which cannot be excluded, restricted, or modified (or can only be excluded, restricted, or modified to a limited extent). To the greatest extent allowed by such laws, the Company will limit its liability to its choice of the following: (a) the replacement of the Products or the re-supply of equivalent Products (including refurbished Products); (b) the repair of the Products; (c) payment of the cost of replacing the Products or acquiring equivalent goods; or (d) payment of the cost of repairing the Products.

4.6 No Product Return. Purchaser has no unlimited right of product return.

5. Reporting, Recordkeeping, and Recall.

5.1 Reporting and Recordkeeping. Company and Purchaser agree to supply to each other upon request any information necessary for the other to comply with any applicable governmental reporting or recordkeeping requirement including, but not limited to, the United States Food and Drug Administration's Medical Device Reporting Regulations, and all similar laws as far as they are applicable where the Products are used. When requesting such information, the requesting party shall inform the other what information is required for these purposes, and, promptly after being made aware of any such required information, the recipient of the request shall supply the other with responsive information necessary to enable the requesting party to comply with such governmental reporting or recordkeeping requirements. Without limiting the generality of the foregoing, Purchaser agrees to provide, upon request, information to Company that responds to whether the Products may have caused or contributed to the death or serious injury of an individual or has malfunctioned, and whether the Products would be likely to cause or contribute to death or serious injury of another if the malfunction were to recur, in order for Company to comply with the aforesaid governmental reporting or recordkeeping requirements.

5.2 Recalls. In the event of a recall, Purchaser shall cooperate fully in conducting such recall. If the recall is caused (in whole or in part) by any action or omission of a party in breach of these Terms, such party shall pay the costs of such recall, excluding attorneys' fees, transportation, and related costs, but including any costs of destruction, related or attributable to such breach. If the recall is caused by reasons other than breach of these Terms by one or both of the parties, the parties agree to equally share the costs for said recall, excluding attorneys' fees, transportation, and related costs, but including any related costs of destruction.

6. Indemnity. Purchaser agrees to indemnify, defend and hold harmless Company, its affiliates and their respective officers, directors, employees, agents and representatives from and against any and all losses of any kind or nature whatsoever arising out of any third party claims or suits resulting from: (i) Purchaser's negligent act or omission in connection with the purchase, storage, use, sale, lease, shipment, promotion, endorsement, or distribution of the Products, (ii) Purchaser's breach of any representation, warranty or covenant contained herein, or (iii) Purchaser's failure to comply with any or all domestic or foreign laws or other regulatory requirements

7. Miscellaneous.

7.1 Limitation of Remedy. EXCEPT TO THE EXTENT PROHIBITED BY THE LAW OF THE TERRITORY WHERE THE PRODUCTS ARE USED: (A) COMPANY'S LIABILITY (WHETHER IN TORT, CONTRACT, OR OTHERWISE), AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), STRICT LIABILITY, OR PRODUCT LIABILITY OF COMPANY WITH REGARD TO ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT SHALL IN NO EVENT EXCEED THE PURCHASE PRICE PAID BY PURCHASER TO COMPANY UNDER PARAGRAPH 3.1; AND (B) COMPANY SHALL HAVE NO OBLIGATION OR LIABILITY WHETHER ARISING IN CONTRACT (INCLUDING WARRANTY), TORT (INCLUDING ACTIVE, PASSIVE, OR IMPUTED NEGLIGENCE, STRICT LIABILITY OR PRODUCT LIABILITY) OR OTHERWISE, FOR ANY

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SPECIAL, CONSEQUENTIAL, OR INDIRECT DAMAGES OR FOR LOSS OF REVENUE, LOSS OF BUSINESS OR OTHER FINANCIAL LOSS ARISING OUT OF OR IN CONNECTION WITH ANY PRODUCT OR OTHER GOODS OR SERVICES FURNISHED UNDER THIS AGREEMENT WHETHER OR NOT COMPANY WAS AWARE OF THE POSSIBILITY OF THE SAME.

7.2 Force Majeure. Company will not be liable for failure or delay to perform obligations under these Terms, which have become practicably impossible because of circumstances beyond the reasonable control of Company. Such circumstances include without limitation natural disasters or acts of God; acts of terrorism; labor disputes or stoppages; war; government acts or orders; epidemics, pandemics, or outbreak of communicable disease; quarantines; national or regional emergencies; or any other cause, whether similar in kind to the foregoing or otherwise, beyond Company's reasonable control. All delivery dates under these Terms affected by force majeure shall be tolled for the duration of such force majeure. The parties hereby agree when feasible not to cancel but reschedule the pertinent obligations and deliverables for mutually agreed dates as soon as practicable after the force majeure condition ceases to exist.

7.3 Assignment. Purchaser may not assign its rights or obligations under this agreement to any third party by operation of law or otherwise, without company's prior written consent.

7.4 Export Laws. Purchaser acknowledges that any Products supplied to Purchaser are subject to export control laws and regulations of the United States. Purchaser agrees to comply with all export laws, trade sanctions, regulations, and restrictions of the United States, including but not limited to the shipment or any other transfer of the Products to a location or to any end user or for any end use that would violate any applicable export controls and trade sanctions. Purchaser further agrees to ensure that the Products will not be exported, sold, or otherwise transferred to countries or persons in violation of the export laws and regulations of the United States.

7.5 Governing Law and Forum. The validity, performance and construction of these Terms shall be governed by the laws of the State of Delaware (excluding principles of conflict of laws). Each party agrees that valid service of process may be by certified mail at the last known address of its principal office, or by other means authorized under the laws of the state of Delaware.

7.6 Entire Agreement. These Terms constitute the entire agreement, and supersede any and all prior agreements, between Company and Purchaser with regard to the Products, unless an agreement is entered into between the Company and Purchaser for special purchase terms supplemental to these Terms. Purchase agrees that Company's failure at any time to require compliance by Purchaser of any of the provisions of the present Terms shall not operate as a waiver of the right of Company to request strict performance of the same or like provisions at a later time. No amendment, modification, or waiver of these Terms will be valid unless set forth in a written instrument signed by the parties to be bound.