



IN EVERYTHING THAT FLIES

TAPIS CORPORATION

TERMS AND CONDITIONS OF SALE

Section 1: Definitions

1.1 “Agreement” shall mean the Confirmed Quote and these Terms and Conditions. The Confirmed Quote and these Terms and Conditions shall be considered a single agreement and the parties agree that all the terms and conditions contained in each of these documents shall govern the sale of the Products by Tapis to Buyer.

1.2 “Buyer” shall mean the entity identified in the Quote.

1.3 “Confirmed Quote” shall mean Buyer’s written confirmation of its acceptance of the Quote in all respects.

1.4 “Custom Products” shall mean Products that are not maintained by Tapis in stock and require an MOQ and special lead times.

1.5 “MOQ” shall mean minimum order quantities.

1.6 “Products” shall mean the products identified in the Quote, as well as those products identified in a Purchase Order that is accepted by Tapis.

1.7 “Purchase Order” shall mean a purchase order, issued by Buyer to Tapis, confirming Buyer’s order for the Products identified in the Quote.

1.8 “Quote” shall mean the quotation issued by Tapis, in response to Buyer’s request for a proposal from Tapis, for the sale of Products by Tapis to Buyer. The Quote shall identify the Products, the Purchase Price and the other terms and conditions of the proposed sale.

1.9 “Purchase Price” shall mean the price for the Products as provided in the Quote.

1.10 “Tapis” shall mean **TAPIS CORPORATION**, a corporation with its principal place of business located at 28 Kaysal Court, Armonk, NY 10504

Section 2: Delivery of Quote; Acceptance by Buyer

2.1 The Quote, in conjunction with these Terms and Conditions, constitutes an offer to sell the Products to Buyer and such offer may only be accepted by Buyer by delivering to Tapis a Confirmed Quote. Until confirmed by Buyer, a Quote may be withdrawn by Tapis at any time and shall expire in any event thirty (30) days following the date of the Quote unless otherwise provided in the Quote to the contrary.

2.2 In lieu of a Confirmed Quote, Buyer may provide Tapis with a Purchase Order

confirming Buyer's order for the Products in accordance with the Quote. The Purchase Order shall confirm the Products ordered, the quantities and prices, the shipment schedule, the terms and place of delivery, and the following notation: "This Purchase Order is issued pursuant and subject to Quote Number: [*insert number contained on original Quote*]."

2.3 Any modifications by Buyer to the Quote or any terms or conditions contained in a Purchase Order or any other document issued by Buyer which are inconsistent with or contrary to the Quote and these Terms and Conditions are expressly rejected by Tapis and shall constitute a counter offer by Buyer, the terms of which Tapis may either accept or reject in whole or in part in its sole discretion. Each Purchase Order shall be governed by and be deemed to include the provisions of this Agreement. In the event of any inconsistency between the terms and conditions of this Agreement and the terms of a Purchase Order, the terms and conditions of this Agreement shall prevail.

Section 3: Custom Products; Minimum Order Quantities; Tolerances; Etc.

All orders for Custom Products shall be subject to an MOQ, 3 yardage tolerances of $\pm 10\%$ for the ordered quantities and such other express terms as provided in the applicable Quote.

Section 4: Purchase Price; Payment Terms

4.1 Payment terms of the Purchase Price are set forth in the Quote. The Purchase Price is net of any sales, use or excise tax and any duty, import or other third party fees imposed with respect to the sale, purchase or use of the Products. Any such expense shall be paid by Buyer or for the account of Buyer and may be included with any invoices or may be billed subsequently.

4.2 Unless a credit line has been established pursuant to Section 4.2, no shipment to Buyer of any Products shall be made until Tapis receives full payment of the Purchase Price by check, certified funds, wire transfer or approved credit card. If Buyer makes payment by non-certified check, shipment of the Products will not occur until the check is honored by Tapis' bank. Buyer may request that a credit line be established for its benefit, the approval of which shall be determined by Tapis in its sole discretion. Buyer agrees to furnish to Tapis, upon request, financial and credit information pertaining to the Buyer's business for the establishment and/or continuation of any credit line.

4.3 All delinquent sums due and owing to Tapis shall bear interest of one and one-half percent (1½%) per month. If Buyer fails to make payment according to the terms of this Agreement, Tapis shall be under no obligation to produce the Products and/or to make further shipments, and may elect at any time to cancel all or any part of the unfulfilled orders, and proceed for the collection of the amount unpaid on shipments previously made.

4.4 If the cost of products or procurement of the Products to Tapis shall increase during the Term of this Agreement, Tapis shall have the right, on giving thirty (30) days prior written notice to Buyer, to increase the Purchase Price. All Products ordered prior to said notice, and/or prior to the expiration of said thirty (30) day period, shall not be subject to the increase.

Section 5: Delivery of Products

5.1 Unless the ship date is provided in the applicable Purchase Order, Tapis shall notify Buyer when the Products are ready for shipment to Buyer from the shipping point. Unless a credit line has been established pursuant to Section 4.2, upon receipt of such notice of readiness for shipment, Buyer shall tender to Tapis any portion of the Purchase Price due prior to shipment in accordance with the terms of the Quote.

5.2 Any delivery date stated in the Confirmed Quote or Purchase Order is approximate only. Delivery and shipment shall be extended to the extent reasonably necessary if delay is caused by Force Majeure. If shipment is delayed, at Buyer's request, tender of the Purchase Price shall nevertheless be due after notice to Buyer that the Products are ready for shipment. Storage charges equal to fifteen percent (15%) of the Quote shall be assessed against Buyer after seven (7) days following the date of such notice.

Section 6: Title and Risk of Loss

6.1 All Products purchased pursuant to this Agreement shall be shipped F.O.B. Tapis' shipping facility as reflected in the Quote, and the place for delivery shall be Buyer's place of business as provided in the Quote or the Purchase Order.

6.2 Unless otherwise provided in the Quote to the contrary, title to, and all risk of loss, injury or destruction to the Products, shall be assumed by Buyer from the point Tapis delivers the Products to the carrier for shipment. Any such loss, injury, or destruction shall not release Buyer from any obligations under this Agreement. Buyer shall, at its own expense, purchase insurance from the carrier which covers the value of, and all filed claims for, any Products damaged or lost in transit.

Section 7: Security Interest

Tapis reserves a purchase money security interest in the Products and all replacements, products and proceeds thereof to secure payment in full of the Purchase Price. Buyer agrees that Tapis will have the right to file these Terms and Conditions of Sale, or financing statements, pursuant to the Uniform Commercial Code or other applicable law to perfect its security interest in the Products.

Section 8: Right of Inspection; Non-Conforming Products

8.1 Buyer shall have seven (7) business days to inspect the Products commencing from the date of their arrival at Buyer's facility. Any objection to the condition, quality, grade, or general conformity of the Products must be made in writing and received by Tapis within such seven (7) business day period. Said writing must specify in detail the basis of Buyer's objection and advise of its intention to accept or reject the Products in their present condition. The failure of Buyer to comply with these conditions shall constitute irrevocable acceptance of the Products by Buyer.

8.2 Any use of the Products by Buyer, including, but not limited to, the cutting of the material, shall be deemed and construed as an acceptance of the Products and as conclusive evidence that the Products are conforming unless Buyer receives written authorization from Tapis before doing so.

8.3 The sole and exclusive remedy for Products that are defective or non-conforming shall be the replacement of such Products subject to Tapis' inspection and the warranty set forth herein. Upon Tapis' receipt of notification from Buyer of defective or non-conforming Products, Tapis shall provide Buyer with instructions regarding their disposition. Buyer may not return Products unless written authorization is received from Tapis. Buyer's failure to comply with Tapis' return of goods authorization procedures will constitute a waiver of all claims relating to the defective or non-conforming Products in question.

Section 9: Assignment

9.1 Tapis may, in its sole discretion and without Buyer's consent, assign or delegate any of its rights or obligations under this Agreement.

9.2 Buyer shall not assign its rights or delegate its obligations under this Agreement without first obtaining the written consent of Tapis. Buyer acknowledges that Tapis has a substantial interest in having Buyer perform or control the acts required by this Agreement and that any unauthorized assignment or delegation would increase the burden or risk involved and would impair its chance of obtaining performance and/or payment. Any assignment or delegation by Buyer without the express authorized consent of Tapis shall be considered a material breach of this Agreement.

Section 10: Nondisclosure

10.1 Each party agrees to regard as confidential all information developed by or communicated to it in the course of or in connection with its performance under this Agreement ("Confidential Information"). Each party agrees that it will not, without the prior express and written consent of the other party, make any oral or written disclosures of any such confidential information, either during or after the term of this Agreement. However, such information may be disclosed to employees of the parties and other authorized persons who may be designated to perform work pursuant to this Agreement.

10.2 Confidential Information shall not include, and the obligations of confidentiality and restriction on use in this Agreement shall not apply to, information obtained by the receiving party that (i) was in the public domain prior to the date of this Agreement or subsequently comes into the public domain through no fault of the receiving party; (ii) was lawfully obtained by the receiving party from a third party free of any obligation of confidence to the disclosing party; (iii) was already in the possession of the receiving party prior to receipt thereof, directly or indirectly, from the disclosing party; or (iv) is required to be disclosed in a judicial or administrative proceeding after all reasonable legal remedies for maintaining such information in confidence have been exhausted including, but not limited to, giving the disclosing party as much advance notice of the possibility of such disclosure as practical so the disclosing party may attempt to stop such disclosure or obtain a protective order concerning such disclosure.

Section 11: Intellectual Property; Infringement

12.1 All data, drawings, specifications, formulas, manufacturing techniques and other technical know-how and information relating to the Products shall remain the exclusive property of Tapis.

11.2 Buyer acknowledges Tapis' ownership of its marks used to identify the Products. Buyer may use such marks on a non-exclusive basis solely in connection with its sale, distribution, advertisement and promotion of the products manufactured from the Products. Buyer may not transfer, assign, sublicense, or otherwise grant rights with respect to the marks to any third parties. All use of such marks on products manufactured from the Products will inure to the benefit of Tapis. Buyer will not, during or after the term of this Agreement, contest Tapis' title in and to such marks or their validity.

11.3 If any Products of Tapis' design when used for their normal purpose are charged with infringement of a United States patent issued on or before the date hereof, and if Buyer has given Tapis prompt written notice of such charge, Tapis at its option (i) shall obtain for Buyer the right to use the Products free of charge or (ii) shall substitute for such Products another equally suitable substitute, or (iii) at Tapis' own expense shall institute or defend any suit or legal proceeding, which may arise as a result of such charge and in any such suit or legal proceeding shall satisfy any final award for such infringement. Tapis' obligations hereunder are subject to the conditions that the alleged infringement not arise from (a) manufacturing the Products in conformity with specifications and designs furnished by Buyer; (b) the combination of the Products with products not furnished by Tapis, or (c) the modification or alteration of the Products following delivery by Tapis. These provisions set forth Tapis' entire responsibility for any claim or charge of patent infringement by the performance of any patented

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process. Buyer agrees to indemnify and defend Tapis and hold Tapis harmless from all expenses, including reasonable attorneys' fees, that may be incurred, as well as all damages and costs that may finally be assessed against Tapis, in any action for patent, trademark, or copyright infringement, or any claim for violation of any trade secret, for which Tapis becomes liable as a consequence of an occurrence under clauses (a) through (c) above.

Section 12: Force Majeure

12.1 Tapis shall not be liable for any delay or non-delivery of the Products directly or indirectly resulting from, in whole or in part, any foreign or domestic laws or regulations, embargos, seizure, act of God, civil or military authority, insurrection, war or the adoption or enactment of any law, ordinance, regulation, ruling or order directly or indirectly rendering impossible or impractical production or delivery of Products under this Agreement, lack of the usual means of transportation, fires, floods, severe weather, explosions, epidemics, quarantine restrictions, strikes, inability to obtain necessary labor, materials, or manufacturing facilities, shipping interruptions, or other accident, contingency or condition beyond Tapis' reasonable control.

12.2 If any delivery under this Agreement is suspended or delayed by reason of any one or more of the occurrences or contingencies described above, then any and all deliveries so suspended or delayed may, at Tapis' option, be made after such event or condition has ceased to exist.

Section 13: Warranties

13.1 Tapis warrants the Products supplied pursuant to this Agreement against original defects in materials and workmanship under normal use and service for a period of two (2) years from the date of shipment. Tapis' sole liability and Buyer's sole remedy, under this warranty, which shall be exercised at Tapis' option, is to repair, replace or provide Buyer with a credit against, the defective or non-conforming Products without charge. Defective and non-conforming Products will only be replaced after Tapis has inspected the Products in question and determined that such Products are defective and/or non-conforming. This warranty is non-transferable and is limited to the original buyer. This warranty does not cover claims for conditions or damages caused by shipping, abuse, accidents, alterations, misuse, neglect, excessive wear and tear, or other physical damage, or from failure to exercise due care in the measurement, cutting, installation, cleaning or maintenance of the Products. This warranty does not cover claims for scuffs, scratches, scrapes, tears and abrasive or excessive wear and does not cover claims for damage due to repair, alteration, or modification of the Products by anyone other than Tapis, unless such repair, alteration or modification is authorized by Tapis in writing. The performance of this warranty does not extend the warranty period for any Products beyond that period applicable to the Products originally delivered.

13.2 Buyer shall immediately contact Tapis upon the discovery that it has a warranty claim. Buyer shall comply with all instructions of the Tapis in processing its warranty claim, including, but not limited to, providing Tapis with all documentation and material it requests within thirty (30) days. Buyer's failure to comply with any request made by Tapis within said time period shall be deemed a waiver of its warranty claim and shall bar Buyer from making any future warranty claims with respect to the Products in question.

13.3 THE FOREGOING WARRANTY IS THE EXCLUSIVE WARRANTY APPLICABLE TO THIS AGREEMENT AND THE PRODUCTS. ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND THOSE ARISING FROM COURSE OF DEALING ARE

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DISCLAIMED. THE SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THIS WARRANTY SHALL BE AS EXPRESSLY PROVIDED IN THIS SECTION 13. IF BUYER DESIRES TO BRING AN ACTION FOR BREACH OF WARRANTY, THE TIME WITHIN WHICH THE ACTION SHALL BE COMMENCED SHALL BE ONE (1) YEAR AFTER THE ACCRUAL OF THE CAUSE OF ACTION. BUYER'S FULL AND COMPLETE PERFORMANCE OF ALL OBLIGATIONS OF BUYER SET FORTH IN THIS AGREEMENT IS A CONDITION PRECEDENT TO TAPIS' WARRANTY OBLIGATIONS.

Section 14: Limitation of Buyer's Remedies

14.1 Should Tapis fail to make delivery of the Products, or otherwise breaches or repudiates this Agreement, Buyer's sole remedy for any and all losses or damages shall be limited to the recovery of the difference between the Purchase Price and the market price of the Products.

14.2 UNDER NO CIRCUMSTANCES SHALL TAPIS BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS OR REVENUE, INABILITY TO USE THE PRODUCTS OR OTHER ASSOCIATED PRODUCTS, THE COST OF SUBSTITUTE PRODUCTS, AND CLAIMS BY THIRD PARTIES). THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS HAS BEEN ESTABLISHED ON THE ASSUMPTION THAT TAPIS HAS NO RISK OF SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES EVEN IF TAPIS MAY BE AWARE OF ANY SPECIAL CONSIDERATIONS OR CIRCUMSTANCES AFFECTING BUYER. THE LIMITATION ON SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES IS INTENDED TO APPLY TO ALL ASPECTS OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT. THIS LIMITATION OF REMEDY HAS BEEN NEGOTIATED BY TAPIS AND BUYER, AND IS DEEMED TO BE ADEQUATE BY BOTH PARTIES.

Section 15: Buyer's Default and Tapis' Remedies.

15.1 Buyer shall be in default under the Agreement if Buyer (i) fails to make any payment required under the Quote when due; (ii) refuses to accept delivery of the Products following issuance by Tapis of the notice of readiness to ship; (iii) terminates acceptance of the Quote or any portion thereof without the consent of Tapis; (iv) breaches any warranty, covenant or other condition of the Agreement; or (v) participates either voluntarily or involuntarily in any bankruptcy, insolvency, assignment for the benefit of creditors or other proceedings under which Buyer seeks relief as a debtor ("Default").

15.2 In the event of a Default, Tapis shall be entitled to elect any of the following remedies: (i) Tapis may suspend performance of any of its obligations, including any warranty, under this Agreement and these Terms and (A) may recover from Buyer all damages incurred by Tapis as a result of the Default including, without limitation, lost profits, costs and reasonable attorneys fees, or (B) may retain all sums paid by Buyer on account as liquidated damages; (ii) Tapis shall be entitled to enforce Buyer's obligations under the Agreement and to recover from Buyer all costs and expenses, including without limitation reasonable attorneys fees; and (iii) Tapis shall have all rights and remedies of a secured party under the Uniform Commercial Code. Provision herein for any particular remedy shall not preclude Tapis from obtaining any other remedy available at law or equity.

Section 16: Buyer's Indemnification

Buyer shall indemnify and defend Tapis, its subsidiaries and affiliates and their respective

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officers, directors, employees and agents (“Indemnitees”) from and against all liabilities, claims, damages, penalties, fines, forfeitures, suits and expenses incident thereto (including costs of defense and reasonable attorneys’ fees), which Indemnitees may incur, become responsible for, or pay out as a result of any third-party claims, arising out of the use, storage, sale, processing or other disposition the Products covered by this Agreement after their delivery to Buyer.

Section 17: Entire Agreement; Modification

The Confirmed Quote (or Purchase Order issued strictly in accordance with Section 2.2) and these Terms and Conditions constitute the entire Agreement between the parties relating to the sale of the Products. No modification to this Agreement shall be binding on Tapis unless the modification is in writing and signed by both Tapis and Buyer.

Section 18: Miscellaneous.

18.1 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of the parties hereto.

18.2 Waiver/Severability. Any failure by Tapis to enforce at any time any term or condition hereof shall not be construed as a waiver of Tapis’ right thereafter to enforce each and every term at a later date. A judicial determination of the invalidity of any one or more of the provisions hereof shall not invalidate the remaining provisions of these Terms.

18.3 Choice of Law; Jurisdiction. The rights and obligations of the parties hereunder shall be governed by and construed under the laws of the State of New York without giving effect to conflicts of laws principles. The parties hereby agree to submit to the exclusive jurisdiction of the federal and state courts of the State of New York for purposes of any litigation involving this Agreement or the Products sold hereunder.

18.4 Headings. Headings used in this Agreement are for convenience only and shall not effect the interpretation of the Agreement.