

**FOX RIVER ASSOCIATES LLC
TERMS AND CONDITIONS OF SALE**

NOTICE: Except as may otherwise be agreed in writing between Fox River Associates LLC, an Illinois limited liability company (*FRA*) and **Purchaser**, these terms and conditions apply to each sale **Product** by FRA to Purchaser.

1. **FRA quotation; FRA sales acknowledgement; Purchaser's agreement to FRA terms and conditions.** Each quotation for any sale of any Product by FRA is subject to these terms and conditions, unless the quotation states that a specific provision is inapplicable. FRA will have agreed to fill an order from a Purchaser for Product only by sending a written sales acknowledgement to Purchaser. FRA's agreement to fill any such order will be subject to these terms and conditions, unless the acknowledgement states that a specific provision is inapplicable. Purchaser's assent to FRA's terms and conditions will be conclusively presumed from its failure to object to them within 5 days of receiving FRA's acknowledgement or, alternatively, from Purchaser's acceptance of all or any part of any of the ordered Products from FRA. No term or condition—whether in Purchaser's purchase order, any Purchaser Website, or in any other Purchaser document—that is inconsistent with or in addition to, or that attempts to reject any of FRA's terms or conditions—will bind FRA; FRA rejects any such term or condition. FRA will be bound by an additional or different term or condition proposed by Purchaser only if FRA by its sales acknowledgment delivered to Purchaser explicitly accepts such term or condition. If a Purchaser wishes to modify an order after receiving a sales acknowledgment from FRA, any such modification will be binding upon FRA and Purchaser only if agreed to by FRA by written acknowledgment delivered to Purchaser saying so.
2. **Deliveries.** Unless otherwise specified by FRA in writing, all deliveries will be as stated in FRA's quotation. All deliveries will be made via common carrier or some other reasonable means chosen by Purchaser. All risk of loss to Products sold will pass to Purchaser upon delivery by FRA of such Products to a common carrier. Delivery schedules represent FRA's estimates only, and partial deliveries are permissible. FRA will not be liable for any delay in delivery or shipment of any Products or for any delay otherwise in performance, or for any damages suffered by Purchaser by reason of any such delay. Delivery is subject to Purchaser maintaining credit satisfactory with FRA.
3. **Prices.** Unless otherwise specified by FRA in writing, prices are quoted with delivery terms as stated in FRA's quotation. Prices do not include sales, use, excise, privilege, import duties, or any similar tax levied by government, and Purchaser shall pay any such applicable tax. Orders for non-standard or special Products manufactured to Purchaser's specifications may be cancelled only prior to the commencement of converting and to the extent that FRA is able, without any additional cost to FRA, cancel materials ordered for the converting of such Products.
4. **Terms of payment.** Unless otherwise specified by FRA in writing, the full purchase price for the Products will be due from Purchaser after Purchaser's acceptance of the Products as provided in Article 5. within 30 days of FRA's invoice date. Any extension of credit may be changed or withdrawn by FRA at any time in FRA's sole discretion. Invoices not paid within 30 days after their due date will be subject to carrying charges on the unpaid balance of 2% per month or the maximum rate permitted by law, whichever is less.

5. **Purchaser acceptance; returned Products and claims.** Unless otherwise agreed in writing by FRA, upon delivery of any Products to Purchaser, Purchaser will have 5 days to inspect them and notify FRA of any discrepancy in quantity, damage to the Products, or failure of the Products to conform to specifications or other defect reasonably apparent upon inspection (*Rejection Notice*). If Purchaser fails to provide a timely Rejection Notice to FRA, Purchaser will be deemed to have accepted the Products. If Purchaser provides FRA a timely Rejection Notice, FRA will have 30 days from receipt of the Rejection Notice to cure any valid quantity discrepancy, damage, non-conformance, or other defect described in the notice (*Cure Period*). If within the Cure Period, FRA fails to cure a valid quantity discrepancy, damage, non-conformance, or other defect described in the Rejection Notice, Purchaser will have no obligation to pay FRA the amount of the purchase price attributable any missing, damaged, non-conforming, or otherwise defective Products.
6. **Limited Warranty.** FRA warrants to Purchaser that until the expiration of the documented shelf life of a Product or, if no shelf life is documented, for 180 days following acceptance—as described in Article 5—of the Product, each such Product will conform in all material respects to specifications in the standard technical data sheet. If Purchaser alters or modifies a Product, in whole or in part, without FRA’s prior consent or removes or alters any label, warning, sign, or instruction accompanying a Product, FRA’s warranty will be void as it applies to the Product. FRA’s warranty is limited to Purchaser, is not transferable, and does not cover any Product in whole or in part, to the extent defective because of: (a) an accident, abuse, misuse, negligence, or improper maintenance that is not caused by any act or failure to act by FRA; (b) use, maintenance, alteration, modification, or storage contrary to (i) these terms and conditions or (ii) any procedure, warning, or instruction in any manual, instruction sheet, label, or other material provided by FRA to Purchaser; or (c) any improper or inadequate integration of the Product into any product manufactured by Purchaser (*Product Integration*). THE WARRANTY IN THIS ARTICLE IS EXCLUSIVE. FRA DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. In addition to the warranty provided by FRA, to the extent assignable, FRA hereby assigns to Purchaser all warranties of any manufacturer applicable to all or any part of any Product.
7. **Purchaser’s sole and exclusive remedy.** Provided that Purchaser notifies FRA of any breach of warranty by FRA under Article 6 as soon as practicable and in no event more than 30 days after Purchaser knew or should have known of such breach, FRA shall, at its option, repair or replace any Product that is non-conforming or defective under Article 6 or provide Purchaser a credit—to apply against future purchases—in the amount of the purchase price attributable to the non-conforming or defective Product. Upon FRA’s request, as a condition to FRA’s performance under this Article, Purchaser shall ship each defective Product to a location and by a method designated by FRA, with FRA to bear the shipping charges. FRA also will bear the costs of shipping any replacement Products—but limited to UPS ground rates. If Purchaser wishes FRA to ship by any other means, Purchaser will bear shipping cost exceeding UPS ground rates. If any repair or replacement requires travel by FRA’s employees or contractors to Purchaser’s location, FRA will bear the related travel expenses and labor costs. The remedies described in this Article—of repair, replacement, or credit—will be Purchaser’s sole and exclusive remedy for a breach of this agreement. The warranty period under Article 6 will not be extended by any repair or replacement.
8. **LIMITATION OF LIABILITY AND ACTIONS.** FRA WILL NOT BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL (SUCH AS LOST PROFITS, LOST SALES, OR DAMAGES FOR LOSS OF USE), OR PUNITIVE DAMAGES ARISING

OUT OF OR RELATING TO THIS AGREEMENT OR ANY PRODUCT PROVIDED UNDER THIS AGREEMENT (WHETHER FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OTHER TORT, OR OTHER FORM OF ACTION) AND REGARDLESS OF WHETHER FRA HAS BEEN ADVISED OF THE POSSIBILITY OF ANY SUCH DAMAGE. IN ADDITION, IN NO EVENT WILL FRA'S LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY SUCH PRODUCT (WHETHER FOR BREACH OF CONTRACT OR WARRANTY, NEGLIGENCE, OTHER TORT, OR OTHER FORM OF ACTION) EXCEED THE AMOUNT OF THE PURCHASE PRICE PAID BY PURCHASER TO FRA. THE LIMITATIONS ON DAMAGES IN THIS ARTICLE ARE INDEPENDENT OF THE REMEDY OF REPAIR, REPLACEMENT, AND CREDIT IN ARTICLE 7 AND WILL APPLY REGARDLESS OF WHETHER THOSE REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. NO ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT MAY BE COMMENCED AGAINST FRA MORE THAN ONE YEAR AFTER THE CAUSE OF ACTION ACCRUES.

9. **Purchaser-Supplied Content; infringement indemnity.** Purchaser represents and warrants that any design, drawing, art work, logo, or other content provided to FRA to incorporate into or otherwise use in connection with any Product (*Purchaser-Supplied Content*) does not and will not infringe any current or future patent, copyright, trademark, service mark, trade dress, or other intellectual property right (collectively, *IP Right*) of a third party and has not been misappropriated from any third party. Purchaser hereby grants FRA a license to use and sublicense such Purchaser-Supplied Content as may be necessary to produce the Product for Purchaser. Purchaser in addition shall indemnify, hold harmless, and reimburse FRA, *FRA-Related Parties* (namely, current and future managers, members, shareholders, directors, officers, affiliates, employees, and agents), and FRA suppliers for any loss, liability, claim, damage, and expense (such as costs of investigation and defense and reasonable attorneys' fees and expenses) (collectively, *Loss*) arising from or in connection with any (a) breach of its warranty and representation in this Article or (b) third-party claim alleging that any Purchaser-Supplied Content infringes any IP Right of a third party or misappropriates any trade secret of a third party.
10. **Storage; Product Integration; accidents; general indemnification.** Purchaser shall store and maintain each Product according to FRA's written instructions. Purchaser also will be responsible for all tasks relating to any Product Integration. Any improper or inadequate storage, maintenance, or Product Integration will be at Purchaser's risk. FRA will have no liability for any resulting property damage or bodily injury, including any death. Purchaser shall notify FRA within 48 hours of any occurrence involving any Product that results in any property damage or bodily injury, including any death, and shall cooperate with FRA in determining the cause. Purchaser in addition shall indemnify, hold harmless, and reimburse FRA, FRA-Related Parties, and FRA suppliers for any Loss in connection with any third-party claim for property damage or bodily injury, including death resulting therefrom, arising from Purchaser's negligence or breach of this agreement, in an amount proportionate to Purchaser's responsibility for such Loss.
11. **Credit review; additional assurances.** FRA's performance under this agreement, including delivery of any Product, is subject to its ongoing credit review of Purchaser. Purchaser shall provide FRA with credit and related information as FRA may request from time to time. If Purchaser's financial condition becomes unsatisfactory to FRA, FRA, as a condition to any additional performance under this agreement, may require that Purchaser make cash payments, provide additional security, and provide other assurances of its ability to pay and otherwise perform. FRA may treat a failure to provide any or all of such payments, security, and

assurances within 30 days of a demand to do so, as a repudiation of this agreement by Purchaser, without any further obligation of FRA to perform.

12. Purchaser default/insolvency; additional assurances. In addition to any remedy available at law or in equity, FRA also may choose to forego delivering any or all of the Products to Purchaser and keep the amount of any payment made by Purchaser if, before Purchaser has paid FRA in full: (a) Purchaser materially breaches any obligation under this agreement and fails to cure such breach within 7 days of notice by FRA of such breach; (b) Purchaser commences a voluntary case under Title 11 of the United States Code or the corresponding provisions of any successor law; (c) anyone commences an involuntary case against Purchaser under Title 11 of the United States Code or the corresponding provisions of any successor law and either (i) the case is not dismissed by midnight at the end of the 60th day after commencement or (ii) the court before which the case is pending issues an order for relief or similar order approving the case; (d) a court of competent jurisdiction appoints a custodian (as the term is defined in Title 11 or corresponding provision of any successor laws) for all or substantially all of Purchaser's assets; (e) Purchaser makes an assignment of all or substantially all of its assets to such a custodian; or (f) Purchaser fails generally to pay its debts as they become due (unless those debts are subject to a good-faith dispute as to liability or amount) or acknowledges in writing that it is unable to do so. Purchaser in any of the circumstances described in this Article will have no right to the Products or to return of any payment.

13. Miscellaneous

- a. *Law; forum.* This agreement, including its validity and construction, will be governed by the laws of the State of Illinois, without regard to conflicts-of-law principles. Any party bringing a legal action or proceeding against any other party arising out of or relating to this agreement must bring the legal action or proceeding in either the United States District Court for the Northern District of Illinois, Eastern Division, or the Circuit Court of Kane County, Illinois. Each party consents to the *exclusive* jurisdiction of the United States District Court for the Northern District of Illinois, Eastern Division and its appellate courts, and the Circuit Court of Kane County, Illinois and its appellate courts, for the purpose of all legal actions and proceedings arising out of or relating to this agreement. The exclusive choice of forum set forth in this Section, however, does not prohibit the enforcement of any judgment obtained in that forum or any other appropriate forum. Nor does it prohibit FRA from maintaining a legal proceeding in any other forum as may be necessary to repossess any or all of the Products. Each party also waives, to the fullest extent permitted by law: (a) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this agreement brought in the Circuit Court of Kane County, Illinois, or the United States District Court for the Northern District of Illinois, Eastern Division; and (b) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum.
- b. *Force majeure.* If FRA is prevented by a **Force Majeure Event** from performing any one or more obligations under this agreement, FRA will be excused from performing those

obligations, on condition that it: (a) promptly notifies Purchaser of the occurrence of such Force Majeure Event, its effect on performance, and how long FRA expects it to last; (b) updates that information for Purchaser as reasonably necessary; and (c) during such a Force Majeure Event, uses reasonable efforts to limit damages to Purchaser and resume its performance under this agreement. Force Majeure Event means any event or circumstance, regardless of whether it was foreseeable, that prevents FRA from performing any of its obligations under this agreement when using reasonable efforts to do so, except that a Force Majeure Event will not include FRA's financial hardship, an increase in prices, or a change of law.

- c. *Assignment; delegation; third-party beneficiaries.* Purchaser may not assign any of its rights under this agreement or delegate any performance under this agreement, except with FRA's prior consent. Any purported assignment of rights or delegation of performance in violation of this Section will be void. FRA-Related Parties and FRA suppliers are third-party beneficiaries of Purchaser's promises under Articles 9 (Purchaser-Supplied Content; infringement indemnity) and 10 (Storage; Product Integration; accidents; general indemnification).
- d. *Recovery of expenses.* In addition to any other relief awarded, FRA will be entitled to recover from Purchaser all expenses such as collection-agency and attorneys' fees and expenses that FRA incurs in connection with enforcing any obligation of Purchaser under this agreement.
- e. *Notice.* All notices, consents, requests, waivers, agreements, objections, and other communications or deliveries required or permitted under this agreement (*Notice*) will be deemed effective only if in writing and sent by email and either certified mail, postage prepaid, return-receipt requested or overnight-delivery service (such as DHL, FedEx or UPS): If to Purchaser: at its address listed in the FRA's acknowledgment; If to FRA: Fox River Associates, LLC, 28 North Bennett Street, Suite C, Geneva, Illinois 60134, Attn: Mr. Duncan S. Wall, info@foxriverassociates.com. A Notice is effective upon receipt. A Notice will be deemed received: (a) if delivered by certified mail, or overnight-delivery service as stated above, upon receipt as indicated by the date on the signed receipt; or (b) if the receiving party rejects or otherwise refuses to accept the Notice, or if it cannot be delivered because of a change of address for which no Notice was given, then upon that rejection, refusal, or inability to deliver.
- f. *Waiver generally.* A party may waive compliance by the other party with a provision of this agreement only in a writing that explicitly waives such compliance. No waiver will constitute a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver.
- g. **WAIVER OF JURY TRIAL. PURCHASER KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ITS RIGHT TO A TRIAL BY JURY IN ANY LITIGATION ARISING OUT OF OR RELATING TO THIS AGREEMENT. THIS WAIVER APPLIES TO ANY LITIGATION, WHETHER IN CONTRACT, TORT, OR OTHERWISE. PURCHASER ACKNOWLEDGES THAT IT HAS RECEIVED THE ADVICE OF COUNSEL.**
- h. *Severability.* If any provision of this agreement is found by a court of competent jurisdiction to be partially or wholly unenforceable, that provision will be modified or restricted to the extent and in the manner necessary to render that provision valid and

enforceable. That modification or restriction may be by the parties' agreement or, alternatively, by a court. If that provision cannot under any circumstances be modified or restricted, it will be excised from this agreement without affecting the validity or enforceability of the remaining provisions.

- i. *Entire agreement.* This agreement, including FRA's quotation, acknowledgment, and these terms and conditions, constitutes the entire agreement between the parties regarding the purchase and sale of the Products and the parties' related rights and obligations and supersedes all other agreements, whether written or oral, between the parties in that regard. In entering into this agreement, Purchaser is not relying upon any representations or other statements of FRA or its employees or agents other than those contained in this agreement.