

THE SCOLAR COMPANY SALES TERMS AND CONDITIONS

Customer Code: _____

Sales Contract Number: _____

"Buyer" means the customer to whom this Sales Confirmation was issued and "Seller" means The Scolar Company.

1. Fuel surcharges and other miscellaneous charges of the freight provider are for the account of Buyer. In addition, unless otherwise specifically stated on the face hereof, the price as set forth in this Sales Confirmation is based on freight rates in effect on the date hereof and any increase in freight rates is for the account of Buyer.

2. Buyer is responsible for demurrage and storage charges at destination for any delay in or failure of delivery arising from strikes, labor difficulty, civil disorder, truck, rail car or container shortage, embargo, war, Act of God, or any other cause or condition beyond Seller's reasonable control and in no case will Seller be liable for the same. Failure of Seller to deliver any installment when due will not constitute a breach of the whole contract or as to any subsequently due installment. Whenever a supply shortage occurs which is beyond the reasonable control of Seller, Seller reserves the right to allocate its supplies among its customers in its absolute discretion without obligation to Buyer except for return of monies paid for goods not delivered. Buyer will accept goods received after contract time unless prior to time of shipment cancellation of this sale is mutually agreed upon and written confirmation thereof is received at Seller's office at the address stated on the face hereof.

3. Buyer will promptly unload all goods and to the extent desired by Buyer, test the same. Buyer is solely responsible for verifying that the goods meet the specifications described on the face hereof within seven days of delivery at destination. Buyer must immediately notify Seller if any goods fail to meet such specifications, in which case Buyer will reject such goods or the parties will agree upon discounts or other resolution with respect to any such goods. If Buyer fails to notify Seller that the goods fail to meet specifications within three days of delivery at destination or prior thereto, commingles such goods with or otherwise incorporates such goods into others (whether similar or dissimilar), or otherwise commences use of such goods, Buyer will be deemed to have accepted the goods at that time. **Commingling, incorporation and/or use of the goods is at Buyer's sole risk.**

4. Seller warrants only that at the time title to the goods sold by Seller to Buyer passes to Buyer, the goods are free and clear of all liens and encumbrances. **Except as specifically provided herein, Scolar disclaims any and all warranties of any kind, express or implied, including but not limited to the warranties of merchantability and fitness for a particular purpose. Buyer assumes all risk and liability resulting from the commingling, incorporation and/or use of the goods, whether used singly or in combination with other substances or in any process. There are no oral warranties collateral to or affecting this sale.**

5. All invoices are due as stated on the face hereof. Seller reserves the right any time during the contract term to require payment by demand draft accompanied by supporting documents notwithstanding prior sales or installments to Buyer on open account. Acceptance by Seller of any payment from Buyer will not constitute a release of claims or accord and satisfaction unless Seller has so agreed in writing separate from the instrument of payment.

6. Buyer is solely and completely responsible for its commingling, incorporation and use of the goods purchased from Seller. **In no event will Seller be liable for damages arising out of or in connection with Buyer's commingling, incorporation and/or use of the goods, including but not limited to direct damages, punitive or exemplary damages, indirect, special or consequential damages, actual or alleged loss of profits, lost sales, and loss of value of brands, trade names, trademarks, service names or service marks. Buyer will indemnify, defend and hold Seller harmless from and against any and all claims, losses, damages, judgments, fines, costs and expenses (including but not limited to reasonable attorneys' fees, costs**

of appeal and costs of recall) arising out of or otherwise related in any way to Buyer's commingling, incorporation and/or use of the goods.

7. **Seller's total liability for breach of contract will not exceed the purchase price of the goods sold hereunder, and in no event will Seller be liable for punitive or exemplary damages, indirect, special or consequential damages, actual or alleged loss of profits, lost sales, or loss of value of brands, trade names, trademarks, service names or service marks.**

8. Buyer represents that it is not insolvent as that term is defined in the Uniform Commercial Code. If Buyer's financial condition is found to be or becomes unsatisfactory to Seller during the term of the contract, Seller may, at its option, terminate the contract and any other contracts between Buyer and Seller whether or not Buyer may otherwise be in default. No rights or causes of action will accrue to Buyer as a result of such termination.

9. Upon any breach of contract by Buyer or termination of contract by Seller, Seller at its option may: (a) resell the goods in the open market for Buyer's account. Buyer to pay Seller any loss and incidental expense resulting therefrom but without obligation to Buyer for any excess realized on such resale; (b) require Buyer to pay the difference between the contract price and the market price as of the date of cancellation in the market on which the contract is based; or (c) cancel the contract in its entirety without further obligation to Buyer. In addition to and without limitation by the foregoing, Seller may have and pursue any remedy allowed by law and (y) Seller will be entitled to collect from Buyer reasonable attorneys' fees incurred by Seller in connection with enforcement of this contract; and (z) Seller will be entitled to collect from Buyer interest on any amount owed by Buyer to seller at a rate equal to three percent (3%) in excess of the prime rate of interest charged by the Chase Manhattan Bank of New York from the date said amount first became due or Buyer's liability first accrued until fully paid. If the aforesaid interest rate exceeds any applicable maximum lawful rate then interest will accrue at said maximum lawful rate on amounts and for the time aforesaid. Failure on the part of Seller to exercise any remedy upon Buyer's default as to a single installment will not constitute a waiver of any subsequent default by Buyer.

10. This Sales Confirmation constitutes the complete agreement between the parties which cannot be changed in any manner except in a writing signed by an authorized representative of each party. In case of any inconsistency between Buyer's and Seller's contracts or confirmations, this Sales Confirmation governs the transaction.

11. The contract will be interpreted and construed in accordance with the law of the State of Minnesota, without regard to its conflicts of laws. The rights and obligations of Buyer and Seller will not be governed by the United Nations Convention on Contracts for the International Sale of Goods. Either party may bring any legal action or proceeding arising out of or related to the contract in the United States District Court for the District of Minnesota or in any court of the State of Minnesota located in the Minneapolis/St. Paul, Minnesota metropolitan area. Each party hereby waives, to the fullest extent permitted by law, (a) any objection which it may now or later have to the laying of venue in any such court; and (b) any claim that any action or proceeding brought in any such court has been brought in any inconvenient forum. Each party hereby submits to the exclusive jurisdiction of such courts for the purposes of all legal actions and proceedings arising out of or relating to the contract.

12. Receipt of this Sales Confirmation by the Buyer without written notice to Scolar of objection or error within ten days is an acknowledgement of the acceptance of all terms and conditions hereof.

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