



Mermet Corp

TERMS AND CONDITIONS OF SALE

GENERAL

All goods sold by Mermet Corp (“Mermet”) to the person, company or other entity purchasing as indicated on the invoice attached hereto (the “Buyer”) are sold subject to the provisions of these Terms and Conditions of Sale, which Terms and Conditions (unless expressly modified in writing by one of Mermet’s officers) constitute the entire agreement between the parties notwithstanding any terms that may be contained in any document furnished by Buyer regardless of when prepared, delivered to, or received by Mermet, and regardless of whether any such document purports to incorporate different terms. These Terms and Conditions of Sale apply in lieu of any course of dealing between the parties, or any usage of trade in the industry.

WARRANTY

Mermet warrants to buyer and only to buyer, that its products shall be free from original manufacturing defects for a period of 10 years (fabrics listed on warranty policy DC.SM.100) or 5 years (fabrics listed on warranty policy DC.SM.105) after Buyer’s initial purchase. This warranty is in lieu of all other expressed or implied warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MERMET MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, NATURE OR DESCRIPTION, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS OF ANY PRODUCTS FOR ANY PARTICULAR PURPOSE AND HEREBY DISCLAIMS THE SAME. The warranty provided herein shall not apply to: (i) normal deterioration due to wear and tear; (ii) alterations or modifications in a manner not authorized by Mermet in writing; (iii) defects in the systems or applications in which the products are installed; or (iv) any damage to or failure of the products resulting from acts of God or conditions beyond the reasonable control of Mermet, including (but not by way of limitation) accidents, fire, misuse, abuse, negligence, improper installation, modification, alterations, tampering, vandalism or Buyer’s failure to properly maintain and service products.

ORDERS – ACCEPTANCE, MODIFICATION, AND CANCELLATION

All orders are subject to acceptance by an employee of the Mermet Account Manager staff. All orders accepted are subject to these Terms and Conditions of Sale and subject to approval by Mermet of the Buyer’s credit at the time of shipment. The specifications applicable to goods sold by Mermet shall be Mermet specifications, unless Buyer shall have furnished different specifications and Mermet shall have agreed in writing to such specifications. Orders may not be altered or modified by the Buyer except with the written consent of Mermet. Mermet, at its option, may cancel all or the remaining unfilled portion of any project, blanket or continuing order if (a) Buyer’s payments are in default; (b) Buyer’s breaches any material provision of these Terms and Conditions of Sale; (c) substantial changes in materials or supplies occur; (d) causes beyond Mermet’s control make it impossible to ensure shipment; (e) Buyer becomes insolvent or is subject to a petition in bankruptcy; or (f) Mermet withdraws its credit approval. The Buyer may cancel a remaining unfilled portion of any project, blanket or continuing order only upon written notice to Mermet and upon payment of reasonable cancellation charges to be determined by Mermet, at its sole discretion. Cancellation charges shall take into account goods already produced or in process, expenses incurred by Mermet in connection with the order, and commitments made by Mermet as a consequence of the order; provided, however, that the cancellation charges shall not exceed the purchase price of the cancelled portion of the order. If an order has been palletized and staged for shipment prior to cancellation, the Buyer shall be assessed a cancellation fee equal to twenty percent (20%) of the total order value to compensate for additional labor, handling, and administrative expenses incurred by Mermet. If an arrangement has been made to produce a custom product, one that we do not offer in our stocked product line, the Buyer must sign and return a Custom Product Agreement (CPA) before Mermet accepts the purchase order.

PRICE AND TERMS

ALL QUOTED PRICES ARE BASED ON THE CURRENT NET WHOLESALE PRICES IN U.S. FUNDS PREVAILING AT THE TIME OF QUOTATION. ALL PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE AND THE PRICE CHARGED WILL BE THAT IN EFFECT AT THE TIME OF SHIPMENT. Unless otherwise agreed in writing, payment for all goods must be net 10th prox for invoices dated between the first and 15th day of the month and net 25th prox for invoices dated between the 16th and last day of the month, subject to approval by the Mermet Credit Department. Customers without established credit approval from Mermet should remit payment with the order. Credit terms specified herein are subject to revocations if Mermet in its sole discretion finds it advisable. In the case of revocation, Mermet may demand payment prior to shipment. A service charge of 1-1/2% per month (18% annum) or the maximum amount permitted by applicable law, whichever is less, will be added to all past due invoices. Buyer is responsible for payment of all applicable sales, use or other taxes, whether local, state, or federal, with respect to the goods purchased.

SHIPPING AND DELIVERY

Shipping dates provided by Mermet are estimates only and are not guaranteed. Partial shipments are permitted, and any portion of an order omitted from an original shipment will be shipped and invoiced at the same price and on the same terms as the original shipment. Mermet shall not be liable for delays in production or delivery due to causes beyond its control, including but not limited to acts of God, acts of Buyer, acts of civil or military authorities, fires, strikes, floods, epidemics, quarantines, war, supply shortages, delays in transportation and inability due to causes beyond Mermet's control to obtain necessary labor, materials, or manufacturing facilities.

Unless otherwise authorized by Mermet in writing; (i) international shipments will ship FOB Cowpens, South Carolina. Buyer is responsible to arrange booking with preferred freight forwarder. (ii) All domestic shipments will ship prepay and add using Mermet's preferred freight carrier. If buyer chooses to use their own carrier, buyer is responsible to contact trucking company and arrange pickup of freight, within Mermet receiving hours, weekdays 8am-2pm.

Mermet will use its discretion in packing, shipping and routing unless Buyer gives specific instructions with its order. In the event of shortage or damage incurred en route, Mermet will file a claim on behalf of the Buyer to the delivering transportation agency. If Buyer chooses to use their own freight carrier, Buyer is responsible to make its complaint to freight company.

Mermet's responsibility for delivery ends when Buyer signs carrier's bill of lading. Regardless of delivery terms, form or language of shipping documents, mode of shipment or who pays for transportation or insurance, title to all goods delivered shall at all times remain with Mermet until the full price of all goods subject to the order has been paid by Buyer. Also, regardless of all the above and of the terms and payment and time or manner of passage of title, all risk of loss or damage to the goods passes to the Buyer upon delivery to the carrier. Buyer is responsible for all applicable use, sales excise, duties or other taxes.

RETURNS

Should any products covered by the warranty stated herein prove defective during the warranty period, Buyer shall notify Mermet promptly in writing, but in no event later than: (i) in the case of patent defects (meaning those defects which are readily observable or discoverable upon reasonable inspection by Buyer) within 90 days of receipt of goods and (ii) in the case of latent defects (meaning those defects which could not be readily discovered upon reasonable inspection by Buyer), within the earlier of 6 months from the date of invoice or 60 days after Buyer learns of such defects, failing which such claim or claims shall be deemed waived. Mermet's sole obligation, and Buyer's exclusive remedy under the warranty shall be limited to the repair or replacement, at Mermet's option, of any product or component thereof covered by the warranty which provides defective in materials of workmanship during the warranty period; provided, however, that Mermet shall have no obligation with respect to any such defect unless Mermet is given written notice of the defect in the manner and within the times provided above. Authorization must be obtained from Mermet prior to Buyer's return of any goods for repair, replacement, or credit and no claim against Mermet shall be allowed for products returned hereunder without Mermet's written authorization, as stated in Mermet's Fabric Defect Claim Policy (PL.SM.100). Buyer must pay all freight costs to Mermet's destination point, unless Mermet agrees otherwise. Mermet shall have the right, prior to return, but not the obligation, to inspect any goods claimed to be defective or nonconforming. Unless Mermet determines, upon inspection of returned goods, that the goods were defective or nonconforming, a \$25.00 or 20% handling/re-stock charge based on the price of such goods (whichever is greater) will be imposed on the Buyer. The repair or replacement of any product or component pursuant to the warranty provided herein shall not extend the term of the warranty beyond the warranty period set forth above.

Buyer shall not refuse damaged shipments. Buyer shall carefully inspect all shipments prior to signing the carrier's bill of lading. In the event of damaged rolls or packages, Buyer must indicate that the shipment was damaged on carrier's bill of lading in order to file a freight claim. Buyer must notify both Mermet and the carrier's local terminal within 48 hours of receipt of damaged merchandise to report the incident. If required, a return merchandise authorization (RMA) will be supplied by Mermet with an authorization number. Buyer is responsible for damaged shipments regardless of whether Buyer or Mermet pays for freight and all returns of damaged shipments must be re-packaged by buyer, in accordance with Mermet packaging standards.

LIMITATION OF LIABILITY OF MERMET

It is agreed that Buyer's sole and exclusive remedy against Mermet for any defective material which fails to conform to the Warranty in these Terms and Conditions of Sale shall be, at Mermet's option, the replacement of such defective material or the return of such material and the repayment of the purchase price. In no event shall Mermet be liable to Buyer, whether in contract or in tort or under any other legal theory, for loss of profits or revenues, loss of use or similar economic loss, or for any indirect, special, incidental, consequential or similar damages arising out of or in connection with the sale, non-delivery, servicing, use, installation, maintenance, condition or possession of any product sold hereunder, or any claim made against Buyer by any other party, even if Mermet has been advised of the possibility of such claim. In no event shall Mermet's liability under any claim made by Buyer exceed the purchase price actually paid by Buyer for the products in respect of which such claim is made.

BUYER'S DEFAULTS

If Buyer refuses to accept any shipment when properly tendered or fails to make any payment provided for in this contract or any other contract with Mermet or if Buyer becomes insolvent, calls a meeting of its creditors, or makes an assignment for the benefit of creditors, or if a bankruptcy, insolvency, reorganization or arrangement proceeding shall be commenced by or against Buyer, the total amount payable under this and/or any other contract with Mermet shall become immediately due and payable and Mermet shall in addition have the right to withhold any further shipments to Buyer until such full payment has been made and/or treat this and all other contracts made with Buyer as breached and exercise such other rights as applicable laws permit. In the event that Mermet is compelled to resort to a collection agency or similar organization or to the services of a lawyer whether to collect any amount in arrears or enforce any other rights it may have, Buyer agrees to pay Mermet in addition to charges on overdue sums, the cost of collection, reasonable attorney's fees, court costs, and other expenses incurred in connection therewith by Mermet. No waiver by Mermet of any default by Buyer shall be deemed a waiver of any subsequent default or of any of Mermet's rights and remedies. Mermet's rights and recourses are cumulative and not alternative.

INDEMNITY OF BUYER

Buyer agrees to defend, indemnify, and hold Mermet harmless from and against any and all claims, demands, liabilities, losses, costs and expenses (including, without limitation, reasonable attorney's fees and costs of investigation), irrespective of the theory upon which based (including, without limitation, negligence and strict liability), Mermet may suffer or incur as a result of any claims, demands, or actions against Mermet by third parties arising out of the sale, delivery, installation or servicing of products sold or delivered to Buyer hereunder or in connection with the use, condition, possession, installation, ownership, selection, transportation, loading, unloading, maintenance or return of any product sold or delivered to Buyer hereunder, including, without limitation, claims for injury to person or property (including death); provided, however, that Buyer shall have no liability to Mermet hereunder for damages, losses or expenses resulting solely from Mermet's negligence.

LIMITATION OF ACTIONS

No action, regardless of form, arising out of or in connection with the sale of products hereunder (other than action by Mermet for any amount due to Mermet from Buyer) may be brought more than one (1) year after the cause of the action has arisen.

MODIFICATION TO PRODUCTS

Mermet reserves the right to change the specifications or component parts of products, provided that such change does not affect the performance of products and is not inconsistent with specifications for the products provided by the Buyer to Mermet.

MANUFACTURING AND SUBCONTRACTING

Certain products, including but not limited to GS Evolve and GS Revive, are manufactured using approved subcontractors. By placing an order, the customer acknowledges and approves the use of such subcontractors.

NOTICES

All notices, order confirmations, invoices and other communications made or given hereunder shall be deemed sufficiently made if given upon delivery in person or upon the expiration of three (3) days after the date of posting if mailed by U.S. airmail, postage prepaid, to the parties at the address appearing in the front hereof.

GOVERNING LAW

Regardless of the place of contracting, place of performance or otherwise, this document and all amendments, modifications, alterations or supplements hereto, and the rights of the parties hereunder shall be construed and enforced in accordance with the laws of the State of South Carolina. If any controversy or claim between the parties arises under or relating to the transactions contemplated herein, only the courts in the State of South Carolina shall have jurisdiction to hear and decide such matter. Buyer hereby irrevocably (a) consents to the jurisdiction and venue of the courts of the State of South Carolina, including federal courts located therein any action arising under or relating to the transactions contemplated herein, and (b) waives any and all jurisdictional defenses Buyer may have to the institution of any such action in any such court.

ENTIRE AGREEMENT, ETC.

These Terms and Conditions of Sale are the entire agreement between the parties and supersede all previous or simultaneous verbal or written representations of any sort made by anyone whatsoever including any terms that may be contained in any document furnished by Buyer and received by Mermet. These Terms and Conditions cannot be modified except by a writing signed by one of Mermet's officers. If any provision in these Terms and Conditions is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable, and these Terms and Conditions shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions in these Terms and Conditions shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance. Mermet's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Mermet's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by one of Mermet's officers. No rights or obligations of Buyer arising hereunder may be assigned without the prior written consent of Mermet.

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