



## **CERATIZIT USA, INC. GENERAL TERMS AND CONDITIONS OF SALE**

### **1. ACCEPTANCE.**

All descriptions, quotations, proposals, offers, acknowledgments, acceptances and sales of goods and related services (hereinafter referred to as "products" of Ceratizit USA, Inc. ("Seller")) are subject to the terms and conditions set forth herein and on the reverse side of this document which together constitute Seller's contract for sale of the products ("Contract"). Seller's acceptance of any offer by Buyer is expressly conditioned on Buyer's assent to the express terms contained herein, whether additional to or different from those contained in Buyer's purchase order or any other form or document previously or hereafter supplied by Buyer to Seller. Buyer will be deemed to have assented to these terms and conditions unless Seller receives notice of objections within five (5) days after Buyer's receipt of this Contract or prior to delivery or other performance of Buyer's purchase order, whichever occurs earlier.

All quotations by Seller are subject to change or withdrawal without prior notice to Buyer unless otherwise specified in the quotation. Quotations are subject to Seller's approval of Buyer's credit. Any proposal for additional or different terms in any document supplied by Buyer or any attempt by Buyer to vary in any degree any of the terms of the offer in Buyer's acceptance is hereby objected to and rejected.

### **2. TERMS.**

Unless otherwise written on this document, purchases are payable in advance or standard net 30 day terms from invoice date. A deposit of 25% may be required on special orders when the order is placed. This deposit is forfeitable in the event of cancellation on special order items. No discounts are allowed for early payment. Seller may, at any time, suspend performance or require full or partial payment in advance, or security or other adequate assurance satisfactory to Seller when, in Seller's sole discretion, the financial condition of Buyer does not justify different payment terms. If Buyer defaults in any payment when due under this Contract or any other contract, Seller, at its option and without prejudice to its other lawful remedies, may defer delivery or cancel this Contract. Delinquent accounts will be charged interest at the rate of 1.5% per month, or the maximum allowed by applicable law, whichever is lower. Buyer shall not be entitled to set-off any amounts due Buyer against any amounts due Seller under this Contract.

### **3. PRICE.**

Prices and terms are subject to change by Seller without notice. The prices shown are F.O.B. Seller's Plant. All license fees, tariffs, custom duties and other such charges shall be paid by the Buyer. There shall be added to the prices shown on the reverse side of this document, the amount of any sales, excise, use, or other taxes, however designated, levied or based on such prices or on this Contract or the sale or use of the products, all of which shall be paid by the Buyer.

### **4. RETURNS.**

Buyer shall inspect products immediately upon receipt, notify Seller in writing of any claims for shortages, defects or damages and hold the damaged or defective products for Seller's written instructions concerning disposition. If Buyer fails to so notify Seller within 10 days after the products have been received by Buyer, the products shall conclusively be deemed to conform to the terms, conditions and specifications of this Contract and to have been accepted by Buyer. Products may be returned at the expense of Seller only after inspection by Seller and upon receipt by the Buyer of definite shipping instructions from Seller. Products returned prior to receiving shipping instructions from Seller or which do not conform to such instructions are at Buyer's sole risk and expense. Buyer shall pay all transportation charges covering any products returned to Seller that are not defective. Seller shall have the right to cure the tender of damaged or defective products by substituting a conforming tender within a reasonable time. A re-stocking charge will be assessed, if the returned products are inspected and deemed in saleable condition.

#### **5. SECURITY INTEREST.**

Seller retains, until Buyer performs all of its obligations hereunder, including without limitation, payment in full of the Contract price, a purchase money security interest in the products, including all accessories and replacements thereto and the proceeds thereof, to secure performance of all obligations of Buyer.

Buyer agrees to permit Seller to execute and record any financing statement, or other documents necessary to take any other action deemed necessary or desirable by Seller in order to perfect Seller's security interest. Buyer shall not attempt to transfer any interest in the products until said Contract price has been paid in full.

#### **6. DEFAULT.**

Failure of Buyer to perform its obligations hereunder, including, but not limited to payment in full of the Contract price, insolvency, bankruptcy, assignment for the benefit of creditors or dissolution, liquidation, or closing of a business of Buyer, shall constitute a default under this Agreement and shall enable the Seller to exercise any and all remedies of a secured party under the Uniform Commercial Code as enacted in the State of Michigan from time to time. If Seller retains a collection agency and/or attorney to collect unpaid amounts, Seller may invoice Buyer for, and Buyer will pay all costs of collection, including without limitation reasonable attorney fees.

#### **7. WARRANTY.**

The products are subject to Seller's Limited Warranty provided with this Contract. It shall be the duty and responsibility of the Buyer to inspect and test the products to determine their suitability for their end use application or purpose. Buyer will notify Seller of any products which do not conform to this warranty within 10 days after an alleged defect is first discovered or by reasonable inspection should have been discovered and, if Buyer should fail to give such notification, claims for breach of warranty, if any, shall be waived. Seller shall not be liable under this warranty for defects caused by misuse, abuse, improper application or alteration not authorized by Seller. This warranty is provided by Seller solely to Buyer as the first commercial purchaser of the products.

**THE LIMITED WARRANTY IS IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED, IMPLIED, STATUTORY OR ARISING BY COURSE OF DEALING OR PERFORMANCE, CUSTOM OR USAGE IN THE TRADE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. 8. LIMITATION OF SELLER'S LIABILITY. STATUTE OF LIMITATIONS. SELLER'S LIABILITY TO BUYER ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT, REGARDLESS OF THE FORM OF THE CAUSE OR ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE OR STRICT LIABILITY, STATUTE OR OTHERWISE, SHALL IN NO EVENT: (A) EXCEED THE PRICE ALLOCABLE TO THE PRODUCTS OR ITEM THEREOF WHICH GIVES RISE TO THE CLAIM; OR (B) INCLUDE ANTICIPATED OR ALLEGED PROFITS, INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR DAMAGES ATTRIBUTABLE TO THIRD PARTY CLAIMS. SELLER SHALL NOT BE LIABLE FOR PENALTIES OR LIQUIDATED DAMAGES OF ANY DESCRIPTION. ANY ACTION AGAINST SELLER, REGARDLESS OF FORM, ARISING OUT OF OR IN CONNECTION WITH THIS CONTRACT MUST BE COMMENCED BY BUYER WITHIN ONE YEAR AFTER THE CAUSE OF ACTION HAS ACCRUED.**

#### **9. FORCE MAJEURE.**

Fulfillment of this Contract by Seller is contingent upon the availability of materials. Seller shall not be liable for delay in delivery or for non-delivery in whole or in part caused by the occurrence of any contingency beyond the control of either the Seller or suppliers to the Seller, including but not limited to war, sabotage, acts of civil disobedience, failure or delay in transportation, act of any government or agency or subdivision thereof, judicial action, labor dispute, fire, accident, explosion, epidemic, quarantine, restrictions, storm, flood, earthquakes, acts of God, shortage of labor, fuel, raw materials or machinery or technical failure where Seller has exercised ordinary care in the prevention thereof. If Seller is unable, due to a force majeure event, to supply the total quantity of products specified in orders, from more than one customer, Seller may allocate production and deliveries among Seller's customers, (including Buyer) without liability for any failure of performance which may result therefrom.

#### **10. RISK OF LOSS.**

Risk of loss or damage to the products shall pass to Buyer upon Seller's delivery of the products to a carrier at Seller's plant. Confiscation or destruction of, or damage to, the products following delivery to the carrier shall not in any way affect the liability of Buyer to pay the Contract price. Claims for products confiscated, damaged, or lost in transit should be made by the Buyer to the carrier, as Seller's responsibility ceases upon tender to the carrier.

#### **11. ASSIGNMENT.**

Buyer may neither delegate its performance nor assign any of its rights or claims under this Contract part without the written consent of the Seller, which consent may be granted or withheld in Seller's sole discretion. Any attempt to assign any duties, right or obligations of this Contract without such consent shall be considered null and void.

#### **12. INFRINGEMENT. INDEMNIFICATION.**

Seller does not warrant that the use or sale of the products delivered under this Contract will not infringe the claim of any patents covering the products themselves or their use in combination with other products or in operation of any process. The sale of products under this Contract is not intended as an inducement to infringe nor shall it be construed as recommending the infringement of any patent, extending any license, express or implied, or assuming any liability under any issued or pending patent. Buyer shall hold Seller harmless from (a) any damage, injury or claim arising from any fault or neglect of Buyer, Buyer's employees, agents and licensees, or any person not a party hereto, (b) to the extent that products are manufactured according to the Buyer's specifications and/or drawings, any charge that said products infringe any patent or other proprietary right of any other person.

#### **13. PATENTS AND TRADEMARKS.**

All patent, design, trademark, service mark, copyright and other industrial or intellectual property rights of Seller of whatever nature in respect of the products, any of their constituent parts, their packaging or other material supplied with the products shall remain the absolute property of the Seller. Seller does not grant Buyer a license to sue Seller's intellectual properties or trademarks.

#### **14. CONFIDENTIALITY.**

Seller and Buyer hereby agree that all information submitted to Buyer, including but not limited to all technical advice, manufacturing processes, drawings and test results, to be proprietary information and received and held by Buyer in strict confidence and used for no purpose other than the purchase of products from Seller and Buyer's use of such products.

#### **15. VALIDITY.**

If any provision(s) of this Contract shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired.

#### **16. APPLICABLE LAW. DISPUTE RESOLUTION.**

This agreement shall be governed by the laws of the State of Michigan, excluding its conflicts of laws provisions and excluding the United Nations Convention on the International Sale of Goods. Venue for any litigation shall be in the Macomb County, Michigan Circuit Court, or the United States District Court, for the Eastern District of Michigan.

Any controversy, claim or dispute arising out of or relating to this Contract or its breach ("Dispute") not disposed of by written mutual agreement shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association. In any Dispute in which the amount of controversy is less than \$250,000, there shall be one arbitrator agreed to by the parties; in all other cases there shall be three arbitrators. One of the arbitrators shall be selected by each party and the third arbitrator shall be selected by the two party-appointed arbitrators. Any such arbitration shall be held in Macomb County, Michigan. The parties will pay their own attorney's fees and share the other costs of arbitration equally, subject to final apportionment by the arbitrators. The arbitrators will apply the law set forth herein as governing this Contract. The decision of the arbitrators will be final and conclusive upon the parties. Neither party will institute any action or proceeding against the other party in any court concerning any Dispute,



except that a judgment upon an award rendered by the arbitrators may be entered in any court of competent jurisdiction. Pending resolution of any such Dispute, Seller shall not be obligated to continue performance and will not be in default of its obligations under this Contract if it determines in its good faith business judgment that it is not commercially reasonable or feasible to proceed.

**17. ENTIRE AGREEMENT. AMENDMENT.**

This Contract constitutes the complete and exclusive statement(s) of the agreement between the parties and supersedes all prior proposals, oral or written, and all other communications between the parties relating to the subject matter. This Contract may only be amended in writing, executed by a duly authorized representative of each party. In the absence of such an amendment, commencement of performance by Seller shall be for Buyer's convenience only and shall not be deemed acceptance of any proposed amendment by Seller.