

## **Exciton's Terms and Conditions of Sale**

1. **Acceptance:** By purchasing and accepting delivery of products ("Products" or "Dyes") supplied by the Seller (Exciton), the Buyer agrees to be bound by these terms and conditions (the "Terms and Conditions"). Terms or conditions contained in any order form or other document submitted by the Buyer which are inconsistent with, or in addition to, these Terms and Conditions are rejected, objected to and shall be deemed void and of no force or effect.
2. **Changes (including cancellations)** — Once submitted, any change(s) to Buyer's order(s) may be made only with advance written approval of Exciton and such changes may require different terms, including a change in the price and/or time of delivery. Once submitted, Buyer may not cancel any order unless cancellation is expressly approved by Exciton in writing. Exciton reserves the right to cancel any order, in whole or in part, upon Buyer's breach of these terms and conditions or Buyer's bankruptcy, insolvency, dissolution, receivership proceedings, or upon the occurrence of any event leading Exciton to reasonably question the Buyer's willingness or ability to perform.
3. **Delivery, claims** — All sales will be delivered Ex Works Exciton's shipping point unless otherwise noted. Delivery of Products to the carrier at Exciton's shipping point shall constitute delivery to the Buyer and the Buyer shall bear all risk of loss or damage in transit. However, Exciton reserves the right, in its sole discretion, to determine the exact method of shipment for any particular shipment. Exciton reserves the right to make delivery in installments, all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligations to accept remaining deliveries. Immediately upon the Buyer's receipt of any Products shipped hereunder, Buyer shall inspect the same and shall notify Exciton in writing of any claims for shortages, defects or damages and shall hold Products for Exciton's written instructions concerning disposition. If Buyer fails to so notify Exciton within ten days after the Products have been received by Buyer, such Products shall conclusively be deemed to conform to the Terms and Conditions hereof and to have been irrevocably accepted by the Buyer.
4. **Delays** — Any specified delivery dates are estimates only and do not represent a promise by Exciton to deliver Products at a date certain. Exciton shall not be liable for any loss, damage or penalty as a result of any delay in or failure to manufacture, deliver or otherwise perform hereunder due to any cause beyond Exciton's reasonable control, including, without limitation, unsuccessful reactions, act(s) of Buyer, embargo or other governmental act, regulation or request affecting the conduct of Exciton's business, fire, explosion, accident, theft, vandalism, riot, acts of war, strikes or other labor difficulties, lightning, flood, windstorm or other acts of God, delay in transportation, or inability to obtain necessary labor, fuel, materials, supplies or power at current prices. If any such event continues for longer than 180 days, either Buyer or Seller may terminate Buyer's order and Buyer

will pay Exciton for work performed prior to termination and all reasonable expenses incurred by Exciton as a result of termination. In the event of delays in delivery or performance caused by force majeure or by the Buyer, the date of delivery or performance shall be extended by the period of time Exciton is actually delayed or as mutually agreed. If, for reasons other than the foregoing, Exciton should default or delay or not deliver Products, Buyer's sole remedy against Exciton is an option to cancel Buyer's purchase order, through prior written notice to Exciton.

5. **Payment and Interest** — Unless otherwise stated, payment in full shall be made within 30 days of invoice. Exciton reserves the right to require an advanced deposit of up to 100% of the purchase price at the time of order or any time prior to delivery as a condition of performance. If for any reason Exciton, in its sole and unfettered discretion, deems the ultimate collectability of the purchase price to be in doubt, Exciton may, without notice to Buyer, delay or postpone the delivery of the Products and may, at its option, change the terms of payment to payment in full or in part in advance, with respect to the entire undelivered balance of Products. In the event of default by Buyer in the payment of the purchase price or otherwise, Exciton, at its option, without prejudice to any other of Exciton's lawful remedies, may defer delivery, cancel Buyer's order and any other order of Buyer, or sell any undelivered products on hand for Buyer's account and apply such proceeds as a credit, without set-off or deduction of any kind, against the agreed upon purchase price, and Buyer agrees to pay the balance then due to Exciton on demand. Buyer agrees to pay all costs, including, but not limited to, reasonable attorney and accounting fees and other expenses of collection resulting from any default by Buyer in any of the terms hereof. Invoices remaining unpaid after their due date will be subject to an interest charge of 1.5% per month (or the maximum rate allowed by law). The Buyer must pay all costs of collection on unpaid amounts, including (without limitation) attorneys' fees and related costs.
6. **Taxes and other charges** — Exciton shall not be responsible for the payment of any use tax, sales tax, excise tax, duty, custom, inspection or testing fee, or any other tax, fee or charge of any nature whatsoever imposed by any governmental authority, on or measured by the transaction between, with the sole exception of any sales taxes invoiced and collected from the Buyer by Exciton. All other such charges (if any) must be paid by Buyer separately and in addition to the prices quoted or invoiced. In the event Exciton is required to pay any such tax, fee or charge, Buyer shall reimburse Exciton therefore; or, in lieu of such payment, Buyer shall provide Exciton at the time the order is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.
7. **Pricing** — Any quotation provided by Exciton is firm only if Buyer places a corresponding order within the time specified on the quote or, if no time period is mentioned, within 30 days. Unless agreed to in writing and in advance, Buyer must request shipment of the entire quantity of Products

ordered within 3 months from the date of order, otherwise, Exciton's standard prices at time of shipment may apply, at Exciton's option, to future deliveries.

8. **Warranties** — Exciton warrants that its products shall, at the time of delivery, conform to the description of such products as provided to Buyer by Exciton through Exciton's product directory or other documents. This warranty is exclusive, and Exciton makes no other warranty, express or implied, including any warranty of merchantability, fitness for any particular purpose, or non-infringement of any third-party patent or intellectual property rights. Exciton's warranties made in connection with this sale shall not be effective if Exciton has determined, in its sole discretion, that Buyer has misused the Products in any manner, has failed to use the Products in accordance with industry standards and practices, or has failed to use the Products in accordance with instructions, if any, furnished by Exciton. Exciton's sole and exclusive liability and the Buyer's exclusive remedy with respect to products proved to Exciton's satisfaction to be defective or nonconforming shall be replacement of such products without charge or refund of the purchase price, in Exciton's sole discretion, upon the return of such products in accordance with Exciton's instructions. Exciton shall not in any event be liable for incidental, consequential or special damages of any kind resulting from any use or failure of the products, even if Exciton has been advised of the possibility of such damage including, without limitation, liability for loss of use, cost of capital, loss of work in progress, down time, loss of revenue or profits, failure to realize savings, any liability of buyer to a third party, or for any labor or any other expense, damage or loss occasioned by such product including, but not limited to, personal injury or property damage unless such personal injury or property damage is caused by Exciton's gross negligence. The exclusion of such damages and/or claims shall be deemed independent of, and shall survive, any failure of the essential purpose of any limited remedy arising from the purchase and/or these terms and conditions. Exciton's liability for damages hereunder shall in no case exceed the contract price for the specific products that give rise to the breach. These exclusions and limitations on damages shall apply regardless of how the loss or damage may be caused and against any theory of liability, whether based on contract, indemnity, warranty, tort, negligence, strict liability, or any other theory. All claims must be brought within one (1) year of shipment, regardless of their nature.
9. The Buyer assumes responsibility to assure that the Products purchased from Exciton are approved for use under TSCA, if applicable. The Buyer has the responsibility to verify the hazards and to conduct any further research necessary to learn the hazards involved in using Products purchased from Exciton. The Buyer also assumes the duty to warn the Buyer's employees, those associated with the Buyer and any auxiliary personnel (such as freight handlers, etc.) of any risks involved in using or handling the Products. The Buyer agrees to comply with instructions, if any, furnished by Exciton relating to the use of the Products and not misuse the Products in any manner. If the Products purchased from Exciton are to be repackaged, relabeled or used as starting material or components of other products, the Buyer agrees that it will verify Exciton's assay of the Products.

10. **Resale, Distribution and Export Prohibited** — Unless the Buyer has signed a distribution agreement or similar agreement with Exciton, The Buyer agrees that the Products may not be marketed, distributed, resold or exported by the Buyer for any purpose.
11. **Patent disclaimer** — Exciton does not warrant that the use or sale of the Products delivered hereunder will not infringe the claims of any United States or other patents covering the Product itself or the use thereof in combination with other products or in the operation of any process.
12. **Non-Analysis Agreement** – Certain Exciton products are proprietary compositions of matter, and a signed Non-Analysis Agreement is required prior to shipment of these products. Contact Exciton for a copy of this document.
13. **Returns** — Products may not be returned for credit except with Exciton's permission, and then only in strict compliance with Exciton's return shipment instructions. The Buyer must obtain advance written authorization from Exciton and a written return authorization document in the form then in use by Exciton, prior to returning any Products or Dyes. Certain items and quantities may not be returned for credit or under any circumstances. Any returned items may be subject to a 50% processing fee and must be returned within 90 days of purchase.
14. **Technical Assistance** — At Buyer's request, Exciton may, in Exciton's sole and absolute discretion, furnish technical assistance and information with respect to Exciton's products. Exciton makes no warranties of any kind or nature, express or implied, including any implied warranty of merchantability or fitness for any particular purpose, with respect to technical assistance or information provided by Exciton or its personnel. Any suggestions by Exciton regarding use, selection, application or suitability of the products shall not be construed as an express warranty unless specifically designated as such in a writing signed by an officer or other authorized representative of Exciton.
15. **Governing Law, Disputes** — All disputes allegedly arising from the legality, interpretation, application, or performance of the Buyer's order, the Products or any of these Terms and Conditions shall be governed by the laws of the State of Ohio including its conflict of laws principles. Each party agrees that any dispute arising between them which results in either party instituting court proceedings shall be litigated in a court of Exciton's choice within the State of Ohio. Notwithstanding the foregoing, nothing in this section shall prevent Exciton from bringing a claim in any court having jurisdiction over the Buyer to enjoin infringement of Exciton's trademark, patent or other intellectual property rights, or to prevent irreparable harm to Exciton. The parties agree to waive, to the fullest extent permitted by law, any and all rights to a trial by jury in connection with any dispute.