

## **TERMS & CONDITIONS OF SALE**

### **1. END USE**

Novact Corporation shall have no responsibility in connection with determining the suitability of the Goods purchased for the use contemplated by Buyer. Such determination is the sole responsibility of the Buyer and Buyer assumes all risk and liability for loss, damage or injury to property out of the use or possession of the Goods furnished under this Agreement.

### **2. LIMITED WARRANTY**

Novact Corporation warrants that the Goods meet Novact Corporation's sales specifications or quality represented by the pre-shipment sample at the time of shipment. **NOVACT CORPORATION DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

### **3. REMEDY**

Buyer's exclusive remedy and Novact Corporation's sole responsibility for any claim or cause of action arising under this Agreement is expressly limited to either (1) replacement or refund of the purchase price of all Goods shown to be other than as warranted, or (2) payment not to exceed the purchase price of the specific goods for which damages are claimed. **ANY REFUND OR REPLACEMENT IS CONDITIONED ON BUYER GIVING NOVACT CORPORATION WRITTEN NOTICE WITHIN 90 DAYS FROM THE DATE OF SHIPMENT THAT THE GOODS ARE OTHER THAN AS WARRANTED.** Failure to give written notice within 90 days shall constitute a waiver by Buyer of all claims under this Agreement with respect to the Goods. If requested by Novact Corporation, all unconsumed Goods alleged by Buyer to be other than as warranted shall be returned to Novact Corporation and Novact Corporation will pay the freight charges. Novact Corporation shall not be liable for any incidental, special or consequential damages.

### **4. PATENTS**

If any suit is brought against Buyer for infringement of any United States Letters Patent alleging that the Goods furnished under this Agreement or Novact Corporation's methods of manufacturing them infringe any United States Letter Patent, Novact Corporation shall, at its own expense, defend and control the suit against these allegations only and shall pay any award of damages assessed against Buyer to the extent that the damages are awarded in connection specifically with only the alleged infringement, provided that Buyer gives Novact Corporation prompt notice in writing of the institution of the suit and, to the full extent of Buyer's power to do so, Buyer permits Novact Corporation to defend and control the suit against these allegations. The above fully expresses Buyer's exclusive remedy and Novact Corporation's sole responsibility with respect to infringement many patent by the Goods supplied under this Agreement, and **NOVACT CORPORATION EXPRESSLY DISCLAIMS ANY WRITTEN OR UNWRITTEN, EXPRESS OR IMPLIED WARRANTY AGAINST INFRINGEMENT** with respect to these Goods. In no case will Novact Corporation be liable to defend or pay any award of damages assessed against Buyer in any suit or cause of action alleging that the USE of the Goods supplied under this Agreement infringes any patent. Buyer shall hold Novact Corporation harmless against any claim, loss or expense arising out of Novact Corporation's compliance with any specifications furnished by Buyer with respect to the Goods.

### **5. PRICE**

Price charged will be price in effect at planned date of delivery:

### **6. TERMS OF PAYMENT**

The payment terms and due date shall be those stated on the front of this form. If the payment is not received within the due date, Novact Corporation may charge interest at a monthly rate of 1.5%, or the maximum rate allowed by applicable law, whichever is less, on all overdue amounts without notification. The Payment Due Date is the date Novact Corporation expects to RECEIVE payment.

### **7. FREIGHT TERMS:**

Novact Corporation's standard freight terms policy as stated in the invoice.

### **8. TAXES:**

Any tax or other government charge now or in the future levied upon the production, sale, use or shipment of Goods ordered or sold may, at Novact Corporation's option, be added to the purchase price.

### **9. CONTINGENCIES**

Novact Corporation will incur no liability from delay in performance, non-performance or other failure to meet any obligation to the Buyer caused by circumstances beyond its control including but not limited to: war, fire, flood, strike, labor troubles, breakage of equipment, accident, rim, act of governmental authority, or Acts of God or in the inability to obtain, on terms judged reasonable by Novact Corporation, raw materials (including energy

source) used in connection with the Goods. In the event information becomes available to Novact Corporation or Buyer which indicates a significant increased risk of potentially adverse human or environmental effects associated with the manufacture, sale, use, or disposal of the Goods, or raw materials or intermediates which are used to manufacture the Goods, either party may terminate this Agreement without penalty or further obligation by providing written notice to the other.

#### 10. APPLICABLE LAW

This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

#### 11. COMMENCEMENT OF SUIT

Any action for breach of this Agreement must be commenced within one year after the cause of action has accrued.

#### 12. ORDERS FOR INDEFINITE DELIVERY:

Orders with indefinite dates are accepted on the understanding that Novact Corporation shall have the right to fill orders as it sees fit in the course of its manufacturing schedules and to hold the Goods for Buyer's account at Buyer's expense and risk, pending receipt of definite shipping instructions, and where required, of government authorization.

#### 13. PAYMENT DEDUCTIONS ARE NOT ALLOWED

Payment Deductions are not allowed for any reason. If you think a credit is due, please contact us directly for immediate resolution. Unauthorized deductions will be directly brought to the attention of the Buyer and may interrupt product delivery.

#### 14. QUANTITY VARIATIONS:

On any individual order or release for Goods not stocked as a standard item or not packed in standard cartons or packages on which special fabrication or construction is involved, Novact Corporation reserves the right to ship and invoice for a quantity of Goods which may vary up to 10% over or under the quantity specified on the individual release and the Buyer shall accept delivery and pay for the revised quantity.

#### 15. RETURNABLE CONTAINERS:

Containers are not returnable unless otherwise stated. Each container for which a deposit is charged is the property of Novact Corporation and must not be used to ship or store any other material. Such containers must be emptied and returned in good shape to the point of shipment, transportation charges collect, within 60 days from the date of invoice before the deposit will be refunded.

#### 16. RETURN OF GOODS:

Goods sold by Novact Corporation may be returned for credit within 4 months from the date of shipment of the Goods if permission for the return is granted in writing by Novact Corporation per the Return Material Authorization procedure.

#### 17. ENTIRE AGREEMENT

This document and the sales specifications represent the entire agreement between Novact Corporation and Buyer with respect to the sale of the Goods. If Buyer's acceptance contains additions or modifications, then this offer shall be void unless the additions or modifications are accepted in writing by Novact Corporation. Novact Corporation's acceptance is at all times subject to the availability of stock and to Novact Corporation's prices. Due consideration will be given to any request of Buyer for modification, cancellation or release against an order, but orders cannot subsequently be canceled except by mutual agreement. Novact Corporation's *waiver* of a breach by Buyer of any provision of the Agreement shall not constitute a waiver of any other breach, or a subsequent breach of the same provision for the same or any other cause, by Buyer.

#### 18. FAIR LABOR STANDARDS ACT

Novact Corporation hereby certifies that the Goods supplied to Buyer under this agreement were produced in compliance with the Fair Labor Standard Act as amended, and of regulations and orders of the United States Department of Labor issued under that Act.

#### 19. RESPONSIBLE CARE:

Buyer agrees to manage its business consistent with the guiding principles of the Responsible Care initiative of the American Chemistry Council or a similarly comprehensive health, safety and environmental program.