

## **SCHEDULE IV**

### **GENERAL TERMS AND CONDITIONS OF SALE**

#### **1. General provisions**

- 1.1 These terms and conditions ("**Terms and Conditions**") will apply to all offers, orders and agreements of sale concluded or to be concluded by **Arnott, Inc.** ("**ARNOTT**") and Buyer and to all advice, works or other services provided by ARNOTT to the Buyer in relation to any goods sold, offered or made available by ARNOTT.
- 1.2 Any oral offers or commitments will bind ARNOTT only after and to the extent that ARNOTT has confirmed them in writing. All offers of ARNOTT, however they are made, will be free of obligation unless provisions to the contrary have been laid down in writing.
- 1.3 ARNOTT is allowed to accept and reject orders of Buyer at its sole discretion. An agreement will be deemed to have been concluded after ARNOTT has confirmed in writing an order placed by the Buyer, or has commenced the execution of that order.
- 1.4 In the event that an agreement is concluded by e-mail, or in the event that an agreement is concluded through another means of electronic communication (such as the [**ARNOTT EDI-system**]), such e-mail message or statement made through another means of electronic communication is deemed to be equal to a written statement and the principle will apply, without prejudice to the provisions laid down in Article 1.3, that an agreement may be concluded without ARNOTT having to fulfill any conditions provided by law pertaining to electronic communication.
- 1.5 ARNOTT will be entitled to adjust prices agreed upon before delivery in the event of increases in cost-determining factors such as fluctuations in exchange rates, raw materials, labor costs or in the event of government measures, provided that such increases or measures occurred after the conclusion of the agreement but before delivery.
- 1.6 Any and all images and specifications of goods in catalogues, price lists, advertisements, etc. must be deemed to be representations by approximation only, unless ARNOTT has explicitly indicated the contrary in writing with regard to a specific delivery.
- 1.7 ARNOTT is at all times entitled to effect adjustments in the goods to be delivered, in order to improve them or comply with government regulations.
- 1.8 The Buyer will be entitled to cancel an order only after receiving written consent from ARNOTT, which consent may be made subject to conditions as deemed appropriate by ARNOTT.
- 1.9 ARNOTT will be entitled to charge the costs of any packaging separately. The packaging will not be taken back. Should ARNOTT, however, be obliged by law or any regulations to take packaging back, any costs related to taking back or processing packaging will be borne by the Buyer.
- 1.10 If ARNOTT, by virtue of applicable law, is under any obligation, other than resulting from an improper performance, to take back the goods sold, the Buyer shall pay to ARNOTT all costs related to such taking back of the goods.

#### **2. Delivery**

- 2.1 Unless otherwise agreed in writing, ARNOTT will arrange for transport of the goods to the premises of the Buyer or to any other destination designated by the Buyer. The costs thereof, and any costs and taxes involved therewith or ensuing therefrom (including but not limited to insurances, tariffs and custom duties) will be borne by the Buyer. The Buyer will be obliged to take delivery of the goods upon ARNOTT's first request. The risk of loss and damage to the goods will transfer to the Buyer at the moment the goods are ready for loading onto the means of transport at ARNOTT's premises.
- 2.2 Any delivery times quoted by ARNOTT may not be considered to be firm deadlines, unless provisions to the contrary have been explicitly agreed upon in writing between the parties. In the event of late delivery, **[ARNOTT must be declared to be in default in writing, in which case ARNOTT will be granted a reasonable term of at least fourteen (14) working days as of the date of the receipt of notification to fulfill its obligations.]** In the event that such extended term is exceeded, the Buyer will be entitled to dissolve the particular agreement to purchase or part of the particular agreement to purchase, only with respect to the goods not delivered. Buyer shall have no other remedy regarding goods not delivered. In such an event, ARNOTT will not be liable to pay damages, unless such damages are the direct consequence of an intentional act or intentional omission or of gross negligence of ARNOTT's executive management.
- 2.3 ARNOTT is entitled to deliver the goods sold piecemeal.
- 2.4 The Buyer is obliged to accept delivery of the goods upon ARNOTT's first request thereto. If Buyer fails to accept delivery, the Buyer will be liable for all costs and damages resulting therefrom, including but not limited to the costs of storing and re-delivering the goods.

### **3. Payment**

- 3.1 **Unless otherwise agreed in writing, all prices are quoted exclusive of any VAT, sales tax, transport and insurance costs and all other costs, to be determined in accordance with these terms and conditions. All payments must be made in U.S. Dollars.**
- 3.2 **Unless otherwise agreed in writing, the Buyer will pay the entire purchase price in advance, or the remainder thereof in the event of advance deposit, within thirty (30) days after the invoice date, at the discretion of ARNOTT, by transfer to or deposit into an account indicated by ARNOTT, without any deduction, discount or set-off. Submission of a complaint will not suspend the Buyer's obligation to pay.**
- 3.3 **If the Buyer fails to pay within thirty (30) days after the invoice date, it will be in default and all claims of ARNOTT will become fully due and payable immediately. In that event, ARNOTT will also be entitled to compensation of the statutory interest (as it applies to trade agreements) plus 2%, with respect to the outstanding amount until the date of payment in full. The amount subject to this contractual interest will, as the case may be, be calculated after the end of each year, and increased by the interest owed over that year.**
- 3.4 In the event of untimely payment, ARNOTT will be entitled to compensation of all extra-judicial costs, including but not limited to costs involved in sending reminders, one or more

notices of default or demand notices, which extra-judicial costs will amount to at least fifteen percent (15%) of the total amount payable, subject to a minimum of U.S. Dollars \$1,000.

**3.5 ARNOTT will be entitled to require the Buyer to effect advance payment of an amount to be determined at ARNOTT's discretion before it commences the execution of an order or commission.**

3.6 In the event that ARNOTT is fully or largely successful in legal proceedings against the Buyer, the Buyer will be obliged to compensate all costs and legal fees incurred by ARNOTT in connection with such proceedings, even to the extent that such fees and costs exceed the cost award made by the court. ARNOTT may invoke this clause irrespective of whether the Buyer has appealed against the relevant judgment at the applicable court of appeal.

#### **4 Retention of title**

4.1 ARNOTT will retain title to all goods delivered and to be delivered to the Buyer until full payment of all purchase amounts has been received, as well as any amounts owed by the Buyer pertaining to work performed by ARNOTT in connection with such purchase agreements and any claims pursuant to any failure in the performance of such agreements on the part of the Buyer.

4.2 The Buyer will be obliged to store the goods delivered under retention of title with due care, ensuring that they are recognizable as the property of ARNOTT. In addition, it will be obliged to insure such goods against, inter alia, fire and water damage and theft. The Buyer will pledge to ARNOTT any claims it has pursuant to such insurance policies upon ARNOTT's first request, as additional security with respect to ARNOTT's claims against the Buyer.

4.3 In the event that the Buyer fails in the performance of any obligation vis-à-vis ARNOTT, or in the event that ARNOTT has good reason to fear that the Buyer will fail in the performance of its obligations, ARNOTT will be entitled to recover the goods delivered under retention of title or to have such recovered, even when the goods have to be detached. The Buyer will cooperate accordingly. The Buyer will bear the costs of recovery, without prejudice to ARNOTT's right to further damages.

4.4 Buyer acknowledges that (i) ARNOTT would be irreparably harmed as a result of a breach by Buyer of any provision of these Terms and Conditions (Schedule IV), (ii) no amount of money would adequately compensate ARNOTT for such harm (to the extent not arising from failure by Buyer to pay for goods supplied by ARNOTT), and (iii) it would be difficult, if not impossible, to calculate the monetary damages which might accrue to ARNOTT as a result of such breach. Buyer therefore agrees that in the event of any breach or contemplated breach of the terms or provisions of these Terms and Conditions (to the extent not arising from failure by Buyer to pay for goods supplied by ARNOTT), ARNOTT shall be entitled to obtain an injunction or similar equitable relief against Buyer from any court of competent jurisdiction in order to enforce the provisions hereof. Notwithstanding the foregoing, ARNOTT shall also be entitled to obtain monetary damages to the extent calculable as a result of the breach by Buyer of the provisions of these Terms and Conditions.

## **5. Force majeure**

- 5.1 If ARNOTT fails in the performance of its obligations due to an event of force majeure, ARNOTT will not be liable. To the extent that the circumstance making performance impossible is not of a permanent nature, ARNOTT's obligations will be suspended. In the event that the period during which performance is not possible due to force majeure exceeds two (2) months or is expected exceed two (2) months, both parties will be entitled to cancel the order, without any obligation to pay the damages that may arise as a result.
- 5.2 In the event that ARNOTT has already partially fulfilled its obligations upon the occurrence of the situation of force majeure, or is only able to fulfill its obligations in part, it will be entitled to separately invoice the part already supplied or the part that can still be supplied and the Buyer will be obliged to pay that invoice as if it pertained to a separate order.
- 5.3 A situation of force majeure affecting ARNOTT within the meaning of this article will be deemed to have occurred in the event of, inter alia, strikes, a shortage of raw materials, delay, transport problems, war or threat of war, full or partial mobilization, riots, sabotage, floods, fire or other forms of destruction within ARNOTT's company, lockouts and industrial actions, breakdowns of machines or tools or other breakdowns within ARNOTT's company. A situation of force majeure must also be deemed to have occurred on the part of ARNOTT in the event that one or more of the above-mentioned circumstances occurs within the companies of ARNOTT's suppliers and ARNOTT cannot or could not promptly perform its obligations as a consequence.

## **6. Complaints and inspection**

- 6.1 The goods delivered must be checked by or for the Buyer upon delivery with respect to numbers and visible defects and any shortages or visible defects must be reported to ARNOTT immediately after delivery. The Buyer must report defects not visible upon delivery within 48 hours of their discovery, and, if earlier, in any event, within 48 hours after the time that the Buyer should reasonably have discovered them. The Buyer will not be entitled to any claim or damages if the defect results from any incorrect operation, installation, storage, maintenance or from transport or any other event that shall be attributed to the Buyer.
- 6.2 The Buyer will be obliged to perform the inspection or to have the inspection performed with due care, upon receipt of the goods. The Buyer will bear the risk for inspecting the goods by means of random checks and may not rely on the fact that it did not observe a defect that was visible and could have been discovered upon delivery because it - or a third party engaged by it - did not inspect the entire shipment.
- 6.3 In the event of a complaint on good grounds, ARNOTT will only be obliged - to be decided at the ARNOTT's discretion - to repair the defect, to replace the relevant good or to credit or refund the amount charged in connection with the defective good in whole or in part, according to its own reasonable judgment and to the exclusion of any other rights of the Buyer by law.
- 6.4 Any and all claims for payment of an amount of money and/or repair of the relevant good and/or replacement of the good and/or supply of any missing part, on whatever basis, as well as any right to dissolve the agreement will lapse upon failure to timely report (or late reporting) pursuant to Article 6.1.

## 7. **Liability**

- 7.1 Any liability on the part of ARNOTT based upon or attributable to ARNOTT for failure with respect to any offers, orders and agreements to purchase as referred to in these Terms and Conditions, shall be limited to and restricted solely to the provisions of Section 6.3 above.
- 7.2 ARNOTT will assume no liability with respect to damage as a consequence of or related to any errors or omissions in advice rendered by it, nor will it assume any liability with respect to damage as a consequence of or related to errors or omissions in the processing instructions recommended by it.
- 7.3 ARNOTT will not - irrespective of the legal basis of the Buyer's claim - be liable for any consequential damages, including but not limited to losses due to delays or loss of data, lost profits, missed savings and penalties forfeited by the Buyer.
- 7.4 Nothing in these Terms and Conditions shall exclude or limit ARNOTT's liability in the event that the damage is the consequence of gross negligence or willful misconduct on the part of ARNOTT's executive management.
- 7.5 The Buyer will compensate and indemnify ARNOTT against any claims by third parties and all resulting costs in connection with goods supplied by ARNOTT. **Buyer shall indemnify, defend and hold harmless ARNOTT, its officers, directors, employees, agents, owners, members, managers and Affiliates against and in respect of any and all claims, settlements (at ARNOTT's discretion), demands, losses, costs, expenses, obligations, liabilities, damages, recoveries and deficiencies, including interest, penalties and reasonable attorneys' fees and disbursements (including but not limited to any attorneys' fees and disbursements incident to any appeals), that ARNOTT (its officers, directors, employees, agents, owners, members, managers and Affiliates) may incur or suffer which arise, result from, or relate to either (i) any breach of or failure by Buyer to perform any of its duties and/or responsibilities described in these Terms and Conditions or other instrument furnished or to be furnished by Buyer, (ii) any action (or failure to act) of Buyer, including, without limitation, noncompliance with any local, federal and state statutes, rules and regulations, or (iii) any transfer to third parties or misappropriations of any Products. Buyer shall promptly notify ARNOTT of the existence of any claim, demand or other matter to which Buyer's indemnification obligations would apply, and shall immediately pay such indemnity obligation. ARNOTT shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf, for the account, and at the risk of Buyer.**

## 8 **Suspension and Dissolution**

Without prejudice to ARNOTT's rights under these terms and conditions or under the law, ARNOTT may, in any event, be entitled to suspend (further) performance or to dissolve any agreement concluded with the Buyer, in whole or in part, if (i) any goods made available by ARNOTT to the Buyer become subject to attachment, (ii) the Buyer is granted a suspension of payments or is declared insolvent or bankrupt, (iii) any permits or licenses required for the performance of the agreement are withdrawn, (iv) the Buyer fails to fulfill one or more of its obligations ensuing from any agreement with ARNOTT, (v) ARNOTT has sound reasons to believe that the Buyer is or will be unable to fulfill its obligations under any agreement, or (vi)

the Buyer ceases its business or if any change occurs in the managerial control or ownership of that business. Any right of the Buyer to suspend performance is hereby specifically excluded.

**9. Applicable law and dispute resolution**

- 9.1 These Terms and Conditions and any and all offers and agreements as referred to in Article 1.1 will be governed by the laws of the State of Florida. The UN or other Convention on Contracts for the International Sale of Goods (“CISG”) does not apply. **Venue for any legal proceeding or action at law arising out of or construing these Terms and Conditions shall lie in the state or federal courts of Orange County, Florida, and the parties specifically waive any other venue, notwithstanding any conflicts or law of other doctrine to the contrary.**