

**STANDARD CONDITIONS OF SALE**  
of Gel-Pak a DBA Delphon Industries, LLC (“Company”)

**1. GENERAL**

The Standard Conditions of Sale contained herein (“**Terms**”) shall constitute the entire agreement between Company and you and the entity you represent (“**Purchaser**”) and supersedes all purchase orders and related prior communications and agreements. Company’s acceptance of Purchaser’s order is expressly conditioned upon Purchaser’s acceptance of these Terms. Company’s failure to object to any document, communication or act of Purchaser will not be deemed a waiver of any of these Terms. No waiver, alteration, or modification, no matter how slight, of any of the provisions hereof shall be binding unless in writing, signed by a duly authorized representative of Company and any purported waiver, alteration or modification without Company’s written consent is hereby rejected. If Purchaser’s documentation contains provisions different from, in addition to, or inconsistent with the provisions hereof, such terms are hereby rejected and these Terms shall prevail. Purchaser’s acceptance of delivery of or payment for any products or services provided hereunder shall constitute Purchaser’s acceptance of all terms and conditions herein. If products purchased by Purchaser are sold, or are incorporated into products that are sold, under a U.S. Government contract, Company hereby rejects provisions or clauses required to be passed on to Company pursuant to said contract and such provisions or clauses shall not be deemed included or binding on Company unless accepted in writing by an authorized representative of Company. These Terms can be updated by Company at any time in its sole discretion by posting updated Terms to [\[Gel-Pak Terms & Conditions\]](#). Purchaser should check the [\[Gel-Pak Terms & Conditions\]](#) from time to time for updated Terms. Any updated Terms will apply to any future purchase requests.

**2. VALIDITY OF QUOTATIONS AND ORDERS**

Quotations are valid for 30 days from Company’s issuance unless (i) otherwise expressly stated in Company’s quotations or (ii) are subsequently withdrawn by Company. Company reserves the right to refuse Purchaser’s acceptance of a quotation unless such quotation is stated to be open for a specific period and is not withdrawn in such period. Company reserves the right to refuse orders, including without limitation orders of less than \$1000.

**3. PRICES, DISCOUNTS AND TAXES**

The published prices of Company’s products (“**Products**”) are those listed on the date of last publication by Company and are subject to alteration by Company in its sole discretion without notice. Prices and currency transactions are in US dollars. Prices do not include any freight, handling, insurance or other similar charges; payment of which will be the sole responsibility of Purchaser. Prices do not include any tax, duties or other governmental charge or assessment on the sale, shipment, production or use of any Products sold to or services rendered to Purchaser hereunder (collectively “**Taxes**”). Such Taxes, when applicable, may appear as separate additional charges on Company’s invoice. Purchaser shall be solely responsible for, and shall pay to Company upon demand, any such Tax, unless Purchaser has furnished to Company a valid certificate issued by or acceptable to the tax authority in question. Purchaser agrees to indemnify and hold Company harmless from and against any liability, loss, damage, cost or expense for such Tax, as well as the collection or withholding thereof, including without limitation penalties and interest thereon.

**4. PAYMENT**

Unless otherwise agreed by Company in writing, Products shall be paid for in cash within 30 days following the date of the relevant invoice. Company’s prices are net and are not subject to any settlement terms. Purchaser may not claim any set-off against Company. In the event of a delay in payment, Company shall be entitled to claim, without any notice of default being required and without prejudice to any further rights it may have, interest at the lesser of a rate of 1 ½% per month or the maximum rate permitted by applicable law. Without limiting Company’s rights and remedies at law or in equity, Purchaser shall be responsible for all costs of collection.

**5. CREDIT**

Where a credit account is desired, a bank and as many as five trade references may be required. Company reserves the right not to grant credit to Purchaser for any reason whatsoever. Company

reserves the right to modify credit terms prior to shipment, require payment in advance, or delay or cancel any shipment or order by reason of Purchaser's creditworthiness or should Purchaser fail to fulfill any obligation when due.

#### **6. SHIPPING OR FREIGHT CHARGES**

Unless otherwise agreed by the parties for a particular order, Products are delivered by Company EXW (*Incoterms* 2010) Company's shipping point, Hayward, California, U.S.A., exclusive of duty, insurance, taxes, and VAT. When U.S. customer specifies "Best Way," the order will be shipped "FedEx Ground," Prepaid And Add (PPA). When special delivery arrangements are requested, and Company expressly accepts in writing, special rates will be charged. All delivery times shall be approximate, except if the Company has specifically agreed in writing to a fixed time of delivery in writing. Title and risk of loss passes to Purchaser in all circumstances at Company's shipping point.

#### **7. CANCELLATION PRIOR TO SHIPMENT**

No accepted order may be canceled or rescheduled by Purchaser less than 90 days prior to delivery without Company's prior written authorization. If Purchaser cancels or reschedules an order for any reason and Company authorizes such cancellation or rescheduling, Purchaser shall be liable for all material and labor costs incurred by Company, including but not limited to, cancellation costs to suppliers, work in progress, and finished goods, if any, together with any identifiable incidental and consequential expenses incurred in fulfilling and cancelling the order.

#### **8. DELIVERY**

Purchaser shall be obliged to cooperate in the delivery of the Products and to take receipt of same. Company may keep any Products refused by Purchaser at the latter party's disposal for account and at the risk of Purchaser. All Products are hereby deemed accepted upon delivery.

#### **9. DEFAULT**

Company shall have the right to discontinue delivery and also at its discretion to terminate any agreement in respect of any undelivered Products if Purchaser defaults in payment as stated under clause 4 of this document or in respect of its other obligations to Company hereunder.

#### **10. LIMITED WARRANTY; DEFECTS AFTER DELIVERY**

For a period of 90 days after delivery ("**Warranty Period**"), the Company will at the Company's option, repair, replace credit or refund Defective Products (as defined below), provided that Purchaser notifies Company in writing of such defective Products within 10 days of discovery thereof and complies with the RMA process described in Section 12. As used herein the term "**Defective Products**" means Products which are defective solely as a result of the faulty design, materials or workmanship of Company and not other causes including without limitation damage in transit or during installation, or improper use, mishandling, modification, abuse or neglect of Purchaser or its agents and shall not include any Special Order Products. THE FOREGOING REMEDY CONSTITUTES PURCHASER'S SOLE AND EXCLUSIVE REMEDY AND COMPANY'S ENTIRE LIABILITY FOR DEFECTIVE PRODUCTS.

#### **11. WARRANTY DISCLAIMERS**

EXCEPT AS EXPRESSLY SET FORTH IN SECTION 10, TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, COMPANY HEREBY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. FURTHER, COMPANY DOES NOT WARRANT THE USE, OR THE RESULTS OF THE USE, OF THE PRODUCTS OR SERVICES AND PURCHASER SHALL BE SOLELY RESPONSIBLE FOR DETERMINING THE SUITABILITY AND/OR QUALITY OF SUCH PRODUCTS AND SERVICES. WITHOUT LIMITING THE GENERAL APPLICABILITY OF THE FOREGOING, COMPANY SPECIFICALLY NOTIFIES PURCHASER THAT THE PRODUCTS AND THE SERVICES (A) HAVE NOT BEEN EVALUATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION (FDA), AND (B) ARE NOT TESTED OR APPROVED FOR HUMAN USE. PURCHASER ACCEPTS SOLE RESPONSIBILITY FOR DETERMINING THE

APPROPRIATE USE OF THE PRODUCTS AND/OR SERVICES, INCLUDING WITHOUT LIMITATION THE SELECTION OF INKS AND MATERIALS UTILIZED IN SUCH PRODUCT AND SERVICES. PURCHASER ASSUMES ALL RISK AND LIABILITY FOR LOSS OR DAMAGE RESULTING FROM USE OF COMPANY'S PRODUCTS WHETHER USED SINGLY OR IN COMBINATION WITH OTHER MATERIALS. Some jurisdictions do not allow the disclaimer or exclusion of certain warranties. Accordingly, some of the disclaimers set forth above may not apply to Purchaser or be enforceable with respect to Purchaser. If Purchaser is dissatisfied with these Terms, Purchaser's sole and exclusive remedy is to discontinue purchase of the Products. If Purchaser is from New Jersey, this section is intended to be only as broad as is permitted under the laws of the State of New Jersey. If any portion of this section is held to be invalid under the laws of the State of New Jersey, the invalidity of such portion shall not affect the validity of the remaining portions of this section.

#### **12. RETURN OF PRODUCTS**

All returns of Defective Product must be authorized by Company in advance. Unauthorized returns will be refused. In no circumstance may Products supplied against a firm order be returned without Purchaser having first applied for and obtained both written consent and a Returned Materials Authorization ("**RMA**") number from Company. Company reserves the right to refuse the return of any Product that has been used with infectious, microbiological, or radioactive substances or other materials that may be deemed hazardous to the employees of Company. Products returned that are not determined by Company to be Defective Products shall be returned to Purchaser at Purchaser's expense (including without limitation the two way cost of shipment) and Purchaser shall pay the full invoice price for such Product in accordance with these Terms. Product approved for return must be received by Company within 30 days of Company's issuance of an RMA. At the sole discretion of Company and upon issuance of an RMA, Products that are not Defective Products may be returned for credit against future purchases. A restocking charge of 50% of the invoice value of the subject returned Products will be deducted from the credit allowance.

#### **13. SPECIAL ORDERS**

Orders for "Built-to-Order (BTO)" Products on the Company's price list and any custom Products are considered special orders ("**Special Order Products**"). NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THESE TERMS, SPECIAL ORDER PRODUCTS ARE PROVIDED "AS IS" WITHOUT A WARRANTY OF ANY KIND AND ARE NOT RETURNABLE FOR RESTOCKING OR CREDIT OR OTHERWISE. The Company reserves the right to ship up to 10% more and up to 10% fewer Special Order Products than included in the applicable order and Company will bill Purchaser accordingly.

#### **14. INDEMNIFICATION**

The Products are not designed, intended or approved for use in life support, medical device, transportation, nuclear, safety or other equipment or for other uses where malfunction of the Product can reasonably be expected to result in personal injury, death, property damages or severe environmental harm. Purchaser represents and warrants that it will use appropriate safeguards to minimize potentially dangerous consequences associated with Product failure. Notwithstanding the foregoing, if Purchaser uses or sells Products for the foregoing critical applications, it does so at Purchaser's own risk and Purchaser agrees to defend, indemnify and hold harmless Company and Company's officers, directors, agents and employees from and against any and all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorneys' fees, resulting from such use. Purchaser warrants that it possesses all rights, including trademark, copyright, other intellectual property rights and all other rights necessary for the production, printing, publication and/or distribution of its own products with which Purchaser elects to use Company's packaging and has obtained all necessary permits, authorizations and/or licenses in connection therewith. Purchaser shall indemnify and hold Company and Company's officers, directors, agents and employees harmless from and against all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorneys' fees related to or arising from Purchaser's use of the Products in association with its own products, including, without limitation, any product liability claim or third party intellectual property rights infringement claim, unless in either instance the claim arises solely from the Products supplied by Company.

**15. LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL COMPANY BE LIABLE TO PURCHASER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR EXEMPLARY DAMAGES OF ANY KIND, HOWEVER ARISING, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT PURCHASER HAS BEEN ADVISED OF THE POSSIBILITY OR LIKELIHOOD OF ANY SUCH DAMAGES. FURTHER, TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, IN NO EVENT SHALL COMPANY'S LIABILITY RELATED TO ANY SPECIFIC ORDER EXCEED THE AMOUNTS PAID BY PURCHASER TO COMPANY REGARDING SUCH ORDER. Each party acknowledges that the foregoing limitations are an essential element of the Agreement between the parties and that in the absence of such limitations the pricing and other terms set forth in these Terms would be substantially different. Some jurisdictions do not allow limitations of liability. Accordingly, some of these limitations may not apply to Purchaser or be enforceable with respect to Purchaser. If Purchaser is from New Jersey, this section is intended to be only as broad as is permitted under the laws of the State of New Jersey. If any portion of this section is held to be invalid under the laws of the State of New Jersey, the invalidity of such portion shall not affect the validity of the remaining portions of this section.

**16. EXPORTS**

Purchaser acknowledges that Products sold by Company under these Terms may be subject to U.S. export control laws and regulations, including without limitation, the Export Administration Regulations, 15 C.F.R. Parts 730 to 774; the International Traffic in Arms Regulations, 22 C.F.R. Parts 120 to 130; and the Foreign Assets Control Regulations codified at 31 C.F.R. Chapter V. Purchaser agrees that it will not transfer, export or reexport the Products sold hereunder except in compliance with all applicable U.S. export laws, sanctions and regulations. Each party shall obtain, at its own expense, licenses, export and import documents, and other approvals as are necessary for each party to fulfill its obligations under these Terms. As appropriate, Company may inform Purchaser of applicable export license terms and conditions; or provisions hereof will not be affected or impaired. Purchaser shall comply with all applicable anti-corruption laws and international corruption standards, including but not limited to the Foreign Corrupt Practices Act, 15 U.S.C. § 78 dd et seq. Purchaser represents and warrants that it shall not violate, or cause Company to violate, any anti-corruption laws in connection with any orders fulfilled by Company for Purchaser.

**17. FORCE MAJEURE (ACT OF GOD)**

Company shall not be held liable for failure of or delay in performing its obligations under this Agreement if such failure or delay is the result of an act of God, such as earthquake, hurricane, tornado, flooding, or other natural disaster, war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, failure of electrical service, delay in delivery by Company's suppliers, or any cause or causes beyond Company's reasonable control. Company reserves the right to cancel without liability any order, the shipment of which is delayed for more than 30 days by reason of any such cause or, in the event *such event* continues longer than 120 days, terminate the Agreement. Company reserves the right to allocate Products in its sole discretion among customers or potential customers, or defer or delay the shipment of any Product, which is in short supply due to any such cause.

**18. ASSIGNMENT**

Purchaser may not, without the consent of Company, assign or transfer any of its rights and obligations hereunder, by operation of law or otherwise. Any assignment not in conformity with the foregoing will be null and void.

**19. MISCELLANEOUS**

These Terms and all sale contracts to which the same apply shall be construed in accordance with the laws of the State of California, U.S.A. without regard to its conflicts of law. The United Nations Convention on Contracts for the International Sale of Goods (1980) is hereby excluded in its entirety from application to this Agreement. The authoritative text of these Terms shall be that in the English language set out herein. Any disputes arising in connection with these Terms and all sale contracts to

which the same apply shall be finally settled by binding arbitration in held in the City of San Jose, California, U.S.A. under the commercial rules then in effect for the American Arbitration Association. Judgment upon any award resulting from such arbitration is final and binding on the parties, and may be entered and enforced in a court having proper jurisdiction. The arbitration proceeding shall be conducted in English. The award rendered by the arbitrator will include costs of arbitration, reasonable attorneys' fees, and reasonable costs for expert and other witnesses. Nothing herein is intended to limit or preclude Company from seeking injunctive relief or any other provisional remedy in order to protect its intellectual property rights. If any provision of these Terms is held invalid, illegal, unenforceable, or in conflict with any law having jurisdiction over these Terms, the validity, legality, and enforceability of the remaining portions or provisions hereof will not be affected or impaired. Any required notices shall be given in writing at the address of each party set forth in the quotation to which these Terms are attached or in which these Terms are referenced, or to such other address as each party may substitute by written notice to the other and shall be deemed given upon personal delivery or three days following deposit in the mail. Company's failure to or delay in exercising any of its rights hereunder shall not constitute or be deemed a waiver or forfeiture of such rights. All waivers must be in writing. Any waiver or failure to enforce any provision of these Terms on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion. Purchaser's relationship to Company is that of an independent contractor, and neither party is an agent or partner of the other. If any provision of these Terms is unenforceable, such provision will be changed to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.