



**GRODAN - A DIVISION OF ROXUL INC.**  
**TERMS AND CONDITIONS OF SALE**

**ACCEPTANCE** – By verifying the product order accompanying these Terms and Conditions of Sale (these “Terms and Conditions”), you agree to be bound by and accept these Terms and Conditions, which together with such order shall constitute a binding contract (this “Agreement”) between you (the “Buyer”) and Grodan Inc. (“Grodan”). This Agreement may not be cancelled, countermanded or otherwise changed, revised or amended except by a written instrument executed by Buyer and Grodan. Buyer and Grodan may be collectively referred to in this Agreement as, the “Parties” or individually as, a “Party.” This Agreement supersedes any prior agreements, representations, or other communications between the Parties relating to the subject matter of this Agreement. No other terms and conditions shall apply, including but not limited to the terms of any purchase order submitted to Grodan by Buyer, whether or not such terms are inconsistent or conflict with or are in addition to the terms and conditions set forth in this Agreement. Grodan’s acceptance of Buyer’s purchase order is conditional upon Buyer’s acceptance of all the terms and conditions contained in this Agreement. The acceptance of any communication construed as an offer by Grodan and is expressly limited to the terms of this Agreement.

**BUSINESS HOURS** – Grodan’s main office in Milton, ON, Canada is open 8:00 AM to 4:30 PM, EST, Monday through Friday. You can reach the main office at 905 636-0611. Grodan has additional offices in Kingsville, ON, Canada. Please contact the main office for more details.

**TERMS** - There is a US\$100.00 or CAD\$150.00 minimum purchase amount for any product order from Grodan. Unless otherwise authorized by Grodan, all product orders must be prepaid. All payment checks must clear Grodan’s account before shipping product. US\$25.00 or CAD\$40.00 will be charged for returned checks. Once credit with Grodan has been established, terms of payment shall be net 30 days from date of invoice. Interest shall accrue and Buyer agrees to pay interest at the lesser of 1.5% per month or the highest lawful rate on all overdue accounts, where the applicable law permits. Additionally, Grodan may require a full or partial payment guarantee at any time if it believes the financial condition of the Buyer so warrants. Buyer shall be responsible for all reasonable costs of collection, including attorney’s fees. Credit limit and credit terms can be amended at any time. Failure to comply with set credit limit and terms can stop order production and or delivery of goods.

**DEPOSITS** – Buyer shall make the following advance payment deposits for each special or custom-made product order: 30% with the order, 60% prior to shipping from the factory, and the final 10% upon delivery. All deposits are non-refundable.

**TAXES** – All local, state, provincial and other governmental taxes are the responsibility of the Buyer, unless otherwise specified in this Agreement, and Buyer shall file all tax returns and pay all applicable tax resulting from any product purchase (other than as it may relate to Grodan’s income tax), if any. In addition, if any other similar tax is assessed against Grodan that relates to Buyer’s purchase of product, Buyer shall indemnify and hold Grodan harmless from and against any and all such (or similar) taxes. In this Agreement, all prices are in U.S. DOLLARS.

**DELIVERY / SHIPMENTS** – Confirmations of products in stock are subject to prior sale. Delivery dates are not guaranteed but are estimates only. Grodan will use reasonable commercial efforts to meet estimated delivery dates. Unless otherwise stated, all prices are F.O.B. Destination to the port designated by Buyer. Title and all risk of loss shall be born by Buyer upon delivery by Grodan at place of location of delivery. Grodan shall be responsible for all reasonable and customary delivery or duty-paid related charges. Any extraordinary charges with respect to delivery or duty paid (including, without limitation, customs exams or demurrage caused by delays or strikes) shall be the responsibility of Buyer, and Buyer agrees to indemnify and reimburse Grodan on demand with respect to any such charges. Grodan shall not be liable for any delay in performance of this Agreement or delivery of the products, or for any damages suffered by Buyer by reason of delay, regardless of the cause. To be clear, GRODAN SHALL NOT BE LIABLE FOR ANY LOSS OF USE OR FOR ANY OTHER DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, LOST PROFITS, OR OTHER DAMAGES OR LOSSES DUE TO DELAY IN SCHEDULED PRODUCT DELIVERY. If delay is caused by Buyer’s failure to furnish necessary information to Grodan, then Grodan may correspondingly extend the delivery date. Any Buyer claims for shortages in shipments shall be deemed waived and released by Buyer unless made in writing within two (2) days after Buyer’s receipt of shipment. Grodan’s responsibility for shipment shall cease upon delivery of the product to the designated location. Unless otherwise agreed to, Grodan intends to route shipments by the most economical means. Air Freight is only used at the request of the customer. GRODAN WILL NOT DELIVER PRODUCT TO AN ADDRESS WITH ONLY A P.O. BOX NUMBER. A STREET ADDRESS IS REQUIRED. DO NOT RETURN ANY MERCHANDISE WITHOUT PERMISSION FROM GRODAN OR IT WILL BE REFUSED.

**GROUND SHIPMENTS** – If Grodan is requested to facilitate the shipment of product from its destination port by truck, rail or otherwise, the bill of lading from such transportation company indicates (or is hereby deemed to indicate) that the material shipped has now become Buyer’s property, and is an acknowledgment by the transportation company of the receipt of the material in good condition. Safe delivery is now the responsibility of the transportation company. Grodan is not responsible for damage after pickup by the transportation company. EXAMINE THE SHIPMENT CAREFULLY BEFORE SIGNING THE FREIGHT BILLS. If any damage is noted, or if the number of pieces received does not agree with the bill of lading, do not accept shipment without shortage or damage noted on the freight bill by the transportation company’s agent; failure to do so may jeopardize Buyer’s recovery. If any concealed damage or shortage is discovered when unpacking, leave material and packing as is and notify agent of transportation company to inspect and make reference thereto on the freight bill. Consult the transportation company for disposition of damaged articles. Grodan will render Buyer reasonable assistance to trace and recover lost goods. Buyer must make its claim with the transportation promptly. Buyer shall not deduct the transportation charges from the invoice, nor payment or invoices withheld awaiting adjustment of any claims with the transportation company, since it is the function of the transportation company to guarantee safe delivery. Check items received to the invoice. If there is any discrepancy, contact Grodan immediately. Claims for shortage attributed to Buyer’s count in packing



must be made within 2 days from the date shipment is received.

**INSPECTION AND CLAIMS** - Grodan is not responsible for damage after pickup by the transportation company. Buyer agrees that it shall inspect the products immediately after receipt and promptly notify Grodan in writing of any non-conformity or defect. Buyer further agrees that failure to give such prompt notice shall constitute acceptance. Acceptance shall be final and Buyer waives the right to revoke acceptance for any reason, whether or not known by Buyer at the time of such acceptance. The giving of any such notice by Buyer shall automatically cause the provisions of the WARRANTY paragraph below to apply and govern the rights, obligations and liabilities of the parties with respect to such nonconformity or defect, provided under no circumstances shall rejection give rise to any liability of Grodan for incidental, consequential, lost profits or any other damages or losses of any kind.

**TECHNICAL ADVICE** - Grodan assumes no obligation or liability, expressed or implied, on account of any recommendations, opinions or advice given as to the choice, installation or use of products. Any such recommendations, opinions or advice are given and shall be accepted at Buyer's own risk and shall not constitute any warranty or guarantee of such products or their performance.

**ORDER CHANGES AND CANCELLATIONS** - This Agreement may be changed or cancelled only with Grodan's prior written consent and upon terms indemnifying Grodan from all resulting losses and damages. Grodan shall have the right to cancel and/or refuse to perform under this Agreement if any term or condition of this Agreement is not complied with by Buyer. If Grodan refuses performance as above set forth, or if Grodan consents to a request by Buyer to cancel or change the whole or any part of this Agreement, Buyer shall reimburse Grodan as follows: (i) for any and all work and product that can be completed within (30) days from the date of notification to stop work, and such product shall be completed, shipped and paid in full; and (ii) for work in progress and any materials and supplies procured for such work or for which definite commitments have been made by Grodan in connection with this Agreement, and Buyer shall pay such sums as may be required to fully compensate Grodan for actual costs incurred, plus twenty percent (20%).

**RETURNS** - No merchandise may be returned without Grodan's prior written authorization or it will be refused. Buyer shall pay to Grodan freight charges and a restocking charge of 25% (with a minimum charge US\$100.00 or CAD\$150.00) on all returns unless the returned merchandise is defective. Items that are special order, made to customer specifications, non-inventory or non-stock items, cannot be returned for any credit due to their special nature (unless found defective). Grodan will not accept any return of products from Buyer if the plants or produce where the products were located have been the subject of or exposed to disease or a reasonable basis exists to suspect that such plants and produce have been the subject of or exposed to a disease at any time during which the product was located at such facility. Grodan reserves the right to condition the return of any product upon the delivery of written certification by Buyer as to the absence of disease at Buyer's facility as described above.

**WARRANTY – IMPORTANT NOTICE TO BUYER:** THE FOLLOWING IS MADE IN LIEU OF ALL WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR

PURPOSE), ALL WARRANTIES NOT SPECIFICALLY GRANTED BY THIS PARAGRAPH ARE HEREBY WAIVED BY BUYER. GRODAN'S AND THE RESPECTIVE MANUFACTURER'S ONLY OBLIGATION TO BUYER SHALL BE TO REPLACE SUCH QUANTITY OF THE PRODUCT PROVEN TO BE DEFECTIVE. NEITHER GRODAN NOR THE MANUFACTURER SHALL BE LIABLE TO BUYER FOR ANY INJURY, LOSS OR DAMAGE, DIRECT OR CONSEQUENTIAL, ARISING OUT OF USE OR THE INABILITY TO USE THE PRODUCT. BEFORE USING, BUYER SHALL DETERMINE THE SUITABILITY OF THE PRODUCT FOR ITS INTENDED USE AND BUYER ASSUMES ALL RISK AND LIABILITY WHATSOEVER IN CONNECTION THEREWITH. ANY CONTROVERSY OR CLAIM ARISING OUT OF OR IN RELATION TO THIS AGREEMENT OR THE SALE OF GOODS BY GRODAN, MAY, AT THE ELECTION OF GRODAN, BE SETTLED BY ARBITRATION UNDER THE TERMS OF THE FEDERAL ARBITRATION ACT ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS COMMERCIAL ARBITRATION RULES. JUDGMENT UPON AN AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY ARBITRATION PROCEEDING INSTITUTED SHALL BE HELD IN THE STATE OF DELAWARE, OR AT SUCH OTHER LOCATION IN THE UNITED STATES AS GRODAN SHALL DESIGNATE. GRODAN WILL PASS THROUGH TO BUYER ALL MANUFACTURER'S WARRANTIES FOR PRODUCT COVERED BY THIS AGREEMENT AGAINST DEFECTS IN MATERIAL OR MANUFACTURE FOR SUCH A PERIOD AS MANUFACTURER GRANTS TO GRODAN; PROVIDED THAT BUYER SENDS GRODAN WRITTEN NOTICE OF THE DEFECT WITHIN THIRTY (30) DAYS OF ITS DISCOVERY AND ESTABLISHES THAT: (I) THE PRODUCT HAS BEEN MAINTAINED WITHIN THE LIMITS OF NORMAL USAGE; AND (II) THE DEFECT DID NOT RESULT IN ANY MANNER FROM INTENTIONAL OR NEGLIGENT ACTION OR INACTION. IF REQUESTED BY GRODAN, BUYER MUST RETURN THE DEFECTIVE PRODUCT TO GRODAN (OR AS DIRECTED BY GRODAN) FOR INSPECTION, OR BUYER AGREES TO ALLOW THE MANUFACTURER REPRESENTATIVE ON SITE FOR THE INSPECTION OF DEFECTIVE PRODUCT (AS DETERMINED BY GRODAN), AND IF BUYER CANNOT ESTABLISH THAT CONDITIONS (I) AND (II) ABOVE HAVE BEEN MET, THEN GRODAN'S REPLACEMENT OBLIGATION UNDER THIS PARAGRAPH SHALL NOT APPLY TO THE ALLEGED DEFECTIVE PRODUCT. FAILURE TO GIVE WRITTEN NOTICE OF DEFECT WITHIN SUCH 30-DAY PERIOD SHALL BE A WAIVER OF GRODAN'S OBLIGATIONS UNDER THIS PARAGRAPH AND ANY ASSISTANCE RENDERED THEREAFTER SHALL NOT EXTEND OR REVIVE IT.

**REMEDIES FOR BREACH** - In no event shall Grodan, or any subsidiary or division of Grodan be liable for actual, direct, incidental, consequential or other damages or losses resulting from a breach this Agreement or a breach of warranty including, without limitation, labor costs, third party costs, personal injury, emotional or mental distress, improper performance or work, penalties of any kind, loss of service of personnel, loss of profits or failure of product to comply with any federal, state or local laws.

**INDEMNIFICATION BY BUYER** - Buyer hereby agrees to indemnify, release, defend and hold harmless Grodan, its subsidiaries, affiliates and parent, and their respective directors, officers, employees, agents, representatives, successors, and assigns (each, an "Indemnified Party") against any and all suits, actions or proceedings at law or in equity (including the costs, expenses and reasonable attorney's fees incurred in connection with the defense of any such matter) and from any and all claims demands, losses, judgments, damages, costs (including legal fees), expenses or liabilities, to any person whatsoever (including Buyer's and Grodan' employees or any third party), or damage to any



property (including Buyer's property) arising out of or in any way connected with the performance or the furnishing of

services or product under this Agreement, regardless of whether any act, omission, negligence (including any act, omission or negligence, relating to the manufacture, design, repair, erection, service or installation of or warnings made or lack thereof with respect to any product furnished hereunder) of an Indemnified Party caused or contributed thereto. If Buyer fails to fulfill any of its obligations under this paragraph or this Agreement, Buyer agrees to pay an Indemnified Party all costs, expenses and attorney's fees incurred by such Indemnified Party to establish or enforce such Indemnified Party's rights under this paragraph or this Agreement. The provisions of this paragraph are in addition to any other rights or obligations set forth in this Agreement.

**CONSTRUCTION AND SEVERABILITY** – This Agreement constitutes the entire agreement between the parties and

shall be construed and enforced in accordance with the laws of the State of Delaware. Grodan shall not be bound by any agent's, employees or dealer's representation, promise or inducement not set forth herein. The invalidity or unenforceability of any provisions of this Agreement shall not affect any other provision and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

**JURISDICTION** – The parties agree that the proper and exclusive forum and venue in all legal actions brought to enforce or construe any of the provisions of this Agreement shall be in the state and federal courts in Toronto, Ontario, Canada.

**MISCELLANEOUS** – Buyer represents that: (i) it is solvent and has the financial ability to pay for the product purchased herein; and (ii) it has all requisite right, power and authority to perform its obligations under this Agreement.

**Name and Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Signature:** \_\_\_\_\_