

Terms and Conditions of Sale of BYK USA Inc.

September 2023

- 1. General.** These Terms and Conditions of Sale shall apply to all orders by Buyer for the purchase of the products specified in the order (the "Products") from BYK USA Inc. ("Seller").
- 2. Offers and Orders.** If the Terms and Conditions of this acknowledgment differ in any way from the terms and conditions of Buyer's order, this acknowledgment shall be construed as a counteroffer and shall not be effective as an acceptance of such order unless Buyer assents to the Terms and Conditions contained herein, which shall constitute the entire agreement ("Agreement") between the parties. Buyer's assent to the Terms and Conditions contained herein shall be deemed given upon Buyer's execution of this acknowledgment below or upon Buyer's failure to object to these Terms and Conditions in writing within ten (10) days from the date of receipt of this acknowledgment. Buyer's receipt of delivery of the Products without immediate return will further manifest Buyer's assent to these Terms and Conditions. No additions to or modifications of any of the Terms and Conditions hereof shall be effective unless made in writing and signed by both parties. Acceptance of an order is at all times subject to availability of the Products for delivery.
- 3. Shipments and Delivery.** Deliveries are made FCA Seller's shipping point. Risk of loss or damage and responsibility shall pass from Seller to Buyer upon delivery to and receipt by a common carrier. Any claims for shortages or damages suffered in transit shall be submitted by Buyer directly to the carrier. While Seller will use commercially reasonable efforts to maintain the delivery date(s) acknowledged or quoted by Seller, all shipping dates are approximate and not guaranteed. Seller reserves the right to make partial shipments. Seller, at its option, shall not be bound to tender delivery of any Products for which Buyer has not provided shipping instructions. If the shipment of the Products is postponed or delayed by Buyer for any reason, Buyer agrees to reimburse Seller for any and all storage costs and other additional expenses resulting therefrom. If Seller desires to revise the point of shipment for the Products hereunder but is restricted to any extent against so doing by reason of any governmental law, regulation, order or action or if the point of delivery in effect under these Terms and Conditions is altered by reason of any government, law regulation, order or action, Seller shall have the right to terminate this Agreement by written notice to Buyer with respect to any Products not then delivered. Because of the conditions involved in the manufacture of custom made Products, where an order calls for a Product to be made-to-order specifically for Buyer: (1) a delivery of not less than 90% of the order will be considered a complete fulfilment of the order; and (2) in case of an over-run, Seller may deliver and Buyer will accept any such excess up to 10% of the order, but not more than 1,000 pounds.
- 4. Force Majeure.** Seller shall not be liable for delays in performance or for non-performance due to acts of God; acts of Buyer; war; fire; terrorism or other criminal conduct; flood; weather; sabotage; strikes, or labor or civil disturbances; governmental requests, restrictions, laws, regulations, orders or actions; unavailability of or delays in utilities, raw materials, containers or transportation; default of suppliers; or unforeseen circumstances or any other events or causes beyond Seller's reasonable control. In the event of any of the foregoing, Seller may, at its option and upon notice to the Buyer, suspend delivery for an appropriate period of time or cancel the order in whole or in part. In the event of any shortage, however caused, Seller, in its sole discretion and without liability to any party, may allocate its available supply of the Products among its purchasers on such basis as Seller determines to be equitable.

5. Prices, Payment Terms, Taxes. All quoted prices, extras (including applicable surcharges), and all freight or transportation rates, are subject to change, without notice, to reflect Seller's prices and extras, applicable freight or transportation rates, in effect as of the date of shipment. Any tax or governmental charge (or increase in same) affecting Seller's costs of production, including costs of materials used therein, sale, delivery, storage, processing, use, consumption or transportation shall be for Buyer's account and shall be added to the price. Prices do not include the cost of special preparation for export, export packaging, consular invoices, export declarations, certificates of origin or other documents, insurance in transit or similar items, and any cost incurred for such items shall be added to the prices as shown. Unless otherwise specifically stated and agreed to in writing by Seller, the terms of payment are net thirty (30) days from the date of Seller's invoice in U.S. currency, or as printed on the face of the document without any right to setoff. Seller shall have the right, among other remedies, either to terminate the order or to suspend further performance under this and/or other agreements with Buyer in the event Buyer fails to make any payment when due. Buyer shall be liable for all expenses, including attorneys' fees, relating to the collection of past due amounts. If any payment owed to Seller is not paid when due, it shall bear interest at a rate of 1.5% per month, or the maximum rate permitted by law if less, from the date on which it is due until it is paid. Should Buyer's financial responsibility become unsatisfactory to Seller, cash payments or security satisfactory to Seller may be required by Seller for future deliveries and for the Products theretofore delivered. If Seller desires to revise the applicable price, discount or terms of payment for the Products hereunder, but is restricted to any extent against so doing by reason of any governmental law, regulation, order or action or if the price, discount or terms of payment in effect under these Terms and Conditions are altered by reason of any government, law, regulation, order or action, Seller shall have the right to terminate this Agreement with respect to any Products not yet delivered by written notice to Buyer.

6. Title and Risk of Loss. Title to the Products shall transfer from Seller to Buyer upon delivery to and receipt by a common carrier, risk of loss or damage and responsibility shall pass pursuant to Section 3 or as otherwise expressly agreed to by Seller.

7. Limited Warranty, Notification of Defect, Returns. Subject to the limitations on remedies and liabilities set forth below, Seller warrants, at the time of shipment from Seller the chemical composition of its Products within stated tolerances but does not guarantee that a Product will be appropriate for any particular application. Any recommendation, performance of tests or suggestion is offered merely as a guide and is not a substitute or a thorough evaluation by Seller. No representative of Seller has the authority to offer a warranty that a Product will perform satisfactorily in manufacturing the Buyer's product and no such representation should be relied upon. Determination of the suitability of the Products for the use contemplated by Buyer is the sole responsibility of Buyer, and Seller shall have no responsibility in connection with such determination. Samples or formulas supplied by Seller are solely for the purpose of allowing Buyer to evaluate the suitability of such Products for their intended use. Seller, upon Buyer's request, may furnish technical advice with reference to the use of the Products sold hereunder, if and to such extent as Seller has such advice conveniently available, but it is expressly agreed that there is no obligation to furnish any such advice, and that if any advice or assistance is furnished, which will be without charge, it shall be given and accepted at Buyer's risk, and Seller shall not be responsible or liable for the advice or assistance given or the results thereof. SELLER MAKES NO OTHER WARRANTY OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AGAINST INFRINGEMENT OF ANY THIRD PART'S INTELLECTUAL PROPERTY RIGHTS; AND ALL IMPLIED

WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY SELLER AND EXCLUDED. Buyer agrees to examine and inspect the Products at once upon arrival at their destination, and if the Products fail to comply with the warranty provided hereunder, Buyer shall promptly give detailed written notice of such failure to Seller. Any claim under this warranty shall conclusively be deemed waived by Buyer unless written notice thereof is given to Seller within fifteen days after discovery, but in no event later than ninety days from the date of sale. Additionally, no claims shall be allowed for any cause as to Products which have been treated or processed in any way, except for such quantity necessarily processed to determine the existence of an inferior quality or defective condition. Seller's responsibility and Buyer's exclusive remedy under this warranty is limited to the replacement of the Products or the refund of the amount of the purchase price paid by Buyer, at Seller's option, upon the return of any nonconforming Products to Seller at Buyer's expense, except such part, if any, as cannot be returned due to its necessary use in processing; and Buyer shall also return, if possible, the said Products used in processing. This warranty does not extend to any losses or damages due to misuse, accident, abuse, neglect, Buyer's negligence or intentional conduct, unauthorized modification or alteration, use beyond rated capacity, or improper storage, maintenance or application.

8. Limitation of Liability. IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY HEREUNDER OR IN CONNECTION WITH THE MANUFACTURE OR SALE OF THE PRODUCTS DESCRIBED HEREIN, WHETHER IN CONTRACT, IN TORT, FOR INFRINGEMENT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE SHALL NOT EXCEED THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS INCURRED BY BUYER). THE PRICE STATED FOR THE PRODUCTS IS A CONSIDERATION IN LIMITING SELLER'S LIABILITY.

9. Termination. Seller shall have the right, among other remedies, either to terminate the order with immediate effect upon written notice or to suspend further performance under this and/or other agreements with Buyer in the event (a) Buyer fails to make any payment when due, (b) Buyer's credit or financial condition has become impaired, or (c) Buyer enters into any bankruptcy or insolvency proceeding or assignment for the benefit of Buyer's creditors.

10. Changes. Seller reserves the right to change the specifications for the Products without prior notice to Buyer, except with respect to Products being made-to-order for Buyer.

11. Containers. Seller retains title to returnable drums and other containers, which can be billed extra at Seller's current schedule of prices. Buyer shall protect them and be responsible for any loss of or damage to any of them from, whatever while in Buyer's possession; and shall return them in good condition in accordance with the terms shown on the face of the invoice, for full credit or refund at the price billed.

12. Confidential Information and Property Rights. All proprietary information including but not limited to any information, know-how, trade secrets, unpublished patent applications, inventions, discoveries, data, technology, computer programs, analytical data, mixtures, recipes, formulas, specifications, manufacturing procedures, methods, customer information, strategies and business plans, projections, marketing or other business information as well as product samples, models, prototypes, materials, and any improvement

and know-how related thereto, that are disclosed or provided to Buyer by Seller (whether in tangible or electronic form) is confidential (“Confidential Information”) whether or not identified as such and all notes, analyses, test results, summaries, compilations, studies and other documents prepared by or on behalf of Buyer based upon the Confidential Information received, if the information can be reasonably understood to be proprietary and/or confidential, because of the circumstances of disclosure, the nature or subject matter of the information or material itself. Confidential Information does not include information which: (i) is in the public domain at the time of disclosure; (ii) is published or otherwise becomes part of the public domain through no fault of Buyer; (iii) was in the possession of Buyer at the time of disclosure by Seller; (iv) was made available to Buyer by a third party who has the right to legally disclose it; (v) was independently developed by Buyer without using or making any reference to Seller’s Confidential Information. Nothing in these Terms and Conditions shall be deemed to grant a license directly or by implication, estoppel, or otherwise under any intellectual property right related to any Confidential Information disclosed or developed pursuant to these Terms and Conditions. They shall not be construed as a fiduciary, teaming, joint venture, partnership, agency or other such agreement; rather, Buyer and Seller expressly agree that these provisions are for the purposes of protecting Seller’s Confidential Information and intellectual property rights and defining the ownership of, and use rights in, intellectual property and technical information. Unless otherwise expressly agreed, all tools, dies, fixtures, jigs, gauges, systems and related specifications shall be and remain Seller’s property at all times and Buyer shall be responsible for all costs of maintenance, insurance, repair and replacement of any such items.

13. Personal Data. Seller saves and processes all personal data disclosed by Buyer in accordance with applicable laws and regulations to the extent required.

14. Compliance. Buyer is obligated to comply with all applicable laws regarding the Products, especially anti-corruption regulations, regulations combating money laundering or financing of terrorism and anti-trust laws. Applicable anti-corruption regulations within the meaning of the previous sentence include but are not limited to the UK Bribery Act 2010 and the US Foreign Corrupt Practices Act.

15. Export Controls. The Products are – unless otherwise agreed in writing – always designated to remain, to be used, as well as to be sold in the first country of delivery agreed upon with Buyer. Unless required by law or otherwise agreed in writing, Seller is under no obligation to make available documents to Buyer for the import or export of the goods from the first country of delivery. If Seller does make such information available to Buyer on an individual basis, this shall be done without any guarantee for the correctness of the information. This does not give Buyer any right to obtain or use this information from Seller for any future business.

The export of certain goods may be subject to authorisation – e.g. because of their nature, their intended use or their final destination. Buyer shall strictly comply with all applicable (re-)export control and sanctions regulations, especially those of the Federal Republic of Germany, the European Union and its member states as well as the United States of America and the United Nations.

Prior to any provision of the goods, which Buyer had purchased from Seller, to a third party, Buyer shall check and guarantee in particular by appropriate measures that

- (a) no embargo imposed by the European Union and its member states, by the United States of America and/ or by the United Nations shall be violated;

- (b) the Products are not intended for use in connection with armaments, nuclear technology or weapons, if and to the extent such use is subject to prohibition or authorization, unless it has obtained the required authorization;
- (c) the regulations of all applicable Sanctioned Party Lists of the European Union and its member states and the United States of America concerning the trading with entities, persons and organizations listed therein are obeyed.

Upon request, Buyer shall provide Seller with all requested end-use-certificates about the intended final destination of the goods purchased from Seller without undue delay, but no later than within 10 calendar days.

Buyer shall indemnify and hold harmless Seller from and against any claim, proceeding, action, fine, loss, cost and damages arising out of or relating to any culpable violation of the above obligations pursuant this Section. Buyer shall compensate Seller for all losses and expenses resulting thereof, in particular the costs and expenses of any possible legal defence as well as any contingent fines or penalties imposed by authorities. This provision does not imply a change in the burden of proof.

If obligations pursuant to this Section 15 would constitute a breach of any applicable mandatory anti-boycott rule legislated by the European Union, any of its member states, the United States of America or other states, such conflicting obligations shall not be fulfilled.

16. Government Contract Terms / Mandatory Flow Downs. If Buyer's contract or order is for a U.S. government contract, and the Products ordered from Seller are to be used in the performance of said contract, only those mandatory flow down clauses of applicable U.S. government procurement regulations required by federal statute to be included in U.S. government subcontracts shall be incorporated herein by reference.

17. Assignment. Buyer shall not assign its rights or delegate its duties hereunder or any interest therein or any rights hereunder without the prior written consent of Seller, and any such assignment, without such consent, shall be void.

18. Product Handling. Buyer shall be responsible for receiving, inspecting, testing, storing, maintaining, applying and disposing of (in accordance with all applicable governmental laws, regulations, orders or actions) all Products.

19. General Provisions. These Terms and Conditions supersede all other communications, negotiations and prior oral or written statements regarding the subject matter of these Terms and Conditions. No change, modification, rescission, discharge, abandonment, or waiver of these Terms and Conditions shall be binding upon Seller unless made in writing and signed on its behalf by an officer or other duly authorized representative of Seller (sales representatives are not an authorized representative). No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary, explain, reject, or supplement these Terms and Conditions shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be affected by Seller's receipt, acknowledgment, or acceptance of purchase orders, shipping instruction forms, or other documentation containing terms at variance with or in addition to those set forth herein. No waiver by either party with respect to any breach or default or of any right or remedy and no course of dealing, shall be deemed to constitute a continuing waiver of any other breach or default or of any other right or remedy, unless such waiver be expressed in writing and signed by the party to be bound. All typographical or clerical errors made by Seller in any quotation,

acknowledgment or publication are subject to correction. The validity, performance, and all other matters relating to the interpretation and effect of these Terms and Conditions shall be governed by the laws of the state of Connecticut, without giving effect to its conflict of laws and rules. The application of the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods to these Terms and Conditions are expressly excluded. Buyer and Seller agree that the proper venue for all actions arising in connection herewith shall be only in Hartford County, Connecticut and the parties agree to submit to such jurisdiction. This acknowledgment and the Terms and Conditions specified herein are hereby accepted by Buyer.

UNLESS OTHERWISE OBLIGATED BY CONTRACTUAL PROVISIONS SIGNED AND EXECUTED BY DULY AUTHORIZED REPRESENTATIVES OF BUYER AND SELLER, THESE TERMS AND CONDITIONS SHALL PREVAIL FOR ALL ASPECTS OF THE ORDER TO THE EXCLUSION OF ANY OTHER TERMS THAT THE OTHER SIDE SEEKS TO IMPOSE OR INCORPORATE OR WHICH ARE IMPLIED BY TRADE, CUSTOM, PRACTICE OR COURSE OF DEALING.