

MADEWELL PRODUCTS CORPORATION GENERAL TERMS AND CONDITIONS OF SALE
EFFECTIVE MARCH 23, 1999

1. CONTRACT.

These General Terms and Conditions of Sale are hereby incorporated by reference into all documents issued by Madewell Products Corporation referencing same, any of which shall be referred to as the "Acknowledgement." Madewell Products Corporation ("Seller") is acknowledging and accepting an order placed by its customer ("Purchaser") on the express condition that Purchaser assents by executing and returning to Seller a copy of an Acknowledgment or, at Seller's option, by any reasonable means and manner, assents to these General Terms and Conditions of Sale, that together with said Acknowledgement, shall constitute the entire agreement ("Contract") of the parties with respect to the sale of goods described in said Acknowledgment ("Goods"). Seller may withdraw such Acknowledgement, without liability thereunder, at any time before such assent is so given and said Acknowledgment shall in any event automatically terminate and Seller shall have no liability to Purchaser at the close of the sixtieth (60th) day after Acknowledgment is mailed by Seller if Purchaser has not already given such assent. The Contract shall be deemed made at the principal office of Seller in Georgia, and shall be construed in accordance with and governed by the Uniform Commercial Code of Georgia and the other laws of the State of Georgia, as amended from time to time. No change to the contract shall be binding on Seller unless set forth in a writing signed by Seller. Seller objects to terms in any proposal or purchase order of Purchaser inconsistent with the terms hereof.

2. F.O.B. TERM.

Unless Paragraph 3 applies, the Goods shall be sold for delivery F.O.B. the point(s) of shipment, which shall be such plant(s) of Seller or its subcontractor(s) or supplier(s) or any combination thereof as Seller may from time to time in its sole discretion determine, and the following terms shall apply: (I) Seller shall use reasonable efforts to comply with any terms respecting shipping which are set forth in its Acknowledgment, but shall always have the option to ship in any reasonable alternative means and/or manner in its discretion; (II) all freight costs are in addition to the purchase price and shall be borne by Purchaser consistent with the terms of Seller's Acknowledgment; (III) at Seller's option the Goods may be shipped pursuant to negotiable or non-negotiable bill(s) of lading and in the case of a non-negotiable bill, a copy thereof shall constitute the only shipping document which Seller is required to furnish to Purchaser, (IV) Seller at its expense will attend to customary and reasonable packing and loading of the Goods but any other packing and loading such as palletizing which may be necessary, or may be requested by Purchaser and assented to by Seller, shall be at Purchaser's expense; and (V) title to (subject to Paragraph 7 hereof) and the risk of loss of and of casualty to the Goods shall pass to Purchaser upon delivery of the Goods to the carrier.

3. DESTINATION TERM.

If and only if Seller's Acknowledgment expressly states that the Goods are shipped via Seller's truck, then the Goods shall be sold for delivery at the destination set forth in the Acknowledgment, or if none is set forth, then at such facility of Purchaser as may reasonably be selected by Seller, and in any event the following terms shall apply; (I) Seller will use its own vehicle(s) in order to effect delivery; (II)

shipments may originate at such plant(s) of Seller or its subcontractor(s) or supplier(s) or any combination thereof as Seller may from time to time in its sole discretion determine; (III) all freight costs shall be borne by Seller; (IV) Seller at its expense will attend to customary and reasonable packing and loading of the Goods but any other packing and loading such as palletizing which may be necessary, or may be requested by Purchaser and assented to by Seller, shall be at Purchaser's expense; and (V) title to (subject to Paragraph 7 hereof) and the risk of loss of and of casualty to the Goods shall pass to Purchaser upon tender of delivery of the Goods at the destination.

4. TENDER; DELAY.

The time of shipment or delivery shall be a reasonable time. Although Seller will use reasonable efforts to comply with any estimate of shipment or delivery time given by Seller (or, absent such estimate, with any such time specified by Purchaser), no such estimate or specification shall be binding on Seller. The foregoing and any other provision hereof notwithstanding, Seller shall have no liability for delay in shipment or delivery or for non shipment or non-delivery of the Goods arising wholly or partially out of any cause wholly or partially beyond Seller's control (including, without limitation, defaults by or delays on the part of any carrier or of any sub-contractor or supplier of Seller); provided that Seller may at its option without liability therefor avail itself of its rights under Paragraph 10 hereof upon giving notice to Purchaser at any time of such cause. In the event the continuance of any such cause permits performance by Seller of some, though not all, of its obligations to Purchaser and third parties, Seller shall be entitled to the benefit of this Paragraph 4 at its option. The Goods may be delivered in a single lot, or in multiple lots, all as determined by Seller, and any reference to the Goods shall apply equally to any lot thereof. If the Goods are delivered in more than one lot, the effect of any default by Seller as to any one lot shall be limited to that lot alone and shall not affect the whole contract, even though such default substantially impairs the value of the whole Contract. Purchaser shall be strictly responsible for providing all facilities and accommodations requested by Seller in connection with effectuating delivery to and receipt by Purchaser of the Goods. Without limitation, Seller is authorized but not obligated to arrange any storage of the Goods at their destination deemed advisable by Seller, which shall be at Purchaser's risk and expense.

5. PRICE.

The purchase price for the Goods will be set forth in Seller's Acknowledgment; provided that if the last lot of the Goods is not delivered to the carrier, if Paragraph 2 applies, or to the destination, if Paragraph 3 applies, within 30 days after the date of which Seller's Acknowledgment is mailed to Purchaser, then, regardless of whether the Contract has been formed, until such delivery occurs, Seller shall have the right from time to time upon notice to Purchaser to set a new purchase price for the Goods. Purchaser shall be bound to pay such new price (which shall apply to all lots accepted by Purchaser, including prior acceptances) unless 15 days after receipt of the notice from Seller of the new price, Purchaser gives to Seller notice of objection to the new price. If timely objection is made, then the Contract (or Seller's obligations under its Acknowledgment, if the Contract has not been formed), at the option of the Seller, will terminate as to any portion of the Goods which had not

been delivered to the carrier or destination, as appropriate, as of the date such objection was received by Seller, but the Contract (if it has been formed) shall continue in effect on the same terms and conditions, including the old price, as to any Goods which had been so delivered prior to such receipt of such notice.

6. PAYMENTS.

All sums payable to Seller hereunder shall be paid in full without deduction or offset in cash or equivalent (unless Seller shall approve payment by Purchaser's company check) in legal U.S. tender and shall be due on demand except that Seller shall render its invoice for the purchase price after the Goods have been delivered to the carrier, if Paragraph 2 applies, or to the destination, if Paragraph 3 applies, and payment of the amount of the invoice, less any discount for prompt payment earned by Purchaser pursuant to Seller's Acknowledgment, must actually be received by Seller not later than the due date set forth on the Acknowledgment. If the Goods are shipped in more than one lot, then Seller may invoice separately for that portion of the purchase price represented by each lot, determined in any manner deemed reasonable by Seller. In addition to all other sums payable hereunder, Purchaser shall timely pay directly to the appropriate authority, or if advanced by Seller in Seller's discretion, shall pay to Seller as provided above as a reimbursement, all customs duties and similar imposts, sales, use, transactional, transfer, excise and other taxes or charges levied or imposed on Seller or Purchaser for the Goods, or required to be collected by Seller, and relating in any way to the Contract. Purchaser acknowledges that the Goods are for non-consumer purposes (that is, not for personal, family, or household purposes). Although Seller is not agreeing hereby to forebear from collecting past-due amounts owed to it, as additional compensation to Seller for any default, for each day on which such past-due amount is due and not paid. Purchaser shall pay to Seller promptly on demand an additional sum: (I) equal to 18% per annum of the past-due amount if the same is \$3,000 or less; or (II) if not, then equal to 0.05% of such past-due amount per day of default, compounding accumulated unpaid such sums into such past-due amount daily. However, the rate charged pursuant to the preceding sentence shall in no event exceed the maximum allowed by law. In addition, should any sum due hereunder be collected by legal process or through an attorney-at-law, Seller shall also be entitled to collect attorneys' fees in an amount equal to the greater of the actual reasonable fees and expenses incurred and 15% of such sum, and all costs of collection.

7. SECURITY INTEREST.

Purchaser hereby grants to Seller a purchase money security interest in the Goods, and in all proceeds and products of same (the foregoing being collectively referred to as the "Collateral"). Said Security interest shall secure all obligations and indebtedness whenever incurred, of Purchaser to Seller of every kind and nature, including without limitation the purchase price due for the Goods and all other sums payable to or for Seller in connection with the Contract. If Seller should determine that the aforesaid security interest is not available under the law of the place where the Collateral is at any time located, on Seller's demand the parties shall utilize such other process as may be available under such law to afford security to Seller on terms no less favorable than those applicable to the aforesaid security interest. If Seller shall so request,

Purchaser shall execute and deliver to Seller such instruments and documents, including, but not limited to, financing statements, as Seller shall deem necessary or desirable for the purposes of perfecting and maintaining its security interest and other rights hereunder, and, on request of Seller, Purchaser shall mark and label the Collateral to give notice of the interest of Seller therein.

8(a). WARRANTIES; HAZARDS; TECHNICAL INFORMATION.

The sales personnel of Seller are not authorized to make warranties about the Goods. Seller's employees' ORAL STATEMENTS DO NOT CONSTITUTE WARRANTIES, shall not be relied upon by Purchaser, and are not part of the Contract. These General Terms and Conditions of Sale set forth the final expression of the parties' agreement concerning warranties and are a complete and exclusive statement of the terms of that agreement: NO OTHER WARRANTIES are given beyond those set forth herein unless set forth in a written document executed by Seller after the assent to the Acknowledgement. Without limitation, Purchasers' attention is directed to the fact that the GOODS CONTAIN SUBSTANCES which could be HAZARDOUS under certain circumstances, and to any and all labels appearing on the Goods' containers, and to any and all Technical Bulletins available from Seller, for further information. PURCHASER ASSUMES THE ENTIRE RISK OF ANY HAZARD ASSOCIATED WITH THE GOODS, THEIR USE AND APPLICATION. Furthermore, any such labels, Technical Bulletins, and any other technical data and/or recommendations which may have been or may now or hereafter be furnished by Seller to Purchaser (collectively, "Technical Information") are furnished without charge. Such Technical Information is based on technical data, industry standards, or professional expertise which Seller believes to be reliable, and is intended for use by persons having skill and knowledge at their discretion and risk. Seller shall have no liability even if negligent for results obtained or damages incurred from the use of Technical Information by Purchaser whether as advised by Seller, or otherwise. The furnishing of any Technical Information shall not be construed as a license to use or as a suggestion to infringe upon any patent. Seller makes no warranty against patent infringement or the like. Without limitation, no specifications or other descriptions contained in any Technical Information shall be construed as constituting express warranties.

(b). WARRANTIES; DESCRIPTION.

Seller expressly warrants to Purchaser that the Goods delivered will be of the kind described in Sellers' Acknowledgement.

(c.) WARRANTIES; INSPECTION.

Purchaser and Seller consider it reasonable that Purchaser shall inspect the Goods, if at all, at the time and place of their receipt by Purchaser. If Purchaser makes no such inspection, or if following such an inspection Purchaser fails to give immediate written notice of all non-conformities to Seller in good faith, then the Goods shall conclusively be deemed to have been accepted by Purchaser and to conform to the Contract. After acceptance is deemed to occur, all warranties except title shall expire, and, without limitation, Purchaser shall thereafter be PRECLUDED FROM ASSERTING ANY CLAIM OR REMEDY against Seller, whether based on warranty, contract, negligence, or any combination thereof, except breach of the title warranty. If the Goods are non-conforming and notice is given by Purchaser as provided above, then Seller at its option shall be entitled to a reasonable time in which to cure such tender without being in default hereunder.

(d). WARRANTIES; DISCLAIMER.

EXCEPT FOR THE AFORESAID EXPRESS WARRANTY, and except for the title warranty, the GOODS ARE SOLD "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTIES WHATSOEVER AND WITHOUT LIMITATION, THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Without limitation, said express warranty and Purchaser's rights thereunder, and the warranty of title, constitute Purchaser's exclusive rights and remedies and are in lieu of and PURCHASER HEREBY WAIVES AND RELEASES SELLER FROM ALL OTHER DUTIES AND OBLIGATIONS connected with Goods delivered to Purchaser, whether based on warranty, contract, negligence, or any combination thereof. Said express warranty of Seller is made only for the benefit of Purchaser and may not be assigned or otherwise transferred by Purchaser, voluntarily or involuntarily, including, without limitation, any assignment or other transfer operation of law. Purchaser warrants to Seller that Purchaser is not a "consumer" within the meaning of, or person intended to be protected by, the Magnuson Moss Warranty Act, the Federal Hazardous Substances Act, or any other federal or state consumer protection statute, regulation or other law and that Purchaser will not sell or otherwise transfer the Goods to any such consumer or person.

9(a) LIMITATIONS.

Without alteration of Paragraph 8 hereof, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES relating in any way to the Goods or otherwise relating to its Acknowledgement or the Contract in any way, whether based on warranty, contract, negligence, or any combination thereof.

(b). Without alteration of Paragraph 8 hereof, THE AGGREGATE CUMULATIVE AMOUNT OF ANY LIABILITY OF SELLER under its express warranty herein contained and under any other duty or obligation of Seller, connected with its Acknowledgement or the Contract in any way, whether based on warranty, contract, negligence, or any combination thereof, SHALL NOT EXCEED THE COST OF THE GOODS TO SELLER (which shall be their inventory value).

10. CANCELLATION.

At Seller's option upon notice to Purchaser, Seller may, notwithstanding any provision hereof, cancel its Acknowledgement (if the Contract has not been formed) without liability therefor, or declare the entire unpaid purchase price and any other sums payable to or for Seller to be immediately due and payable, or without liability, cancel the Contract (if it has been formed), and either recover the price reasonably apportioned by Seller to Goods already shipped if Paragraph 2 applies, or delivered to the destination, if Paragraph 3 applies, or require same to be returned at Purchaser's risk and expense, or avail itself of any or all remedies permitted a seller by the Uniform Commercial Code of Georgia as then in effect, or combine any such remedy with any other such remedy or remedies consistent, in Seller's opinion, therewith, upon the happening and during the continuance of any one or more of the following events: (I) failure of Purchaser to make any payment to or for Seller when due, or (II) default by Purchaser in the observance or performance of any other term or condition contained in the Contract; or (III) the filing by Purchaser of a voluntary petition in bankruptcy or a voluntary petition or answer seeking reorganization, arrangement, or readjustment of its debts, or any agreement by Purchaser indicating its consent to, approval of a acquiescence in any such petition or proceeding or (IV) the application by Purchaser for or the consent or

acquiescence of Purchaser in the appointment of a receiver or trustee of Purchaser or for all or a substantial part of its property; or (V) the filing of an involuntary petition against Purchaser seeking reorganization, arrangement, or readjustment of its debts or for any other relief under any insolvency act or law, now or hereafter existing, or the involuntary appointment of a receiver of trustee for Purchaser, or for all or a substantial part of its property or assets, or the issuance of a warrant of attachment, execution or similar process against any substantial part of the property of Purchaser; or (VI) upon the giving of notice by Seller to Purchaser that Seller believes that the prospect of payment or performance by Purchaser is impaired; or (VII) any other event specified elsewhere herein as entitling Seller to avail itself of its rights under this Paragraph 10. Purchaser agrees to give Seller prompt notice of the occurrence or abatement of any such event other than (VI) or (VII) above.

11. MISCELLANEOUS.

Except as otherwise provided herein, any and all notice or other communications under or relating to the Contract shall be in writing and the same shall be deemed given when personally served or when sent by first class mail, postage prepaid, or by telegram or cable. Neither Seller's Acknowledgement nor the Contract may be transferred, assigned, sold or in any manner hypothecated or pledged by Purchaser unless written consent to such act is first obtained from Seller. Except as herein limited, the rights, obligations, representations, and warranties herein contained shall be binding upon and inure to the benefit of the parties hereto, their heirs, administrators, executors, successors and assigns. Should any portion hereof be legally adjudicated invalid or unenforceable, the parties do hereby covenant and agree that such portion or portions are absolutely and completely severable from all other portions hereof and such other provisions shall constitute the agreement of the parties. The rights and remedies of Seller provided herein are cumulative to each other and to any other rights or remedies available to Seller at law or in equity. No failure on the part of Seller to exercise and no delay in exercising any right shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any right preclude any other or future exercise thereof or the exercise of any other right. Purchaser must commence any action for breach of Seller's Acknowledgement or the Contract, and any other cause of action in any way arising out of or in connection with the Acknowledgement or the Contract, if at all, within one (1) year after the cause of action accrued. Purchaser agrees that any and all such action(s) shall be pursued in and only in the courts located in Forsyth County, Georgia, waives any defense or objection to jurisdiction and venue in the courts of Forsyth County, Georgia in any action brought by Seller against Purchaser and hereby submits itself to the jurisdiction in said courts. The Georgia Prompt Pay Act, O.C.G.A. § 13-11-1 *et seq.* shall apply to the extent it is not inconsistent with the terms hereof. The paragraph headings herein are not a part hereof. Any provision contained in Seller's Acknowledgement or in the Contract in favor of Seller may be waived by Seller in whole or in part at its option at any time, but no such waiver shall be binding on Seller unless contained in a signed writing delivered to Purchaser, without limitation. Seller's Acknowledgement may vary any provision contained in these General Terms and Conditions of Sale, for example, by providing that Seller will bear the freight costs even if Paragraph 2 applies or by promising a "firm" price notwithstanding Paragraph 5, and such variance will control over any provision in these General Terms and Conditions of Sale with which it is expressly inconsistent, but only to the extent of such inconsistency.