



## **TERMS AND CONDITIONS OF SALE**

**Article 1. Scope.** These terms and conditions of sale (the “**Terms and Conditions**”) shall apply to the sale by Ompi of America, Inc., a Delaware corporation with registered offices at 41 University Drive, Newtown, PA 18940, and by Ompi North America S. de R.L. de C.V., a Mexican company with registered offices at Canada 130, Parque Industrial Nacional CP 65550, Ciénega de Flores, Nuevo Leon (Mexico) (each a “**Seller**”), of any glass container, vial, syringe or other tubular glass packaging manufactured or distributed by Seller to be used for pharmaceutical products (the “**Products**”), to any buyer (the “**Buyer**”) and to any order of Products made by the Buyer and accepted by Seller. In case of conflict between these Terms and Conditions and any terms and conditions included in any order made by the Buyer, the terms and conditions indicated in these Terms and Conditions shall prevail. No modification of or amendment to these Terms and Conditions shall be valid unless made in writing and duly signed by Seller.

**Article 2. Orders.** All orders shall be submitted within the specific lead time agreed upon by the sales representative of Seller and Buyer and in any case at least four (4) months prior to the requested shipment date for bulk Products and six (6) months prior to the requested shipment date for EZ-Fill Products and shall include an order number, a full and accurate description of each Product ordered, the possible detailed silkscreen to be printed on the ordered Products, the amount of each Product ordered, the part numbers, the price quoted by Seller, the requested delivery date and the delivery and invoicing address for the ordered Products. Seller shall not be liable for any shipment error due to incorrect or incomplete information provided by the Buyer with the order. All purchase orders shall be legally binding offers, and no purchase order shall be deemed accepted until specifically accepted in writing by Seller or actually shipped. Seller reserves the right to vary the quantities delivered by +/- 5% of the ordered quantities.

**Article 3. Delivery and Risk of Loss.** Unless specifically agreed in writing to the contrary, the Products will be delivered “Ex works” (Incoterms® 2010) manufacturing site of Seller indicated in the order confirmation within +/- 7 days of the delivery date indicated in the relevant order confirmation.

Without prejudice to Article 10 below, the title to and all risk of loss for the Products shall pass to the Buyer on such date and at such time as the Products are delivered to the Buyer “Ex works” (Incoterms® 2010) manufacturing site of Seller indicated in the order confirmation, unless another term of delivery is indicated in the order confirmation. The Buyer shall be solely responsible for filing any claims for loss or damage with the carrier or any other third party. The risk of loss or transfer of title will not be altered by the actions of either party hereto, including but not limited to the direct shipment of the Products by Seller to any designee of the Buyer. Buyer’s sole remedy in case of delayed delivery of any Products ascribable to Seller is the cancellation of the relevant order, which may take place only if Seller has not delivered the Products within twenty (20) days following the Buyer’s written notice requesting such delivery, provided such remedy does not apply if the late delivery of the Products is caused by a delay of Buyer in communicating to Seller its confirmation of, or request of modifications to, the silkscreen form pursuant to Article 5 below.

**Article 4. Prices and Payment Terms.** Unless otherwise agreed in writing, the prices indicated for the Products are per thousand units and shall be in USD. The Buyer shall pay the purchase price of the Products within the dates indicated in the relevant orders and in any case not later than thirty (30) days following the date of the relevant invoice issued by Seller. The Products’ prices do not include, and the Buyer shall be solely responsible for, all shipping and freight costs, insurance, export or import fees, customs duties or other governmental charges, sales or use or value added taxes or other taxes of any kind, and all other comparable costs or charges, unless otherwise indicated in the order confirmation. All payments by the Buyer shall be in cleared funds and in USD and shall be made to Seller by electronic funds transfer to such financial institution and account number as Seller may designate in writing from time to time.



In case of late payment, default interest will automatically accrue on the outstanding amounts due to Seller from the date when such amounts will be due to the date of the actual payment at a rate equal to Euribor 6-months increased by 300 bps, it being understood that the Buyer shall reimburse to Seller any and all costs and expenses incurred to collect past due amounts.

In the event of delayed payment of any amount due by the Buyer, Seller will have the right to suspend or cancel any pending or future orders without prejudice to any other claims or remedies, and to require the immediate payment of all the other debts of the Buyer vis-à-vis Seller without any prior notice. Buyer shall have no right to and shall not at any time withhold or credit or setoff or otherwise deduct from its payment obligations to Seller any asserted claims or damages or other amounts.

**Article 5. Buyer's Responsibilities.** The Buyer shall be responsible for (i) evaluating the safety, efficacy and appropriateness of the Products for the Buyer's intended use, including any such use with Buyer's or third parties' compounds or other materials comprising part of the Buyer's components or products; and for (ii) validating the Products with respect to all materials, processes, storage, handling and any other uses and treatments. Buyer shall inform Seller in writing of all significant incidents and claims with respect to the Products and shall provide Seller with all information relating to the Buyer's use of the Products necessary for Seller to comply with the applicable laws and make the applicable filings. Buyer agrees to fully comply with all applicable laws, including, but not limited to, export control laws, governing trans-border sales, shipments and transfers of Products and any products incorporating, including or contained in, the Products. Seller's obligation to supply the Products to the Buyer is contingent upon receiving any required governmental authorizations.

If Buyer has requested the printing of a silkscreen over the Products, Seller will provide for the completion of the manufacturing process and for the delivery of the Products to Buyer only after receipt by Buyer of the acceptance of the silkscreen form. To such extent, Seller will deliver to Buyer the silkscreen form to be printed on the Products, and Buyer shall, within and not later than two (2) business days after the delivery to Buyer of the silkscreen form, confirm to Seller, or indicate to Seller any modifications to be brought to, the silkscreen form. Buyer acknowledges that, in case of failure of Buyer to provide to Seller its confirmation or its request of modifications within said two-days term, Seller might not be able to respect the delivery date of the Products (as provided under Article 3 above) and any possible consequent delayed delivery of the Products shall not be ascribable to Seller, which will therefore not be deemed liable for any damage Buyer or others may have suffered as a consequence of such late delivery.

**Article 6. Warranty and Indemnification.** Seller represents and warrants that at the time of delivery to the Buyer Ex Works manufacturing site of Seller, the Products shall meet the applicable specifications (which are known to the Buyer and may be made available to the Buyer at the Buyer's request). The Buyer is solely responsible for the proper use, handling and storage of the Products following their delivery.

**SELLER EXPRESSLY DISCLAIMS ANY WARRANTIES IMPLIED BY LAW, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. TO THE EXTENT BUYER MAY WARRANT THE PRODUCTS TO ANY PERSON BEYOND THE SCOPE OF SELLER'S WARRANTY, SUCH ADDITIONAL WARRANTIES SHALL BE THE RESPONSIBILITY SOLELY OF THE BUYER.**

UNDER NO CIRCUMSTANCES WILL **SELLER** OR ITS RELATED PERSONS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES OR LOST PROFITS, WHETHER FORESEEABLE OR UNENFORCEABLE, BASED ON CLAIMS OF THE **BUYER** OR ITS CUSTOMERS INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF GOODWILL, PROFITS, USE OF MONEY OR USE OF PRODUCTS, ARISING OUT OF BREACH OR FAILURE OF WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE, EXCEPT ONLY IN THE CASE OF DEATH OR PERSONAL INJURY WHERE AND TO EXTENT THAT APPLICABLE LAW REQUIRES SUCH LIABILITY. IN NO EVENT WILL THE AGGREGATE LIABILITY WHICH



**SELLER AND ITS RELATED PERSONS MAY INCUR IN ANY ACTION OR PROCEEDING EXCEED THE TOTAL AMOUNT ACTUALLY PAID TO SELLER BY THE BUYER FOR THE SPECIFIC PRODUCT THAT DIRECTLY CAUSED THE DAMAGE.**

The Buyer shall indemnify Seller and will defend, and hold Seller and its employees and agents harmless from and against any and all claims, suits, judgments, costs, liabilities, damages or losses, including reasonable attorneys' fees, in any manner arising out of the use of the Products supplied hereunder, and any brands, trademarks, designs, logo or packaging specified by the Buyer.

Buyer further agrees that Seller shall not be liable for any damages that may result from force majeure, which shall include, *inter alia*, natural disasters, acts of the public enemy, war, terrorism, insurrections, riots, strikes, injunctions, embargoes, fires, explosions, floods, or other unforeseeable causes beyond the reasonable control of Seller.

**Article 7. Inspection and defective Products.** The Buyer shall thoroughly inspect or have inspected the Products within and not later than ten (10) business days after receipt for any obvious defects or shortages or other non-conformance. The Buyer shall give Seller written notice of any claims of obvious defects or shortages or other non-conformance within and not later than twenty (20) days after receipt of the Products. The failure of the Buyer to so inspect or notify shall waive and bar any claim the Buyer may have against Seller for any obvious defects or shortages or other non-conformance. Without limiting the foregoing, breakage or damage occurring during shipment is the sole responsibility of the Buyer and will not be credited or adjusted by Seller, unless otherwise indicated in the order confirmation. Any non-conforming Products properly rejected within such 20-day period shall be held for reasonable inspection by Seller.

The Buyer shall give Seller written notice relating to any Products which have non-obvious defects caused by Seller within one (1) year following the delivery of the Products, provided that such written notice shall be received by Seller within eight (8) days from the date of the discovery of the non-obvious defects. The failure of the Buyer to so notify Seller within such terms shall waive and bar any claim the Buyer may have against Seller as to any non-obvious defects. Any such non-conforming Products shall be held for the reasonable inspection of Seller.

Seller shall not be liable for any defects or conditions or problems of any kind that are attributable to any acts or omissions of the Buyer or any of its common carriers, employees, agents, affiliates or any third persons or entities, including but not limited to any mishandling or misuse or failure to properly handle, transport or store any Products or any alteration or modification of any of the Products.

Seller shall have access to and the right to reasonably inspect any Products that the Buyer claims to be defective or nonconforming.

If the relevant Products are defective or nonconforming due to Seller, Seller can decide at its sole discretion to (i) rework, repair, repurchase any defective or nonconforming Product, or (ii) credit the relevant amount at invoiced cost plus reasonable handling charge, or (iii) replace any defective or nonconforming Product. The Buyer shall not return any Products without the prior written authorization of Seller. In the event that Seller recalls any Product because of defects, the Buyer shall fully cooperate with such recall and comply with all reasonable instructions of Seller.

This Article 7 sets forth the exclusive remedies of the Buyer for any defective or nonconforming Products. The express warranties in this Article 7 are expressly in lieu of any other express or implied warranties of any kind or nature, including but not limited to any implied warranty or merchantability or fitness or infringement.

**Article 8. Claims.** Any claim of the Buyer regarding the Products shall be validly presented to Seller only if in writing and provided that it indicates the following information with respect to the relevant Products: (i) order date and number; (ii) date of delivery; (iii) date and number of the invoice; (iv) batch number and, where applicable, the number(s) of the package(s) concerned; (v) a detailed description of the alleged defective or non-conforming Products; (vi) samples of the alleged non-conforming Products; and (vii) any other information required to fully assess the claim.

Ompi N.A. S. de R.L. de C.V.

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In the event that the claim is determined to be valid, Seller may at its discretion, either instruct the Buyer as to how return the Products concerned to Seller and pay the freight costs with respect thereto or instruct the Buyer to destroy such Products, in which event the Buyer must provide Seller with a valid certificate of destruction.

**Article 9. Compliance with Laws.** Buyer shall comply with all applicable federal, state, local or other laws, treaties, regulations and governmental orders in connection with the importing, cleaning, use, filling and sale of the Products and in the general conduct of its business. Buyer shall advise and inform Seller in connection with any requirement, authorization, filing and permit necessary to comply with the mandatory laws in connection with the supply of the Products to the Buyer.

**Article 10. Retention of Title.** Seller shall retain exclusive ownership of all Products delivered to the Buyer until the purchase price of such Products has been fully paid to Seller, it being, however understood that the Buyer shall bear all risks with respect to the Products from the date of delivery.

**Article 11. Confidentiality.** Unless otherwise agreed to in writing by Seller, the Buyer agrees to keep and hold in confidence, and to cause its affiliates, directors, officers, employees, agents, advisors and representatives to keep and hold in confidence, any and all information acquired from Seller or relating to the Products, unless such information (i) is or becomes available to or known by the public generally through no fault of the Buyer; (ii) is otherwise available to the Buyer without restriction or breach of any confidentiality agreement; (iii) is requested to be disclosed by any authority.

**Article 12. Governing Law and Jurisdiction.** These Terms and Conditions and all disputes arising hereunder and/or related to the Products purchased by Buyer will be governed by and interpreted in accordance with the laws of New York. The parties hereby agree and consent to the exclusive jurisdiction of the courts of New York, USA, for the resolutions of such disputes.

Notwithstanding the above, in case for any reason outside the intention and control of the parties these Terms and Conditions were to be governed and interpreted in accordance with the law of any jurisdictions other than New York, the parties agree that any controversy or claim shall be finally resolved by a sole arbitrator. The arbitrator shall be selected by mutual agreement of the parties. In the absence of such agreement within ten (10) days after the initiation of an arbitration proceeding, the arbitrator may be appointed by the Center for International Dispute Resolution, American Arbitration Association upon request of any party. The decision in writing of the arbitrator shall be final and binding upon the parties.

The rules of arbitration shall be the Commercial Rules of the Center for International Dispute Resolution, American Arbitration Association in effect at the time of the arbitration. The arbitrator's decision shall be in writing and shall provide a reasoned basis for the resolution of each dispute and for any award. Each party shall bear its own fees and expenses with respect to the arbitration and any proceeding related thereto and the non-prevailing party shall bear the fees and expenses of the American Arbitration Association and the arbitrator.

Date: .....

**Seller**

(.....)

**Buyer**

(.....)