

Terms and Conditions of the Volume Incentive Program

1. **Applicability.** These Terms and Conditions of the Volume Incentive Program are the only terms which will govern the distribution of Incentives by Plycem to the Program Recipient. The accompanying Volume Incentive Program Agreement (“VIPA”) and these Terms and Conditions (together with the VIPA, the “Agreement”) comprise the entire agreement between the parties, and supersede all prior or contemporaneous understandings, agreements, negotiations, representations and warranties, and communications, both written and oral, unless otherwise expressly agreed by the parties in writing, in which case the express written agreement shall control to the extent it conflicts with these Terms and Conditions. The Parties agree that the terms of the Agreement shall prevail over any conflicting terms or conditions in any instrument or submission from Program Recipient to Plycem unless the parties have agreed in writing otherwise. Any additional or different terms or conditions in any instrument or submission from Program Recipient to Plycem shall be deemed objected to by Plycem without the need of any further or additional notice of objection, and such additional different term(s) shall be of no effect or in any way binding upon Plycem. Plycem’s payment of Incentives to Program Recipient does not constitute acceptance of any of Program Recipient’s terms and conditions and does not serve to modify or amend the Agreement. Acceptance of the Agreement, including these Terms and Conditions, shall be deemed given upon the occurrence of any of the following: (a) Program Recipient signing and returning the Agreement to Plycem, or (b) accepting an Incentive issued by Plycem as a result of this Agreement.

2. **Definitions.** As used in this Agreement and the Terms and Conditions of the Volume Incentive Program, each of the following capitalized terms shall have the meaning ascribed to such term in this Section. All capitalized terms not defined in this Section shall have the meaning ascribed to such terms in the body of this Agreement.

“Customer” means a purchaser that has acquired the Products from Program Recipient.

“New Product” means a product that on the Effective Date (i) did not exist, (ii) was not available to Program Recipient or (iii) was not covered by this Agreement.

“Product(s)” shall mean the products listed in the Agreement and where applicable, any alternative or substitute products that constitute Temporary Product, Replacement Product, or New Product as defined by Plycem in its reasonable discretion. The Products listed in the Agreement are subject to these terms and qualify for the Incentive.

“Program Recipient” means the party eligible to receive Incentives under the VIPA.

“Plycem” means Plycem USA LLC, a Delaware limited liability company d/b/a Allura.

“Incentive” means the payment remitted by Plycem to Program Recipient after review and acceptance of an Rebate Request and supporting documentation.

“Replacement Product” means where an applicable Product listed in the Agreement is not available, a product of equal quality that is identified by Plycem, in its sole discretion, as a replacement for the unavailable Product, the price of which is equal to or lower than the current price for the unavailable Product.

“Temporary Product” means where the applicable Product listed in the Agreement is temporarily not available, an immediately available product of equal quality that is identified by Plycem, in its sole discretion, as a temporary replacement for the unavailable Product, the price of which is equal to or lower than the current price for the unavailable Product.

3. Tracking and Payment.

(a) Program Recipient will track the qualifying Incentives and will submit a request for payment to Plycem (each, a “Rebate Request”) as well as supporting documentation. The supporting documentation shall include, but is not limited to, relevant sales and distribution data such as the Customer name, the Customer’s total quantity of Product purchased itemized by Product type, the Customer’s purchase price for each Product, the Product delivery address, and the Product delivery date or Customer invoice date for the purchase of the Product. Program Recipient shall provide such information and any additional supporting documentation reasonably requested by Plycem to verify compliance with VIPA requirements. The Rebate Request must be submitted to Plycem within thirty (30) calendar days after the end of each quarter (“Quarterly Submittal Period”) unless otherwise agreed by the parties in writing. Any Rebate Request received after the Quarterly Submittal Period shall not be processed and shall be rejected upon receipt.

(b) Plycem shall remit any Incentive to Program Recipient (the within sixty (60) days of Plycem’s review and acceptance (in its sole discretion) of the Rebate Request and supporting documentation. Program Recipient will have a period of one hundred twenty (120) days after the receipt of the Incentive payment to review and verify the accuracy of any payments during which time it may notify Plycem of any disputes, which disputes will be resolved as set forth in Section 6 below.

(c) Plycem will remit all payments to Program Recipient at the address listed in the Agreement or as otherwise indicated by Program Recipient, as it may be changed from time to time by agreement of the parties.

4. **Price Adjustment.** The price of any Products may be adjusted by Plycem at any time, in its sole discretion, upon providing notice to Program Recipient of any such adjustment at least thirty (30) days prior to the date such adjustment is to be in effect.

5. **Incentive Adjustment.** The Incentive rates of any Products may be adjusted by Plycem at any time, in its sole discretion, upon providing notice to Program Recipient of any such adjustment at least thirty (30) days prior to the date such adjustment is to be in effect.

6. Disputes and Termination.

(a) For all disputes, whether monetary or non-monetary, Plycem and Program Recipient agree that before resorting to any remedies provided in this Agreement, each Party will first notify the other Party in writing of the item(s) of dispute. For a period of ten (10) business days following such written notice, the Parties agree to work together in good faith to resolve such dispute.

(b) If the Parties are unable to resolve the dispute during such ten (10) business day period and a Party believes a breach has occurred, such Party may give the other Party written notice describing in reasonable detail the breach. Upon the receipt of such written notice of breach, the Party receiving the notice shall have a period of sixty (60) days to cure such breach. Program Recipient’s sole and exclusive remedy for a non-monetary breach not cured by the expiration of such sixty (60) day period is to terminate this Agreement by giving Plycem written notice that Program Recipient is terminating this Agreement.

7. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications under this Agreement must be in writing and addressed to the other Party at its address set forth in the Agreement (or to such other address that the receiving Party may designate from time to time in accordance with this Section). Unless otherwise agreed herein, all notices must be delivered by personal delivery, nationally recognized overnight courier, or certified or registered mail (in each case, return receipt requested and postage prepaid). Except as otherwise provided in this Agreement, a notice is effective only (a) on receipt by the receiving Party, and (b) if the Party giving the notice has complied with the requirements of this Section.

8. **Confidential Information.** All non-public, confidential or proprietary information of either Party, including but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”), whether disclosed orally or disclosed or accessed in writing, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with this Agreement is confidential, solely for the purpose of performing this Agreement and may not be disclosed or copied unless authorized by the Disclosing Party in writing. Upon the Disclosing Party’s request, the Receiving Party shall promptly return all documents and other materials received from Disclosing Party. The Disclosing Party shall be entitled to injunctive relief for any violation of this Section. Such information shall at all times remain the property of the Disclosing Party. If the Receiving Party receives a request to disclose all or any part of the Disclosing Party’s Confidential Information under the terms of a discovery request, subpoena,

decreed or order issued by a court or tribunal of competent jurisdiction, or by a governmental or regulatory body or agency (a “Disclosure Request”), Program Recipient hereby agrees promptly to notify the Disclosing Party, in writing, of the existence, terms and circumstances surrounding the Disclosure Request. If the Disclosing Party seeks a protective order, the Receiving Party agrees to cooperate fully with respect thereto.

9. **Entire Agreement.** This Agreement, including and together with any related exhibits, schedules, attachments and appendices, constitutes the sole and entire agreement of the Parties with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding such subject matter.

10. **Amendments.** No amendment to this Agreement is effective unless it is in writing and signed by an authorized representative of each Party.

11. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon a determination that any term or provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement to give effect to the original intent of the Parties as closely as possible in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

12. **Waiver.** No waiver by any party of any of the provisions of this Agreement shall be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

13. **Cumulative Remedies.** All rights and remedies provided in this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties, or otherwise. Notwithstanding the previous sentence, the Parties intend that Program Recipient’s rights under Section 6 are Program Recipient’s exclusive remedies for the events specified therein.

14. **Assignment.** Program Recipient shall not assign, transfer, delegate, or subcontract any of its rights or obligations under this Agreement without the prior written consent of Plycem. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation shall relieve Program Recipient of any of its obligations hereunder. Notwithstanding the foregoing, this Agreement may be assigned by either Party in connection with a merger, consolidation, sale of all of the equity interest of the party, or a sale of all or substantially all of the assets of the party to which this Agreement relates.

15. **Successors and Assigns.** This Agreement is binding on and inures to the benefit of the Parties to this Agreement and their respective permitted successors and permitted assigns.

16. **No Third-Party Beneficiaries.** This Agreement benefits solely the Parties to this Agreement and their respective permitted successors and assigns and nothing in this Agreement, express or implied, confers on any other person any legal or equitable right, benefit, or remedy of any nature whatsoever under or by reason of this Agreement.

17. **Governing Law.** All matters arising out of or related to this Agreement are governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule (whether of the State of Texas or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of Texas. The parties expressly waive the jurisdiction and application of the United Nations Convention for the International Sale of Goods.

18. **Binding Arbitration.** Except for any and all controversies, disputes or claims pertaining to non-payment or confidentiality, the parties agreed that any and all other controversies, disputes, or claims pertaining in any manner whatsoever to the purchase of the Product shall be resolved exclusively by binding Arbitration administered by the American Arbitration Association. This agreement to arbitrate is intended to and shall be broadly interpreted and covers all controversies, disputes, and claims arising out of or relating to a Product purchase including, but not limited to, contract claims, tort claims and statutory claims, or any combination of claims. The American Arbitration Association shall administer the arbitration, and the American Arbitration Association’s Consumer Arbitration Rules (the “Rules”). Any arbitration under the Agreement will take place on an individual basis. Class arbitrations and class actions are not permitted. Distributor agrees that, by use and/or application of the Product, Distributor is waiving the right to a trial by jury or to participate in a class action. This binding agreement to arbitrate shall be governed by and interpreted under the United States Federal Arbitration Act (Title 9, U.S. Code, sections 1-16). For any and all controversies, disputes or claims pertaining to non-payment or confidentiality, the Parties agree to venue in the state or federal courts in Harris County, Texas and agree to waive and do hereby waive any defenses and/or arguments based on improper venue and/or lack of personal jurisdiction. By entering into this Agreement, the Parties agree to personal jurisdiction in the state and federal courts in Harris County, Texas.

19. **WAIVER OF JURY TRIAL. EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE UNDER THIS AGREEMENT, INCLUDING EXHIBITS, SCHEDULES, ATTACHMENTS, AND APPENDICES ATTACHED TO THIS AGREEMENT, IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND, THEREFORE, EACH SUCH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LEGAL ACTION ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, ATTACHMENTS, OR APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.**

20. **Attorneys’ Fees.** Should any dispute result in litigation between the parties, the prevailing Party in such litigation shall be entitled to recover from the losing Party its reasonable attorneys’ fees and related costs and expenses.

21. **Counterparts.** This Agreement may be executed in any number of counterparts and each counterpart will constitute an original instrument, but all such separate counterparts will constitute one and the same agreement. Notwithstanding anything to the contrary in this Section, a signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission is deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

22. **No Franchise or Business Opportunity Agreement.** The Parties to this Agreement are independent contractors and nothing in this Agreement shall be deemed or construed as creating a joint venture, partnership, agency relationship, franchise, or business opportunity between Plycem and Program Recipient. Neither Party, by virtue of this Agreement, will have any right, power, or authority to act or create an obligation, express or implied, on behalf of the other Party. Each Party assumes responsibility for the actions of their personnel under this Agreement and will be solely responsible for their supervision, daily direction and control, wage rates, withholding income taxes, disability benefits, or the manner and means through which the work under this Agreement will be accomplished.

23. **Not Construed Against Drafter.** Plycem and Program Recipient acknowledge that they have read this Agreement, have had the opportunity to review with an attorney of their respective choice, and have agreed to all its terms. Under these circumstances, Plycem and Program Recipient agree that the rule of construction that a contract be construed against the drafter shall not be applied in interpreting this Agreement and that in the event of any ambiguity in any of the terms or conditions of this Agreement, including exhibits, schedules attachments and appendices attached hereto, such ambiguity shall not be construed for or against any Party on the basis that such Party did or did not author same.