

**GENERAL TERMS AND CONDITIONS OF SALE – Constant Irwindale Inc.  
(D/B/A Bimeda Irwindale)**

**Invoice Number:**

1. **Terms:** Seller shall sell any articles, things, materials, goods and services (“**Goods**”) hereunder and Buyer shall buy the Goods on the terms and subject to the conditions (“**Conditions**”) herein. All quotations are given and orders accepted by Seller on the basis of these Conditions. No variation or addition to these Conditions shall be valid unless agreed in writing and signed for and on behalf of Seller. Buyer acknowledges that these Conditions shall prevail over any qualification or condition purported to be imposed by Buyer and any previous course of dealing between Buyer and Seller. Buyer expressly agrees that these Conditions shall take precedence over any contractual provisions proffered by Buyer, including but not limited to terms contained in any order, acknowledgement or specification. Seller shall not be bound by and does not agree to any contractual provisions proffered by Buyer save to the extent, if any, agreed to in writing by Seller. Buyer agrees that no action taken by Seller shall be interpreted as Seller accepting any contractual provisions proffered by Buyer.
2. **Acceptance:** The acceptance of orders hereunder shall be at the entire discretion of Seller but orders will normally be accepted subject to availability of the Goods.
3. **Separate Contracts:** Each shipment or delivery of Goods is to be treated as if it were made under a separate contract. Failure to make any particular shipment or delivery shall not entitle Buyer to refuse to accept further shipments or deliveries in respect of which any orders have been made by Buyer.
4. **Quantities:** Seller may deliver against any order hereunder up to 10% variation of the amount specified for the delivery in question in full discharge of its obligations in this respect provided that as regards such excess or deficiency Seller shall make a corresponding adjustment in the amount payable by Buyer.
5. **Buyer's Obligations:** The Buyer will place all orders on these Conditions and ensure that the contents of any Order are complete and accurate, ensure that all specifications which it provides with an Order are complete and accurate and contains all information the Seller may require and co-operate fully with the Seller in relation to delivery or collection of the Goods.
6. **Price:** The price for the Goods will be as set out in the order or in default of such provision will be calculated in accordance with Seller's standard scale of charges in force on the date of formation of the Contract. All prices quoted by Seller are subject to the addition of taxes and duties, such as value added tax, import and export duties and any other taxes and duties required by law, where applicable at the appropriate rates at the date of dispatch of the Goods. Seller shall have the right to increase the price of the Goods by giving notice of such increase at any time before the dispatch of the Goods. If Buyer is of the opinion that any such price increase is unreasonable, it may cancel the undelivered balance of any applicable Contract provided however if Buyer does not exercise this right of cancellation, then the increased price as notified by Seller shall apply to the undelivered balance of the Contract.
7. **Payment:** Unless otherwise agreed in writing, Buyer will pay all invoices in full without deduction or set-off other than as required by law, in cleared funds within 30 days of the invoice date. Time of payment is of the essence and in case of failure to pay on the due date, all sums outstanding shall become payable immediately. Where any sum due hereunder are not paid in full by the due date, the Seller may, without limiting its other rights, charge interest on such sums at 7% per annum above the base rate of the European Central Bank from time to time in force, and the interest will accrue on a daily basis, and apply from the due date for payment until actual payment in full, whether before or after judgment.
8. **Delivery:** Unless otherwise specified in the order, the Goods will be delivered by or for Seller to the delivery location specified in the order. Goods may be delivered by instalment. Any dates specified for delivery of the Goods are intended to be an estimate and time for delivery of the Goods shall not be made of the essence by notice. If no dates are so specified, delivery shall be within a reasonable time. Any liability of Seller for non-delivery of Goods shall be limited to replacing the Goods within a reasonable period of time or issuing a credit note at the pro-rata Contract rate against any invoice raised for such Goods, but otherwise Seller shall not be liable for any direct, indirect or consequential loss (including without limitation, pure economic loss, loss of profits, loss of business, depletion of goodwill and similar loss), costs, damages, charges and expenses caused directly or indirectly by any delay in delivery of the Goods (even if caused by Seller's negligence) nor shall any delay entitle Buyer to terminated or rescind the Contract. If for any reason Buyer fails to accept delivery of any of the Goods or if Seller is unable to deliver the Goods on time because Buyer has not provided sufficient information, the Goods shall be deemed to have been delivered and Seller shall be entitled to sell the Goods to a third party. The quantity of any consignment of Goods as recorded on Seller's delivery note shall be conclusive evidence of the quantity received by Buyer on delivery.
9. **Title and risk:** Risk in the Goods will pass to the Buyer on delivery to the Buyer. Title to the Goods shall not pass to Buyer until Seller has received in full (in cash or cleared funds) all sums due in respect of: (a) the Goods; and (b) all other sums which are or which become due to Seller from Buyer on any account. Until title to the Goods has passed to the Buyer, the Buyer will (a) hold the Goods on a fiduciary basis as bailee for the Seller and (b) maintain the Goods in a satisfactory condition and keep them adequately insured on Seller's behalf for their full price against all risks. Buyer may resell the Goods before title has passed to it solely on the following conditions: (a) any sale shall be effected in the ordinary course of Buyer's business at full market value; and (b) any such sale shall be a sale of Seller's property on Buyer's own behalf and Buyer shall deal as principal when making such sale. Seller shall be entitled to cancel the Contract without liability (and suspend any further deliveries under the Contract) and Buyer's right to possession of the Goods shall terminate immediately if: (a) Buyer has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting or creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver and/or manager, administrator or administrative receiver appointed of its undertaking or any part thereof; or (b) Buyer is unable to pay its debts as they fall due or ceases to trade. Seller shall be entitled to recover payment for the Goods notwithstanding that title to any of the Goods has not passed from Seller. On termination of the Contract, however caused, Seller's (but not Buyer's) rights contained herein shall remain in effect.
10. **Warranty** Seller warrants that the Goods shall comply with Seller's specifications for the Goods in question or such other specifications as may have been agreed in writing by the parties. Seller does not warrant the fitness of the Goods for any particular purpose even if the purpose is known to Seller. The Seller will, at its option, repair, replace or refund the price of defective Goods, provided that the Buyer informs the Seller in writing within 2 days of discovery that some or all of the Goods do not comply with this warranty and the Buyer gives the Seller a reasonable opportunity to examine the defective Goods; and the Buyer returns the defective Goods to the Seller at the Seller's expense. The Seller will not be liable for any failure of the Goods to comply with this warranty (i) where such failure arises by reason of fair wear and tear, willful damage, negligence, abnormal working conditions, or could be expected to arise in the normal course of use of the Goods; (ii) to the extent caused by the Buyer's failure to comply with the Seller's instructions as to: (a) storage, installation, commissioning, use or maintenance of the Goods, or (b) good practice in relation to the storage, installation, commissioning, use or maintenance of the Goods; (iii) to the extent caused by the Seller following any design or specification or requirement of the Buyer in relation to the Goods; (iv) where the Buyer repairs or alters any Goods without the Seller's prior written agreement; or (iv) where the Buyer uses any of the Goods after notifying the Seller that it does not comply this warranty. Except as set out herein, the Seller gives no other warranty in relation to the Goods and all warranties, conditions and other terms implied by statute or common law are to the fullest extent permitted by law excluded from the Contract.
11. **Liability:** The following provisions set out the entire financial liability of Seller (including any liability for acts or omissions of its employees, agents and subcontractors) to Buyer in respect of: (a) any breach of these Conditions; (b) the manufacture, sale, delivery, resale, replacement or use of any of the Goods and (c) any representation, statement of tortious act or omission including negligence arising under or in connection with the Contract. Seller's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising out of or in connection with the Contract shall be limited to the Contract price for the Goods; and Seller shall not be liable to Buyer for any indirect or consequential loss or damage (whether for loss of profit, loss of business, depletion of goodwill or otherwise), costs, expenses or other claims for consequential compensation whatsoever (howsoever caused) which arise out of or in connection with the Contract. Nothing in these Conditions excludes or limits the liability of Seller for: (a) death or personal injury caused by Seller's negligence; (b) fraudulent misrepresentation; or (c) any matter which it would be illegal for Seller to exclude or limit its liability. Except as expressly stated above all other warranties, conditions and representations, express or implied, statutory or otherwise, in relation to the quality or fitness for any particular purpose of the goods are hereby excluded.
12. **Returns Policy:** Following delivery of the Goods, unless otherwise agreed in writing with Seller or required by law, Seller will not accept any return of Goods except where in accordance with clause 11, the Goods are returned by reason of a breach of the warranty in clause 11.
13. **Buyer's Trademarks:** Buyer shall not use the name, trade mark, trade names, any logos, or symbols of Bimeda® and affiliates and/or any information relating to the existence of this Contract without the prior written consent of Seller.
14. **Confidentiality** Each party shall keep confidential all confidential information of the other party and will only use the other party's confidential information as required solely to perform this Contract.
15. **Assignability:** This Contract or any order in its entirety and each and every provision hereof shall ensure to the benefit of the successors, affiliate companies, and assignees of Seller, Buyer may not assign this order without Seller's written consent.
16. **Waivers:** This Contract must be strictly complied with notwithstanding that Seller may on an earlier occasion or occasions have waived its rights hereunder. Any failure by Seller to enforce or require strict performance by Buyer of any terms or conditions hereof shall not constitute a waiver thereof by Seller and Seller may at any time avail itself of the remedies Seller may have for any breach of terms hereof. Buyer cannot claim that Seller is unable to exercise any right hereunder merely because Seller has not yet exercised that right.
17. **Force Majeure:** Seller reserves the right to defer the date of delivery or to cancel the Contract or to reduce the volume of Goods ordered by Buyer (without liability to Buyer) if prevent from or delayed in the carrying on of its business due to any circumstances beyond its reasonable control.
18. **Independent Contractor:** Buyer is and at all times shall be an independent contractor and nothing herein stated shall constitute Buyer as the legal representative of Seller for any purpose whatsoever. Buyer is not authorised to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of Seller, or to bind Seller in any manner whatsoever except as set out herein.
19. **Separate Agreements:** In the event of any separate agreement(s) being concluded between Buyer and Seller, these terms and conditions shall be construed in conjunction with such agreement(s) and not superseded thereby unless such agreement/s records such suppression by express reference to these terms and conditions. Any terms and conditions proposed by Seller which are inconsistent with these terms, shall not be valid or enforceable unless agreed to by the parties in writing.
20. **Governing Law:** This Contract shall be governed by the laws and regulations of the State of California, United States of America. Either party may bring any dispute arising from or in connection with this Contract to any Federal court in California, United States of America which has competent jurisdiction over such dispute and either party shall be entitled to enforce any verdict or decision rendered by the Federal court in California, United States of America in any other jurisdictions.

