

# Terms and Conditions of Sale

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## TERMS AND CONDITIONS OF SALE

**1. CONTROLLING TERMS AND CONDITIONS.** Seller objects to and is not bound by any term or condition on Buyer's order which is different from or in addition to Seller's terms and conditions, and Seller agrees to sell to Buyer, the products or services described or referred to herein, at the prices indicated only on the express condition that Buyer assents to the terms and conditions set forth both on the face of this form and on the reverse side hereof. Buyer's acceptance is limited to the exact terms stated herein, and any additional or different terms or conditions proposed by Buyer are hereby expressly rejected. If this document construed as an expression of acceptance or a confirmation of a verbal agreement, such acceptance or confirmation is expressly made conditional on the assent of the Buyer to the terms and conditions stated herein. No terms, conditions, description, price, quantity, or delivery schedule shall be charged, and no agreement or understanding in addition to or different from the terms and conditions stated herein shall be binding upon Seller without written authority from Seller's authorized representative. Any confirmatory action by Buyer hereunder, or any acceptance of the products or services described or referred to herein constitute assent to the terms and conditions hereof and a representation that Buyer is solvent.

**2. QUOTATIONS, CHARGES AND CANCELLATION.** Quotations are valid and firm for fifteen (15) days unless otherwise stated. Buyer may not, under any circumstances or for any reason, cancel its order or any part thereof unless Seller has received written notice of the cancellation more than thirty (30) days prior to the shipping date last agreed upon by Seller for the order or the portion thereof being canceled. In the event of any such cancellation or change of any order by Buyer, Buyer shall reimburse Seller for all costs and expenditures made or committed to be made by Seller up to the date of receipt of Seller of written notice of the change or cancellation, including reasonable overhead and profits lost on the portion canceled.

**3. ACCEPTANCE.** Buyer shall immediately and irrevocably accept products and services when tendered and shall, in case of damaged or nonconforming products or services, follow only the procedures and remedies outlined in the written warranty contained herein. Acceptance shall occur upon tender to Buyer. If Buyer refuses to receive such products and services when tendered, Seller may exercise any or all of the remedies afforded to Sellers by section 2-703 et seq. of the Uniform Commercial Code. Seller shall have no obligation to hold or resell such products for Buyer's account.

**4. REPRESENTATION OF SOLVENCY.** Buyer represents that by placing its order it hereby acknowledges that it is not insolvent as the term is defined in section 1-201(23) of the Uniform Commercial Code. In the event that Buyer becomes insolvent before delivery of products, it will notify Seller. Failure to notify Seller shall constitute a written reaffirmation of Buyer's solvency at the time of deliver.

**5. WARRANTY.** Unless a different period is expressly provided, Seller warrants for a period of twelve (12) months, from the date of delivery that the products delivered hereunder will be of the kind and quantity designated or specified herein, and shall conform to the specifications set forth herein and shall be free from defects in materials or workmanship.

EXCEPT AS SET FORTH ABOVE, SELLER MAKES NO OTHER WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WHETHER OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE OR AGAINST PATENT, COPYRIGHT, OR TRADEMARK INFRINGEMENT OR OTHERWISE. BUYER ASSUMES AND INCURS ALL RISK RESULTING FROM THE USE OF THE PRODUCTS SOLD HEREUNDER, WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS.

Buyer shall inspect products delivered hereunder within thirty (30) days after delivery of such products to their shipping destination. In the event the products sold hereunder fail to conform to the specifications set forth herein or are not free from defects in materials or workmanship, and if Buyer shall notify Seller thereof within ten (10) days after Buyer's discovery of such failure or defects, then Seller shall, at Seller's sole and exclusive option, issue appropriate credit or correct such failure or defect by repairing or replacing such products found in fact to be nonconforming or defective. Buyer shall return, by prepaid shipment, all allegedly nonconforming or defective products, subject to reimbursement by Seller of the cost of shipping such products found in fact to be nonconforming or defective, only after first obtaining, and then observing, such reasonable instructions as Seller may give in authorizing any return by Buyer.

Buyer represents that it is not relying upon the skill or judgment of Seller to select or furnish suitable products for any specific or general use intended or contemplated by Buyer.

**6. BUYER'S REMEDIES.** The remedy or issuing appropriate credit or repair or replacement, provided by the above warranty is the sole and exclusive remedy afforded for breach of the above written warranty or for breach of any express or implied warranties arising under state law. Seller shall not be liable for any labor costs or other expenses in replacing a nonconforming or defective product; nor for any incidental or consequential damages resulting from or contributed to by any defect in materials or workmanship, negligence in manufacture or design, or failure to warn. Seller makes NO WARRANTY with respect to any product that has been altered or subjected to misuse, abuse or use for which it was not designed. Seller shall in no way be liable for any losses, costs, forfeitures, or damages (including loss of profits, liabilities of Buyer to its customers, employees, or third persons, and all incidental or consequential damages) whether direct or indirect and whether or not resulting from or contributed to by the default, negligence, whether in manufacturing or design, or failure to warn on the part of Seller, its agents, employees subcontractors, which might be claimed as the result of, or use (with or without an active malfunction) or malfunction of the products covered by the warranty.

THE EXTENT OF LIABILITY OF SELLER (EXCEPT AS TO TITLE) ARISING OUT OF THE SUPPLYING OF SAID PRODUCTS, OR THEIR USE, WHETHER ARISING FROM WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE SHALL NOT IN ANY CASE EXCEED THE COST OF ISSUING APPROPRIATE CREDIT OR CORRECTING NONCONFORMITIES OR DEFECTS IN THE PRODUCT AS HEREIN PROVIDED; AND UPON THE EXPIRATION OF THE APPLICABLE WARRANTY PERIOD SPECIFIED HEREIN, ALL SUCH LIABILITIES SHALL TERMINATE. THE FOREGOING SHALL CONSTITUTE THE SOLE AND EXCLUSIVE REMEDY OF BUYER AND THE SOLE AND EXCLUSIVE LIABILITY OF SELLER.

UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES, WHETHER BASED UPON LOST GOODWILL, LOST RESALE PROFITS, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS, OR OTHERWISE AND WHETHER ARISING OUT OF ANY BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE OR OTHERWISE.

**7. DELIVERY AND FORCE MAJEURE.** Each delivery shall stand as a separate sale and is subject to credit arrangements to the satisfaction of Seller or to payment in cash. If payments are not made in accordance with such arrangement or if at any time in the judgment of Seller Buyer's credit standing has been impaired, Seller may withhold delivery of any goods called for hereunder until cash or credit arrangements satisfactory to Seller have been established. All delivery dates specified by Seller are approximate and are based on its best estimate and are subject due to conditions beyond its reasonable control, including without limitation (1) acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority (de jure or de facto), war, (declared or undeclared), riot, revolution, priorities, fires, strikes, explosions, floods, quarantine restrictions, sabotage, or epidemics, (2) inability due to causes beyond Seller's reasonable control to timely obtain, at normal prevailing market prices, necessary and suitable labor, materials, components, manufacturing facilities, transportation, or instructions from Buyer, and (3) any other cause beyond Seller's reasonable control. If by reason

of any such circumstances Seller is unable to supply the total demand for the products to be delivered hereunder, Seller may make partial delivery of Buyer's order, or may distribute the available supply of Seller among any or all purchasers on such basis as it may deem appropriate without liability for any failure of performance with may result there from. In the event of any such delay or failure, the date of delivery shall be extended for a period equal to the time lost by reason thereof.

**8. PAYMENT, TITLE, AND RISK OF LOSS.** Payment is to be made by Buyer in United States dollars or other medium exchange acceptable to Seller, upon presentation of invoice to Buyer by Seller, subject to the terms and conditions of payment stated thereon. Prices are subject to change upon fifteen (15) days notice. Seller's prices are quoted F.O.B. Seller's plant, (location indicated on the reverse side hereof); U.S.A. Buyer shall pay, or reimburse Seller for the cost of freight and insurance of the goods. Seller's prices do not include sales, use, excise, value-added, customs duties, or other similar taxes. Consequently, in addition to the price specified herein, the amount of any such sale or the use of the products by Buyer hereunder shall be paid to Buyer. Except as otherwise expressly provided herein, title to the products specified herein shall pass to Buyer upon delivery at Buyer's designated shipping destination; however, risk of loss shall pass to Buyer at the F.O.B. point, Seller's plant, (location indicated on the reverse side hereof). Cost of all return shipments, for whatever reason returned shall be borne by Buyer, with title passing to Seller at Buyer's shipping point of origin, and risk of loss passing to Seller upon delivery to it at its shipping destination.

Seller shall have no obligation to make any further shipments until Seller shall have received all payments for prior shipments. Furthermore, Seller may suspend production until such payment is received.

**9. SPECIAL TOOLING.** In the event that Seller manufactures or purchases special tools, dies, or equipment in connection with Buyer's order, such tools, dies and equipment, unless otherwise agreed to in writing by an authorized representative of Seller, shall remain the exclusive property of Seller, notwithstanding that a part of the cost thereof is included as a part of the price specified herein.

**10. INFORMATION DISCLOSED BY SELLER.** Any proprietary knowledge or information which Seller shall have disclosed or may hereafter disclose to Buyer, or which may hereafter be acquired by Buyer, in connection with the products or services described herein, shall be deemed to be confidential and proprietary information of Seller and shall not be disclosed by Buyer until it becomes common knowledge.

**11. PATENTS, TRADEMARKS OR COPYRIGHTS.** Buyer shall indemnify, defend and hold Seller harmless against any expenses, damages, costs, or losses resulting from any suit or proceeding brought for infringement of patents, trademarks, or copyrights, or for unfair competition, arising from compliance with Buyer's designs or specifications or instructions, or arising from Seller's delivery of Buyer's purchased products or services.

**12. ASSIGNMENT.** Buyer shall not assign any interest herein or any rights of obligations hereunder without the written consent of Seller.

**13. COMPLIANCE WITH APPLICABLE LAWS.** Seller warrants that all products to be furnished hereunder were or will be produced, manufactured, and delivered in compliance with all applicable federal laws and lawful orders, rules, and regulations there under, including but not by way of limitation, the applicable provisions of the Fair Labor Standards Act and the Occupational Safety and Health Act.

**14. REVISION.** Seller reserves the right to revise these terms and conditions of sale at any time.

**15. WAIVER OF TERMS AND CONDITIONS OF SALE AT ANY TIME.** The failure of Seller in any one or more instances to insist upon performance of any of the terms or conditions contained herein, or to exercise any right or privilege hereunder, or the waiver by Seller of any breach by Buyer, of these terms or conditions of sale, shall not be construed as thereafter waiving such terms, conditions, rights or privileges, and the same shall continue and remain in force and effect as if no failure or waiver had occurred.

**16. DISPUTE RESOLUTION.** Any demand for arbitration to assert a claim under the above warranty must be commenced within twelve (12) months of the date of shipment by Seller of such products claimed to be nonconforming or defective.

All disputes, claims or questions arising out of or in any way connected with this Contract of Sale will be subject to and submitted to binding arbitration under the rules of the American Arbitration Association. The arbitration shall be the sole method of resolving any material disagreements. Both parties agree that they shall accept the findings of the arbitrator and shall be bound thereby.

**17. INTERPRETATION.** The sole and exclusive provisions of the Contract of Sale are the terms and conditions of Seller, which shall control over any conflicting provisions in Buyer's order or otherwise. Such contract and Seller's terms and conditions of sale can be modified or rescinded only by a writing signed by an authorized representative of Seller. Such contract of sale shall be construed as a contract made in the State of Indiana and shall be governed in accordance with the laws of the State of Indiana. Such contract constitutes the entire agreement between Seller and Buyer with respect to the products and services covered hereby and supersedes any prior or other agreements, written or oral, between the parties.