



SALES TERMS AND CONDITIONS

These Sales Terms and Conditions ("Terms") govern all sales of products (the "Products") by Seller to Buyer regardless of whether Buyer purchases the Products through the medium of written purchase orders or electronic orders via facsimile or EDI (collectively, "Purchase Orders"). Upon receipt by Buyer of an express acceptance by Seller, these Terms, the face of the Purchase Order, as modified by Seller's acceptance or order acknowledgment, become a binding contract between Buyer and Seller on the terms reflected in those documents (the "Sales Agreement"). In the event of a conflict between these Terms and the Purchase Order, these Terms prevail except where Seller has expressly agreed to the conflicting term in the Purchase Order in its written acceptance or order acknowledgment. In case of a conflict between the Purchase Order and Seller's written acceptance or order acknowledgment, Seller's written acceptance or order acknowledgment prevails. In all cases, any and all terms and conditions as may be contained on the reverse side of any request for quotations, request for bids, purchase orders, payments and similar documents issued by Buyer are hereby expressly rejected in their entirety and shall have no force or effect. Seller is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction.

- 1. SPECIFICATIONS:** The specifications applicable to the Products shall be Seller's standard specifications or, in the case of items other than Seller's standard Products, such specifications as are agreed to in writing signed by both Seller and Buyer.
- 2. CHANGES:** Seller reserves the right to make process and design changes in the Products which do not adversely affect form, fit or function without the prior approval of or notification to Buyer. Buyer may request changes in process, design or method of shipment of the Products only if Buyer agrees to accept such changes in delivery times or price which are, in Seller's judgment, reasonably necessitated thereby. Should Buyer request changes, which are, in Seller's judgment, beyond the ability of Seller to produce or deliver within the schedule or for the price proposed by Buyer, Seller shall have the right, in its sole discretion and without liability, to reject or cancel Buyer's order. If production on the order has commenced or expenses have been incurred or commitments made as a consequence thereof, Buyer shall pay reasonable cancellation charges based on Seller's costs and commitments.
- 3. SHIPMENT:** The method of packing and shipment of the Products sold hereunder shall be at the discretion of Seller, unless special written instructions have been received by Seller five (5) days prior to shipment.
- 4. DELIVERY:** The delivery schedule appearing on the face side of Seller's quotation or order acknowledgment is approximate only. Seller will make reasonable efforts to deliver in accordance therewith but shall have no liability for failure to do so. Pro rata payments will be due from Buyer as deliveries are made by Seller. If a delivery is delayed as a result of any action or inaction of Buyer, Seller may invoice Buyer for the Products as of the scheduled delivery date and may charge Buyer for warehousing and other expenses incurred because of the delay.
- 5. EXCUSABLE DELAY:** Seller shall not be liable for delays or defaults in delivery due to acts of God or public enemies, war or military activity, riots, insurrection or sabotage, acts or threats of terrorism, fires, floods, explosions or other catastrophes, unusually severe weather, accidents, epidemics or quarantine restrictions, acts of local, state or national governments or public agencies, labor disputes or shortages, energy or material shortages, utility or communication failures or delays, delays of a supplier of Seller, or causes beyond reasonable control. In the event of any such delay, the date for delivery shall be deferred for a period equal to the time lost by reason of the delay.
- 6. DOMESTIC DESTINATIONS ONLY:** Seller's obligation with respect to delivery ceases upon its tendering possession of the Products to the first common carrier at Seller's facility. Thereafter, all risk of damage, loss or delay in transportation shall be borne by Buyer.

7. FOREIGN DESTINATIONS ONLY:

(a) Ownership, right to possession, legal title and all risk of loss or damage to the Products shall pass to the Buyer upon Seller's tendering of possession of the products to the first common carrier at Seller's facility or to the Buyer's designated freight forwarder at Seller's facility. These terms of ownership, right to possession, title and risk of loss or damage shall apply regardless of how the Products are shipped, for whom they are designed, the time or method of payment, and the commercial abbreviations or other terminology used to describe the sale.

(b) Buyer shall, upon request, take all actions and provide all certificates, undertakings or other documents required to enable Seller to export the Products from the country of manufacture. When the Products arrive at a foreign point of entry, Buyer shall take all actions and pay all duties, taxes or other costs necessary to import them.

8. PRICES: The prices stated on the face of Seller's quotation shall apply to Products scheduled for shipment no more than twelve (12) months from the date of receipt of Buyer's order by Seller. Seller reserves the right to increase its prices for later shipments upon ninety (90) days written notice. Buyer shall have thirty (30) days from the date of such notice to cancel its order, without charge, with respect to any Products not scheduled for shipment prior to the effective date of the price increase. All costs of shipping the Products to Buyer, including without limitation, freight, insurance (for either Buyer's or Seller's benefit) and special packing or handling, shall be in addition to the stated prices and shall be paid by Buyer. Payment of all sums invoiced to Buyer shall be in U.S. Currency. Seller shall be entitled to interest on all unpaid sums from the due date at the rate of 1.5% per month or the maximum rate by law, whichever is less.

9. TAXES: In addition to the stated prices, Buyer shall pay Seller the amount of any excise, sales, use or other taxes incident to the sale of Products hereunder for which Seller may be liable or which Seller is required by law to collect unless Buyer provides Seller with a proper tax exemption certificate.

10. WARRANTY: Seller warrants that the Products sold to Buyer hereunder will be free from defects in material and workmanship and will conform, within normal commercial tolerances, to applicable specifications. This warranty shall apply only where Buyer has given Seller written notices of such defect or nonconformity within ninety (90) days after delivery of the Products by Seller and the warranty does not extend to any Product which has been subjected to abuse, misuse, neglect or accident, nor to any Product which has been repaired or altered by other than Seller. **THE FOREGOING WARRANTY IS BUYER'S SOLE AND EXCLUSIVE REMEDY AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, DESCRIPTION, QUALITY, PRODUCTIVENESS, OR OTHERWISE.**

11. RETURNS: Written authorization must be obtained from Seller prior to the return of any Products for any reason including return for repair, replacement or credit. Issuance of credit for any returned Products shall be made at Seller's option upon Buyer's request. Seller shall have the right prior to return to inspect, at Buyer's plant, any Products claimed to be defective or nonconforming. Risk of loss or damage to any Products returned to Seller for adjustment shall remain with Buyer until they are received by Seller. Shipping charges for returned Products will be paid by Seller only for Products repaired or replaced pursuant to warranty. Otherwise such charges will be Buyer's responsibility.

12. EXPERIMENTAL PRODUCTS: If Seller delivers Product identified as "prototypes", "samples", "for engineering approval", "for evaluation" or terms of similar import, Buyer agrees that such Products are confidential and experimental in nature, that Buyer will limit the availability of such only to those of its employees as are necessary to carry out the testing and evaluation contemplated by the parties and to no others without the prior written consent of Seller, and that all information concerning such Products received or generated by Buyer shall be and remain the proprietary property of Seller and shall not be disclosed to any third party. Buyer's receipt, use and evaluation of such Products shall be at Buyer's sole risk. It is anticipated that changes may be made in the manufacture of such Products based on such tests and, therefore, Buyer shall communicate to Seller the data accumulated during its testing and evaluation of the Products. Buyer shall return all such Products covered under this paragraph 12 to Seller within ten (10) days following Buyer's receipt of Seller's written request therefor. Buyer shall not compile, decompile, reverse engineer, disassemble or otherwise copy or reduce to practice any such Products so delivered hereunder.

13. **TOOLING:** Unless the Buyer pays the full cost of special tooling and other equipment necessary to manufacture the Products as a separately identified charge, such tools and equipment shall remain the property of Seller. Seller may charge Buyer for the cost of maintenance and rework of such tools and equipment owned and provided by Buyer. Notwithstanding the foregoing, however, Seller shall retain all rights in and to any and all intellectual property that may be contained or embodied in the Tooling irrespective of whether or not Buyer has paid the full cost of any such Tooling.

14. **INFRINGEMENT:** Subject to the conditions and limitations as provided for herein, Seller will defend and indemnify Buyer against so much of any claim, suit, action or proceeding (“Claim”) as alleges that the Product, in the form supplied to Buyer, infringes a valid U.S. patent or copyright, and Seller agrees to pay all reasonable litigation and settlement costs and attorney’s fees incurred by Buyer in connection with any such Claim. Seller shall have no obligation for any costs, fees or expenses incurred by Buyer without Seller’s prior written consent, any Claim arising out of any similar product, or any special, consequential or incidental damages arising out of any Claim. This indemnity will not apply unless Buyer (a) gives written notice to Seller within fifteen (15) days of receipt of service of any such Claim and informs Seller in writing of any subsequent communications regarding same; (b) fully cooperates with Seller in the defense of the Claim; and (c) provides Seller with information and assistance in defending the Claim. Seller shall have sole control of the defense of the Claim and of all negotiations for its settlement or compromise. This indemnity shall not apply to any Claim, or portion thereof, that arises from any negligent or willful act or omission by or attributable to Buyer, use or operation of the product in combination with materials of others, or any addition to or modification of the product, use of other than the current unaltered product or to any aspect of the Product that is designed, either in whole or in part, by Buyer. Upon receipt of notification of actual or alleged infringement of any patent, trademark, trade secret, copyright or any other proprietary right, Seller shall, at its option either (i) defend the allegation of infringement; (ii) modify the design of the challenged product; (iii) negotiate a reasonable licensing arrangement that permits Buyer to continue using the challenged product; (iv) substitute a non-infringing product which meets or exceeds the requirement and specifications of Buyer; or (v) terminate this Contract without further liability.

15. **PROPRIETARY RIGHTS:** Sale of the Products to Buyer does not convey a license, implied or otherwise, under any patent, trademark, copyright or any other intellectual property or right in which Seller has an interest, nor does it any convey rights to any descriptive data, including, but not limited to, Seller’s drawings, secrets, processes or tooling.

16. **FINANCIAL RESPONSIBILITY:** In the event that Buyer fails to fulfill the terms of payment for any shipment of Products or if Seller shall have a reasonable doubt at any time as to Buyer’s ability to pay for Products ordered Seller may, at its option and without liability, (i) change the terms of payment or (ii) defer further production and shipments until satisfactory performance has been made by Buyer and Seller is satisfied as to Buyer’s financial ability; such change or deferment shall not prejudice any claim for damages Seller may otherwise have against Buyer.

17. CANCELLATION:

(a) Seller may, at its option and without liability, cancel Buyer’s order if: (i) Buyer’s payments are in default or Buyer breaches any material provision hereof, (ii) any cause specified in Paragraph 5 hereof (“Excusable Delay”) makes it commercially impracticable, in Seller’s judgment, to deliver the Products within a reasonable time, or (iii) Buyer becomes insolvent or the subject of a proceeding under any bankruptcy law. Such cancellation shall not prejudice Seller’s rights to any amounts then due or affect any other rights Seller may have under applicable provisions of controlling law.

(b) Buyer may cancel the remaining unfilled portion of its order upon forty-five (45) days written notice to Seller prior to the delivery date. Payment of reasonable cancellation charges invoiced by Seller may include, among other items, the profit that would have been made on the cancelled portion of the order taking into account the Products already produced or in process, the expenses already incurred and the commitments already made as a consequence of the order. In no event will the cancellation charges exceed the purchase price of the cancelled Products.

18. **CLAIMS:** Claims for shortages, incorrect materials or invoicing errors must be made by Buyer within five (5) days after receipt of shipment. Claims for non-receipt of shipment must be made within five (5) days after receipt of Seller's invoice. If Seller has agreed to pay for any transportation charges, claims for such charges must be made within ninety (90) days after shipping date.

19. **PRODUCT LIABILITY:** Buyer shall indemnify and hold harmless Seller, its directors, officers, agents and employees against all expense, loss, costs, damage or liability, including attorney's fees, arising from any claim or action for Product defect where the alleged defect relates to design, labeling or manufacture specifications supplied by Buyer. At the request of Seller, Buyer shall defend at its own expense all such claims or actions, provided that Seller shall be entitled, at its election, to participate in such defense.

20. **LIMITATION OF LIABILITY:** SELLER'S LIABILITY FOR DEFECTIVE OR NONCONFORMING PRODUCTS, WHETHER BASED ON BREACH OF WARRANTY, NEGLIGENT MANUFACTURE OR PRODUCT LIABILITY, IS EXCLUSIVELY LIMITED TO REPAIR OR REPLACEMENT, AT SELLER'S ELECTION, OF SUCH PRODUCTS. SELLER ASSUMES NO RISK AND SHALL NOT BE SUBJECT TO ANY LIABILITY FOR ANY DAMAGES OR LOSS RESULTING FROM THE SPECIFIC USE OR APPLICATION MADE OF THE PRODUCTS. SELLER'S LIABILITY FOR ANY OTHER CLAIM, WHETHER BASED ON BREACH OF CONTRACT, NEGLIGENCE OR PRODUCT LIABILITY, RELATING TO THE PRODUCTS SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR SUCH PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY COVER DAMAGES OR FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, AND CLAIMS OF THIRD PARTIES, HOWSOEVER CAUSED, WHETHER BY THE NEGLIGENCE OF SELLER OR OTHERWISE.

21. **COMPLIANCE WITH LAWS:** Seller warrants and certifies that it complies with all applicable statutes, rules, regulations and orders of the United States, including those pertaining to labor, wages, hours and other conditions of hiring and employment.

22. **GOVERNMENT CONTRACTS:**

(a) If the Products are to be used in fulfilling a contract with the United States Government, Seller will comply with all mandatory requirements of such contract which are applicable to Seller, provided that Seller has received written notice of such requirements from Buyer in sufficient time to incorporate their impact into the price and delivery schedule for such Products. In addition, Seller may at its option adopt any provisions of FAR or other federal statutes or regulations which are applicable to Seller.

23. **AUDITS:** Buyer shall not have the right to audit or examine Seller's financial records pertaining to the Products sold hereunder.

24. **WAIVER:** Failure by Seller to insist upon strict performance of any provision hereof by Buyer shall not be deemed to be a waiver by Seller of its rights or remedies, or a waiver by it of any subsequent default by Buyer.

25. **ASSIGNMENT:** Buyer shall not assign any of its rights or obligations hereunder without the prior written consent of Seller.

26. **NOTICES:** Any notices and other communications required or permitted to be given hereunder shall be in writing and shall be effective when delivered personally or electronically transmitted (later confirmed in writing) or, if mailed, three (3) days after air mailing, postage prepaid.

27. **CORRECTIONS:** Clerical errors, typographical errors or obvious errors or omissions are subject to correction by Seller.



28. **SEVERABILITY:** In the event that one or more provisions hereof should be held to be unenforceable in any respect, this document shall be construed as if such unenforceable provision(s) had not been contained herein.

29. **ENTIRE AGREEMENT:** These terms and conditions supersede all other agreements, representations, warranties, undertakings and understandings of the parties with respect to the subject matter hereof and may not be modified except by a written document signed by an authorized employee of Seller. If Buyer and Seller have executed an overriding agreement covering the sale of Products to which this document relates, the terms of said overriding agreement shall prevail over the terms stated herein to the extent of any conflict.

30. **GOVERNING LAW:** Seller's sale and Buyer's purchase of Products hereunder shall, in all respects, be governed by the laws of the state of Ohio, USA, without regard to its conflicts of laws provisions.