

**SALES CONTRACT TERMS AND CONDITIONS**

- (1) **AGREEMENT AND LIMITATION.** The agreement between Seller and Buyer (the "sales contract") with respect to the sale of goods described herein shall consist of the terms appearing herein with any additions or revisions of such terms mutually agree to in writing by the Seller and Buyer. Seller objects to and shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communications from the Buyer to Seller unless specifically agreed to by Seller in writing. Except as expressly stated in the sales contract, no reference to Buyer's purchase order or other communication from Buyer shall be deemed to incorporate by reference any terms appearing therein. The sales contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person or parties. Prior courses of dealing, trade and verbal agreements not reduced to a writing signed by Seller, to the extent they modify, add to, detract from, supplant or explain the sales contract, shall not be binding by the Seller.
- (2) **TERMINATION OR MODIFICATION.** The sales contract may be modified or terminated only upon the Seller's written consent except that clerical errors are subject to correction by Seller or upon Seller's written consent. If Seller shall declare or consent to a termination of the sales contract, in whole or in part, Buyer, in the absence of contrary written agreement signed by Seller, shall pay termination charges based upon expenses and costs incurred in the production of the goods or in the performance of the services to the date such termination is accepted by Seller including, but not limited to, expenses of disposing of materials on hand or on order from suppliers and the losses resulting from such disposition, plus a reasonable profit. Notwithstanding the foregoing any goods substantially completed or services performed on or prior to such termination shall be accepted and paid in full by the Buyer.
- (3) **PRICE.** Unless otherwise expressly provided within, the prices stated herein do not include any sale or similar taxes and if the State wherein Purchaser received delivery of goods sold hereunder shall assess such a sales or similar tax. Purchaser shall be responsible to pay and/or reimburse Seller for the amount thereof or, in lieu thereof, provide Seller with tax-exemption certificates acceptable to the relevant taxing authorities. If the goods are shipped outside the USA, Buyer shall be responsible for all duties, taxes and brokerage fees relating to such shipment. All prices quotes are subject to change, without notice, at any time prior to Seller's acceptance of the Buyer's order, to such prices prevailing at the time of acceptance.
- (4) **PAYMENT.** Unless otherwise expressly provided on the invoice herein all payments are to be made net [30] days after date of invoice. Seller may at any time require full or partial payment in advance of delivery, or in advance of manufacture, or satisfactory assurance or security from Buyer that invoices will be paid when due if in Seller's judgment the same at any time becomes necessary. In the event that the Buyer does not pay within the terms of this contract, all collection costs incurred by Seller, including but not limited to attorney's fees, will be paid by the Buyer. Times and terms of payment are of the essence and if any default therein be made by the Buyer or if the financial responsibility of Buyer shall at any time become impaired or unsatisfactory to Seller, Seller shall have the right to terminate this Contract or to defer or to discontinue further shipments hereunder until past due payments are made or satisfactory assurances of Buyer's financial responsibility are received by Seller and such right shall continue irrespective of any prior failure on the part of Seller to exercise such right. Each shipment or purchase is to be considered a separate sale.
- (5) **LATE PAYMENT AND COLLECTION COSTS.** If payment is not made when due, payments will subject to interest at a rate of 1 ½% per month compounded, 18% per year or the highest rate remitted by law, whichever is less. In the event that the Buyer does not pay within the terms of this Contract, and the Seller is this required to initiate any collection procedures through a third party (such as a collection agency or attorney), the Buyer shall be responsible to pay Seller an additional 20% of all outstanding due, including but not limited to interest charges, collection fees and/or attorney fees.
- (6) **CLAIM OR RETURN.** Unless other expressly provided herein, and in lieu of any other remedies or warranties, expressed or implied, Seller warrants only the goods covered hereby will conform to the description stated within and will be free from any lien or encumbrance of any third party. Any claim by Buyer for defective good or for any other cause whatsoever relating to the goods sold hereunder or the terms of this Contract shall conclusively be deemed waived by the Buyer unless written notice thereof is given to Seller within [12] months of shipment of the goods to which the such claim relates and the Buyer complies with the inspection, repair and replacement provisions set forth herein. Seller shall be given reasonable opportunity to investigate all claims asserted by Buyer and the goods to which such claim relates. However, no goods shall be returned to Seller until Buyer shall have received a return authorization and/or shipping instructions for such good from Seller. Goods so returned by the Seller may be repaired or replaced without charge. In no event shall Buyer charge back Seller for any repairs, corrections or replacements of any of the goods sold hereunder unless Seller shall have approved same in writing in advance of such repairs, corrections or replacement.
- (7) **DELAYS.** The schedules dates for shipment of the goods are estimated based on current and anticipated manufacturing capabilities at the time of quotation and may be quotes as weeks after receipt of order. All delivery dates are estimates only, and Seller shall not be liable for any damages relating to failure to ship the products as of a certain date. Seller shall not be liable for any delay in fulfillment of or failure to fulfill this Contract arising from any factory or labor conditions, fire, or delay in Seller's usual sources of supply by the acts or omissions of Buyer, its agents, subcontractors or material suppliers, or any cause not reasonably within the control of the Seller. In the event of any delay in delivery or failure to manufacture due to a cause beyond Seller's control, unless otherwise agreed, the time for delivery shall be deemed extended for a period equal to the delay.
- (8) **TRANSPORTATION AND DELIVERY.** Unless otherwise provided on the invoice hereof, all deliveries of goods are F.O.B. Seller's factory and Seller assumes no liability for loss or damage of goods after delivery for shipment at Seller's factory, and risk of loss with respect to the goods passes to Buyer at the said F.O.B. point.
- (9) **INSPECTION.** Buyer shall inspect the goods immediately upon the receipt thereof. All claims for any alleged defect in Seller's performance under this sales contract, capable of discovery upon reasonable inspection, must be full set forth in writing and received by Seller within [14] days of Buyer's receipt of the goods. Failure to make any such claim within said [14] day period shall constitute a waiver of such claim and an irrevocable acceptance of the goods by Buyer.

- (10) **WARRANTY. EXCEPT AS MAY OTHERWISE BE EXPRESSLY SET FORTH ON THE SELLER'S WEBSITE OR IN WRITING HEREIN, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE GOODS SOLD HEREUNDER. THERE IS NO OTHER WARRANTIES, EXPRESSED OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY SET FORTH HEREIN. SELLER MAKES NO WARRANTIES WHATSOEVER WITH RESPECT TO PRODUCTS, ACCESSORIES OR PARTS FURNISHED BY SELLER BUT NOT MANUFACTURED BY SELLER. SUCH PRODUCTS, ACCESSORIES OR PARTS WILL CARRY ONLY THE WARRANTY, IF ANY, OF THE MANUFACTURER THEREOF, AND SELLER HEREBY ASSIGNS TO PURCHASER ITS RIGHTS AND INTEREST IN ANY SUCH WARRANTIES, IF ANY, PROVIDED BY THE MANUFACTURERS OF SUCH PRODUCTS, ACCESSORIES AND PARTS TO THE EXTENT THAT SUCH AN ASSIGNMENT IS NOT PROHIBITED BY THE TERMS OF ANY AGREEMENT BETWEEN SUCH MANUFACTURERS AND SELLER.**
- (11) **LIMITATION OF LIABILITY. SELLER WILL NOT BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES, LOSSES OR EXPENSES DIRECTLY OR INDIRECTLY ARISING FROM THE USE OF THE GOODS SOLD HEREUNDER, FOR ANY BREACH OF WARRANTY OR ANY NEGLIGENCE IN CONNECTION WITH THE MANUFACTURE, DESIGN, LABELING OR INSTRUCTIONAL MATERIALS RELATING TO THE GOODS SOLD HEREUNDER. SELLER'S LIABILITY AND PURCHASER'S EXCLUSIVE REMEDY SHALL BE EXPRESSLY LIMITED TO THE REPAIR OF DEFECTIVE GOODS, OR THE SHIPMENT OF EQUIVALENT GOODS F.O.B. THE SHIPPING POINT INDICATED HEREIN, OR THE REPAYMENT OF THE PURCHASE PRICE UPON RETURN OF THE GOODS TO SELLER WITH SELLER'S APPROVAL, OR THE GRANTING OF A REASONABLE ALLOWANCE ON ACCOUNT OF ANY DEFECTS, AS SELLER IN ITS SOLE DISCRETION MAY ELECT.**
- (12) **CHANGE ORDERS.** All proposed changes in the goods subject to this contract must be submitted in writing by the Buyer and will be reviewed by the seller for acceptability and for the effect of the proposed changes on shipping schedules and prices. Seller will submit to Buyer its decision to accept or not to accept the proposed changes and the amendments to the shipping schedules, selling prices and other terms upon which the proposed changes would be acceptable to Seller. The changes will become effective as amendments to the Contract upon Buyer's written acceptance of the said amended terms.
- (13) **CANCELLATION.** This contract is not subject to cancellation by the Buyer except with Seller's prior written agreement and after full payment by Buyer of Seller's cancellation charges which shall be equal to all amounts incurred by Seller for materials, labor and overhead in respect to the canceled goods plus reasonable contract profits.
- (14) **JURISDICTION AND LIMITATION OF ACTIONS.** This Contract and all questions as to the validity, interpretation, performance and non-performance thereof shall be governed by the laws of the State of New York. The Purchaser submits to the exclusive jurisdiction of the Courts of the State and/or City of New York in connection with any dispute which is in any way related to the goods sold hereunder or the terms of this Contract. Any such lawsuit by Purchaser must be filed in the Courts of the State of New York, located in the City of New York, and must be commenced within one (1) year from the date upon which the Purchaser shall have received the goods giving rise to such claim or lawsuit. Notwithstanding the foregoing, this Section shall not be deemed a limitation of Seller's rights to file suit in any court of competent jurisdiction for the enforcement of any judgment entered against Purchaser in a court of the State and/or City of New York.
- (15) **MISCELLANEOUS.** (a) The waiver by Seller of any term, provision or condition hereunder shall not be construed to be a waiver of any other terms, provisions or conditions hereof, nor shall such waiver be deemed a waiver of a subsequent breach of the same term, condition or provision. (b) This Contract, including the terms and conditions on the invoice and front side hereof, supersedes all prior negotiations and understandings of the parties and contains the complete and final agreement between Seller and Purchaser concerning the subject matter hereof and no other agreement in any way modifying any of the said terms and conditions will be binding upon Seller unless made in a writing specifically referring to this Contract and signed by Seller's authorized representative.

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Authorized Purchaser's Signature

Authorized Purchaser's Name

Company Name

Date