



Terms and Conditions of Sale

1. PRICE AND PAYMENT TERMS

- (a) All prices are FOB Seller's shipping point.
- (b) Prices, terms and conditions are subject to change without notice.
- (c) Subject to the approval of Seller's credit department, payments shall be due net thirty (30) days from invoice date, unless otherwise noted.
- (d) Invoices are presumed valid unless disputed in writing within ten (10) days of receipt.
- (e) Invoices not paid within terms are considered past due and will be charged at the rate of one and one-half percent (1-1/2%) per month (18% per year) on the outstanding balance.
- (f) Buyer is not entitled to take discounts on orders unless specifically provided in the quote.
- (g) Purchase orders placed with Seller must match quoted volumes and prices.
- (h) Seller shall have the right to either terminate the agreement or suspend further performance under this and/or any other agreements with Buyer in the event Buyer fails to make any payment when due. In the event of non-payment by Buyer, Buyer shall be liable for all costs of collection, including attorneys' and court fees.
- (i) Buyer shall be responsible for insurance, freight and all other charges in connection with shipping the goods to Buyer. Buyer may request shipping by a particular method or route provided that if Seller agrees to such shipment, Buyer shall be responsible for the cost of any premium rate shipping.

2. TAXES

Any and all federal, state and city taxes including taxes on manufacture, sale, use, purchase and delivery of the goods will be the responsibility of the Buyer. SELLER IS NOT AUTHORIZED TO COLLECT SALES TAX.

3. SHIPMENT

While Seller will use reasonable commercial diligence to meet scheduled shipment dates, all shipping dates are approximate. **LEAD TIMES ARE FROM MANUFACTURING DRAWING APPROVAL.** Any claims for shortages must be made within ten (10) days in writing to Seller after delivery. Buyer to pay shipping charges, FOB Seller's shipping point. Cancelled orders will be billed for materials and labor costs incurred up to the point of cancellation.

4. PERFORMANCE AND DELAYS

- (a) Seller shall not be liable for any failure or delay in performance if such failure or delay is caused by circumstances beyond the control of Seller, including, without limitation, failures or delays resulting from fires, accidents, labor stoppages, war, civil insurrection, terroristic act, inability to secure materials or labor, government acts or regulations, or acts of God. Any such circumstances shall extend the time for delivery of the goods and shall not relieve Buyer of its obligation to accept remaining deliveries.
- (b) Seller is not liable for any loss or damage, including loss of income and/or profits, special or consequential damages resulting from Seller's delayed performance in shipment and/or delivery of goods.

5. LIMITED WARRANTY

Subject to the limitations of paragraph 6, Seller warrants that the goods will be free from defects in material and workmanship under normal use, service and maintenance. Buyer must report to Seller in writing within thirty (30) days any claimed defects in material and workmanship; and if the goods are found to be defective by the Seller, at its sole cost and expense, Seller will replace the goods FOB Seller's shipping point. **THIS IS THE SOLE AND EXCLUSIVE WARRANTY GIVEN BY SELLER WITH RESPECT TO THE GOODS AND IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

6. LIMITATION OF LIABILITY

SELLER'S LIABILITY SHALL BE LIMITED TO THE PRICE PAID BY BUYER TO SELLER FOR THE GOODS OR TO REPLACEMENT OF THE GOODS, AND BUYER SHALL BE ENTITLED TO NO OTHER REMEDY, REGARDLESS OF THE FORM OF CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE). IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, PUNITIVE, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES. SELLER SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAYS IN PERFORMANCE.

7. RISK OF LOSS

Buyer will assume all risk of loss upon delivery of the goods to the carrier, FOB Seller's shipping point. Carrier will be deemed to be acting for and on behalf of Buyer at that point, and terms of payment and Buyer's obligation to pay for the goods will not be affected by damage to or destruction of the goods.

8. NON-RELIANCE

Buyer agrees that it is not relying upon Seller's skill or judgement regarding the goods. Buyer agrees that it is solely responsible for the design and specifications of the goods furnished to Seller, including without limitation, the determination of the suitability of the goods for Buyer's application. Buyer further agrees that it will be solely responsible for ensuring the safe utilization of any product, machinery or equipment in which Seller's goods have been incorporated. Buyer agrees to assume responsibility for detection of any defective workmanship by testing any of Seller's goods for its intended purpose prior to its use.

9. CANCELLATION AND CREDITS

- (a) Buyer acknowledges that the work to be done by Seller is special, unique, and of no value to anyone other than the Buyer.
- (b) Failure to approve the manufacturing drawing in a timely fashion may result in a delay or cancellation of the Buyer's order. The Seller reserves the right to charge engineering fees for orders cancelled after the print is made and/or approved.
- (c) If Buyer desires to cancel the goods prior to completion, Buyer agrees to provide ten (10) days' written notice to Seller. Buyer will pay Seller in full for its work up to the date of termination, equal to fifteen percent (15%) of the purchase price of the goods or the total cost incurred by Seller, whichever is greater.
- (d) All credits issued by Seller must be utilized by Buyer against the purchase of goods within one year of the credits' issuance date or they will be rescinded.



10. SECURITY INTEREST

Buyer hereby grants to Seller and Seller hereby retains a continuing purchase money security interest in all of the goods and any and all auxiliary equipment and accessories therefore together with all spare parts, attachments, accessions, additions, replacements, improvements, and substitutions thereto or thereof, whether presently in the possession of Buyer or hereafter acquired, and all proceeds thereof (as of now and hereafter defined by the Uniform Commercial Code), including but not limited to, cash, accounts receivable, contract/lease/rental right and chattel paper. This security interest shall secure and act as security for the purchase price of the goods and any and all other indebtedness, liability and obligations of Buyer to Seller, whether absolute, contingent, direct, indirect, liquidated or unliquidated, now existing or hereafter arising. Buyer shall keep the goods free from any adverse lien, security interest or encumbrance and will not store the goods or any part thereof or use the goods in violation of any statute or ordinance. In the event Buyer shall be in default under this Agreement, Seller shall have the remedies of a secured party under the Uniform Commercial Code. Seller may enter Buyer's premises and remove the goods and/or render the same inoperable through such means as Seller may deem appropriate. Buyer agrees to pay Seller's reasonable attorneys' fees and court costs incurred in the collection of any amounts owing to Seller hereunder or incurred in the repossession of the goods or otherwise incurred to secure/perfect or otherwise exercise its rights against Buyer.

11. INDEMNIFICATION

Buyer agrees to indemnify Seller and hold Seller harmless from any loss, liability, or expense, including reasonable attorneys' fees and cost of suit, with respect to any claim asserted by a third party against the Buyer or Seller with regard to the Buyer's use or sale of the goods.

12. CONFIDENTIALITY

Seller's drawings, specifications, programs and prices furnished to Buyer by Seller shall be the sole and exclusive property of Seller.

13. GOVERNING LAW/JURISDICTION

Except to the extent that the perfection of the security interest granted herein is otherwise mandated by applicable law, the agreement of which these terms are a part shall be governed by and construed in accordance with the laws of the State of Illinois, without reference to conflicts of laws principles. Without limiting Seller's right to commence action, at Seller's election, in any other jurisdiction, Buyer hereby consents to the exclusive jurisdiction and venue of any court (federal or state) situated in Cook County, Illinois and waives any and all objections to lack of jurisdiction, improper venue and/or forum non-conveniens and further consents to service of process by certified mail, postage pre-paid, addressed to Buyer at its address set forth herein. Buyer hereby waives any right to trial by jury. Buyer shall bring any legal proceedings arising out of the agreement between the parties and/or the relationship of the parties hereto only in a federal or state court located in Cook County, Illinois. If Buyer institutes an action in any other court or forum, Buyer shall pay Seller's expenses (including reasonable attorneys' fees) in dismissing or transferring such action to a court located in Cook County, Illinois. If Buyer contests Seller's rights to possession of the goods in any action, Buyer shall post a bond in the amount of two times the greater of sale price or value of the goods to protect Seller's interest therein. Seller shall not be required to post any bond or other forms of security in connection with any action for the repossession or replevin of, or otherwise relating to, the goods.

14. BLANKET ORDERS/RELEASED ORDERS

When a Buyer places an order which is to be delivered in varying amounts over a period of time and payments for same are to be made with each delivery, the delivery period shall be no longer than one (1) year. At the end of one (1) year, Seller reserves the right to ship unreleased quantities and Buyer will be responsible for accepting delivery of the balance of the order and paying the balance of the order in full at that time.

15. MISCELLANEOUS

These terms and conditions constitute the entire agreement between Seller and Buyer, and supersede all other communications, negotiations and prior oral or written statements. No modification of this agreement shall be binding upon Seller unless made in writing and signed by the Seller. No failure by the Seller to take any action or assert a right or remedy with regard to a breach or default, and no course of dealing, shall be deemed to be a continuing waiver or any other right or remedy. The validity, performance and interpretation of this agreement shall be governed by the law of the State of Illinois.