

Terms and Conditions of Sale

The purchaser named herein offers and agrees to purchase the goods described from "seller" on the following terms and conditions:

- 1) This offer is subject to approval and acceptance by the seller's authorized officers at seller's city and state. Such approval will cover materials and services specified in writing on this contract; and no statement, promise, warranty or agreement made by any salesperson, field representative or third party shall be binding upon the seller.
- 2) This offer is a firm offer. It will be held open and will not be revoked for 30 days.
- 3) This offer may be accepted by confirmation, by performance or the making of arrangements preparatory to performance, or in any other appropriate manner. The seller need not give the purchaser notice of acceptance. After acceptance, this agreement cannot be modified, rescinded, waived or changed, except by a writing signed by the party to be bound thereby. Any request for cancellation must be submitted in writing to the seller and purchaser agrees to pay for any expenses incurred by seller prior to such request for cancellation.
- 4) The seller may tender any quantity of goods which is not less than 90% nor more than 110% of the quantity specified herein (unless indicated otherwise on the front of this contract.) Such tender shall be a conforming tender and the price specified herein shall be ratably adjusted.
- 5) The seller may ship the goods at any time convenient to the seller, in a single lot or in several lots. Subject to any shipping instructions set forth herein, the seller or its agent may pack and ship the goods, select a carrier, make a transportation contract, and put the goods into the possession of a carrier, in any manner and on any terms the seller or its agent may see fit. The seller need not notify the buyer of any shipment.
- 6) This sale is made FOB point of shipment. All goods are shipped at the purchaser's risk. The purchaser shall duly pay for, and the seller shall have no liability for goods damaged, destroyed, or lost in transit.
- 7) The seller reserves a security interest in the goods as security for the payment of the price and all other obligations of the purchaser hereunder.
- 8) LIMITED WARRANTY: The seller warrants the goods will at the time of delivery conform to the description on the face side hereof and that the purchaser will acquire good title to the goods. THE SELLER MAKES NO OTHER AFFIRMATIONS, PROMISES, OR WARRANTIES, EXPRESS OR IMPLIED, as to the goods or the condition, quality, or characteristics of the goods, or as to any other matter whatsoever. THE SELLER SPECIFICALLY DISCLAIMS AND EXCLUDES ANY WARRANTY OF MERCHANTABILITY AND WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE.
- 9) In the event of any breach of the warranty made in paragraph 8, the seller will, upon reasonable notice from the purchaser, either replace the affected goods with conforming goods or refund the purchase price paid by the purchaser to the seller for the affected goods, at the seller's option. The foregoing remedies shall constitute the SOLE AND EXCLUSIVE REMEDY for any breach of warranty. This exclusive remedy shall not be deemed to have failed of its essential purpose under any circumstances. THE SELLER SHALL NOT BE LIABLE UNDER THIS AGREEMENT, OR WITH RESPECT TO THE SALE CONTEMPLATED HEREBY, FOR INCIDENTAL DAMAGES, FOR CONSEQUENTIAL DAMAGES, FOR BREACH OF WARRANTY DAMAGES, OR FOR ANY OTHER DAMAGES OF ANY KIND.
- 10) No goods may be returned by the purchaser to the seller without the seller's prior written consent, and then only to the extent of the quantity and under the terms and conditions set forth in writing.
- 11) The purchaser shall pay the total purchase price set forth on the face side hereof to the seller upon placement of contract with seller. In the event of any additional charges, such as, but not limited to: additional shipping, handling, art, overruns, or special charges, these are due upon receipt of the contract. Any balances remaining after 30 days of invoice are subject to a service charge of 18% per annum (or higher if allowed by law). In addition, the purchaser agrees to pay a 25% collection fee should it become necessary for the seller to engage outside professional services in the collection of this obligation due to the purchaser's failure to duly and punctually pay for the price due and/or reasonable attorney's fees with court costs.
- 12) The seller shall not be liable for any breach, default or delay caused by inability to obtain transportation, inability to obtain materials, delay in transit from a manufacturer or supplier or failure to make delivery by a manufacturer or supplier, shortage of fuel, failure of sources of supplies, strike, lock out, labor disputes, fire, flood, accident, invasion, riot, war, revolution, embargo, restraint or damage of the United States or any other government, failure of purchaser to perform its obligations with respect to this transaction, or any other cause or contingency beyond the control of the seller.
- 13) The purchaser will indemnify the seller, and hold the seller harmless from and against all claims, demands, liabilities and expenses, including (without limitation) claims of infringement of patent, trade mark, copyright or other proprietary right, invasion of privacy, or any other matter, arising from the use of any picture, plate, advertising copy, specifications, or material furnished to the seller by the purchaser or prepared by seller at purchaser's request including reasonable attorney's fees with court costs.
- 14) The purchaser will pay all sales, use and other taxes and impositions, except net income taxes, due or arising in connection with this sale or applicable to the goods after delivery.
- 15) If the purchaser shall fail to pay any indebtedness owed to the seller, shall become insolvent, shall cease to carry on business substantially as now conducted, shall suffer the appointment of receiver of the commencement of any proceeding under any bankruptcy or insolvency law, or if the seller shall at any time in good faith believe that any such event has occurred or that, for any other reason, the prospect of due and punctual payment of the purchaser's obligations is impaired, then the seller may immediately suspend its performance under this agreement and may demand immediate payment of all amounts due or to become due to the seller from the purchaser with respect to this transaction.
- 16) This agreement sets forth the entire agreement of the parties with respect to the subject matter covered. It supersedes all prior offers and agreements. The provisions of this agreement shall govern and displace any inconsistent provisions which may be set forth in any purchase order form or other document heretofore or hereafter submitted to the seller by the purchaser. The seller specifically objects to the inclusion of any terms or conditions proposed by the purchaser which are different from or additional to the terms and conditions set forth herein.