



## STANDARD TERMS AND CONDITIONS

**1. ACCEPTANCE.** All orders are subject to acceptance by Seller at Seller's applicable manufacturing facility. "Terms and Conditions" means collectively, the terms and conditions contained herein, any Seller's "Supplement to Terms and Conditions of Sale", and terms and conditions stated in Seller's quotation. "Agreement" means the agreement arising from the acceptance of this order and its attachments, including the Terms and Conditions, which are incorporated into and are part of the purchase order. Any terms and conditions originating with Buyer are superseded by the Terms and Conditions and shall not be or become part of the contract between Buyer and Seller unless specifically accepted in a writing signed by a duly authorized representative of Seller. Acknowledgement of the receipt of any order, including signing and returning to Buyer its acknowledgement copy, if any, shall not constitute acceptance by Seller of any additional or different terms and conditions, nor shall Seller's commencement of effort, in itself, be construed as acceptance of an order containing additional or different terms and conditions. Seller shall have no liability until and unless the orders are accepted. Buyer assumes full responsibility for inaccurate, incomplete or faulty data supplied to Seller for Seller's use in the performance of orders.

**2. PRICES.** Prices and shipping lead times are subject to change without notice. They are prepared for the purpose of furnishing general information and are not quotations or offers to sell on the part of the Seller. No payment discounts are offered, and minor inadvertent administrative errors contained in an invoice are subject to correction and shall not constitute reason for untimely payment.

Prices are quoted FCA (INCOTERMS 2010) Seller's Factory. Goods will be billed at the prices in effect at the time of shipment. Partial shipments on quantity orders shall be deemed a separate and independent contract for billing. Freight charges will be "collect" unless specified otherwise. Prepaid charges will be invoiced using Seller's freight and handling charge rate list. Courier service and/or US Parcel Post charges will be prepaid and added to the invoice using current rates.

If the Seller's cost, of raw materials used for the manufacture of the Goods, increases by more than 3 % during the term of the Agreement as a result of industry-wide conditions not contemplated by Seller at the inception of the order, Seller shall have the unilateral right at any time upon advance written notice to Buyer to increase the prices on booked and acknowledged orders by an amount equal to the additional raw material costs incurred by Seller. Seller does not accept COD orders.

**3. TAXES.** Prices do not include any sales, use, excise, property, import, export or such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any such taxes shall be the responsibility of Buyer. If Seller is required to pay any such taxes, the cost shall be added to the invoice or billed to Buyer separately.

**4. DELIVERY.** Unless otherwise agreed to by Seller, all shipments are made FCA (INCOTERMS 2010) Seller's Factory. Delivery to a common carrier or licensed trucker shall constitute tender of delivery to Buyer and all risk of loss or damage in transit shall be borne by Buyer. In no event shall Seller be held liable for any damages or expenses caused by delays in delivery. The parties recognize that delivery dates are approximate.

Method and route of shipment are at Seller's discretion, unless Buyer supplies explicit instructions that are accepted by Seller in writing in accordance with these Terms and Conditions. If Seller is prepared to make shipment, and Buyer delays delivery, terms of payment shall apply as though delivery had been affected as of the date that Seller was prepared to make shipment. All costs associated with handling, care and custody of the Goods shall be to the account of Buyer. The acceptance of the Goods by Buyer shall constitute a waiver of all claims for delay. Buyer and Seller agree that "TIME IS NOT OF THE ESSENCE" in Seller's performance of this order.

Seller reserves the right to ship the Goods up to five (5) days in advance of the specified delivery dates without affecting the terms of payment, price or any other of the terms of the order. Seller shall not be liable for delay in delivery or failure to manufacture due to causes beyond its or its subcontractors' reasonable control, including, but not limited to, delays or failures due in whole or in part to, acts of God, acts of Buyer, acts of civil or military authority, priorities, fire, strike, floods, acts of terrorism, insurrection, epidemics, quarantine, war, riot, transportation delays, acts of a public enemy, inability to obtain necessary labor, materials or manufacturing facilities, or other causes similar to those enumerated. 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 of the delay.

**5. SCHEDULED SHIPMENT POLICY.** All Goods listed are eligible for scheduled shipment under the following terms:

- Releases to be entered into the Seller's system are limited to shipment requested within 12 months of receipt of the order by Seller.
- Releases will be entered into Seller's system with firm release dates only.
- All unshipped portions of an order, after 6 months of the original order's receipt and booking, are subject to change in price.
- After an order is received, booked and scheduled in the Seller's system, any delivery schedule changes may be subject to additional charges.
- Any cancellation of a scheduled order will be subject to cancellation charge of at least 25% of the price of the Goods.

Prices are valid only for releases that are booked and acknowledged. All unbooked, and/or unscheduled shipments of Goods are subject to invoice at the price of the Goods at the time of shipment.

Seller reserves the right to ship and bill "in place" any order which is complete and which meets Buyer's requirements and specifications as defined in the order if shipment of this order is delayed by Buyer more than five (5) calendar days from its scheduled shipping date.

**6. TERMS OF PAYMENT.** Terms of payment are Net 30 from date of invoice. Late charges at the interest rate (i) of 1.5% per month (18% annually) or (ii) the maximum rate permitted under applicable law, whichever is less, may be charged on past due accounts. All shipments on open account are subject to approval of Seller's credit department.



**7. LIMITED WARRANTY.** Seller warrants that the Goods sold hereunder are free from defects in material and workmanship for the Warranty Period is 24 months from date of manufacture or 18 months from date of shipment. Seller warrants its Good(s) only to the original Buyer. There are no warranties whatsoever on Goods built or acquired, wholly or partially, to a Buyer's designs or specifications.

This express warranty in this Section and in Section 9 are in lieu of and exclude all other warranties, express or implied, by operation or law or otherwise including THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER KNOWN TO SELLER OR NOT), all other such warranties being hereby expressly disclaimed by Seller and waived by Buyer.

Written notice of claimed defects shall have been given to Seller within the Warranty Period, and within thirty (30) days from the date any such defect is first discovered. The Good or parts claimed to be defective must be returned to Seller, accompanied by a Return Material Authorization (RMA) issued by Seller's facility responsible for supplying Goods, with transportation prepaid by Buyer, with written specifications of the claimed defect.

If a warranty claim is valid, Seller shall pay reasonable one-way costs of transportation of the defective Goods from either the original destination or the location where defect occurred, whichever is closest to Seller's facility. Under no circumstances shall Seller be liable for removal of Seller's Goods from Buyer's equipment or re-installation into Buyer's equipment. No person including any agent, distributor, or representative of Seller is authorized to make any representation or warranty on behalf of Seller concerning any Goods manufactured by Seller.

**8. SOFTWARE WARRANTY.** Computer software programs that may be included in material or Goods sold to Buyer have been designed to perform a given set of tasks as defined in the documentation provided and is offered "AS IS." It is Buyer's responsibility to determine if the features of the software programs are suitable for Buyer's requirements and must confirm that the software programs operate correctly. Buyer understands that such software programs are of such complexity that they may have inherent defects and that Seller makes no warranty that all software features will perform correctly as supplied. For Seller's software utilizing automation servers, improper reading and writing data to the automation server can cause the automation server software to malfunction and may cause the automation server and/or the program writing to the automation server to crash. Improperly reading and writing data to an automation server may cause the device controlled by that automation server to malfunction. Seller shall not be responsible for damage to any device or damage caused by any device due to the improper reading and/or writing of data to an automation server.

**9. LIMITATION OF LIABILITY.** NOTWITHSTANDING ANYTHING TO THE CONTRARY, SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING OUT OF THE PERFORMANCE, DELAYED PERFORMANCE OR BREACH OF PERFORMANCE OF THIS ORDER REGARDLESS WHETHER SUCH LIABILITY BE CLAIMED IN CONTRACT, EQUITY, TORT OR OTHERWISE. SELLER'S OBLIGATION IS LIMITED SOLELY TO REPAIRING OR REPLACING (AT ITS OPTION AND AS SET FORTH IN SECTION 8 AND SECTION 9), AT ITS APPROVED REPAIR FACILITY, ANY GOODS OR PARTS WHICH PROVE TO SELLER'S SATISFACTION TO BE DEFECTIVE AS A RESULT OF DEFECTIVE MATERIALS OR WORKMANSHIP, IN ACCORDANCE WITH SELLER'S STATED WARRANTY. IN NO EVENT SHALL SELLER'S LIABILITY EXCEED THE TOTAL PURCHASE PRICE SET FORTH IN THIS ORDER.

**10. GENERAL INDEMNITY.** Buyer agrees to hold Seller harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by Goods covered by the order while in possession or under the control of Buyer or Buyer's successor in interest.

**11. PATENT INDEMNITY.** Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as specifically provided in this section. Any liability of Seller shall be limited as set forth in section 10. Seller will defend and indemnify Buyer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, trade dress and trade secrets as (hereinafter collectively referred to as the "Intellectual Property Rights") subject to the limitations and conditions set forth in this section. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in any action brought against Buyer based on an allegation that an item sold to Buyer ("Item") infringes the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If an Item is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, in its sole discretion, procure for Buyer the right to continue using the Item, replace or modify the Item so as to make it non-infringing, or offer to accept return of the Item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to Items for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of the Items. The foregoing provisions of this section shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights. If a claim is based on information provided by Buyer or if the design for an Item is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such Item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

**12. PROPERTY RIGHTS.** Except where otherwise expressly agreed, all patterns, tools, jigs and fixtures, drawings, designs, software and other materials and data developed, fabricated or otherwise required in the performance of this order, notwithstanding any charges, shall be and remain Seller's property and in Seller's possession and control.

Except as specifically provided for in this order, Buyer shall have no right in any technical data, Intellectual Property Rights, and computer software associated with this order. In the event Seller agrees to provide Buyer with proprietary information, drawings, designs or data in conjunction with this order, Buyer agrees that such information, drawings or data will not be disclosed to a third party, or used by Buyer, without the written permission of an authorized official of Seller.

**13. RIGHT TO GOODS; DEFAULT; INSOLVENCY.** If Buyer becomes insolvent or if Buyer is in default for any reason under the terms of this or any other agreement between Buyer and Seller, Seller shall be entitled, at Seller's option, to discontinue further performance of all or part of the order, to withhold shipments, in whole or in part, and/or to recall Goods in transit, retake same, and repossess all Goods which may be stored with Seller for Buyer's account, without the necessity of taking any other proceedings. Buyer consents that all Goods so withheld, recalled, retaken or repossessed shall become Seller's absolute property, provided that Buyer is given full credit. The foregoing shall not be construed as limiting, in any manner, any rights or remedies available to Seller under contract, at law or equity.

**14. CONDITIONS.** The order is accepted with the understanding that it is subject to Seller's ability to obtain the necessary raw materials, and the order and all shipments applicable thereto are subject to Seller's current manufacturing schedules, and governmental regulations, orders, directives and restrictions that may be in effect from time to time.

**15. NON-WAIVER BY SELLER.** Waiver by Seller of a breach of any of the Terms and Conditions shall not be construed as a waiver of any other breach. Any failure at any time of Seller to enforce any provision of these Terms and Conditions shall not constitute a waiver of such provisions or prejudice Seller's right to enforce such provisions at any time. Should any provision of these Terms and Conditions be or become void or not enforceable by force or operation of law, all other provisions shall remain valid and enforceable.



- 16. ASSIGNMENT.** Buyer shall not assign, subcontract, or otherwise transfer the order, in whole or in part, without the prior written consent of Seller, and any such assignment, subcontract, or transfer without Seller's prior written consent shall be void.
- 17. BUYER SUPPLIED MATERIAL.** All material or equipment owned or furnished by Buyer while in Seller's possession will be carefully handled and stored but Seller shall not be responsible for accidental loss thereof or damage thereto.
- 18. CHANGES.** Changes in whole or in part of the order can be made only with Seller's consent and upon terms that will permit an equitable adjustment to be made in both the price and schedule of the Goods to be delivered. Changes will be recognized and implemented only when communicated to Seller by Buyer's authorized representative, in writing.
- 19. TERMINATION.** Termination of the order in whole or in part can be made only with Seller's prior written consent and upon terms that will indemnify Seller against loss and afford an equitable profit.
- 20. PLACE OF MANUFACTURE.** Seller has the right to determine in which of Seller's manufacturing facilities all or part of the order may be fabricated, processed, assembled, etc.
- 21. RESERVATION OF RIGHTS.** Seller reserves the right to make subsequent improvements and changes in the design of Goods without imposing any obligation to make such changes or improvements upon Goods sold to Buyer.
- 22. INSPECTION AND ACCEPTANCE OF GOODS.** Final inspection and acceptance of Goods provided under this order shall be made by Buyer within fourteen (14) days of receipt of the Goods at Buyer's facility, except in the case where Buyer's source inspector or authorized representative inspects the Goods at Seller's facility. Failure of Buyer to inspect and reject in writing, said Goods within the above time period (where source inspection is not applicable) shall be deemed to mean acceptance has occurred. In the event Buyer's source inspector is delegated to perform inspection and acceptance, then sign-off of the relevant test documentation by the source inspector or authorized representative shall constitute acceptance of the Goods by Buyer.
- 23. INSTALLATION.** All Goods shall be installed by and at the expense of Buyer. Should Buyer request the services of Seller, such service shall be rendered and charged at the established rate at the time of performing said service, plus all other expenses including travel, hotel bills and living expenses.
- 24. GOVERNING LAW; LIMITATION ON ACTIONS.** This order shall be governed and construed in accordance with the laws of the State or Commonwealth of Seller's manufacturing facility, USA. No actions arising out of the sale of Goods covered by this order, other than an action by Seller to recover the purchase price of such Goods, may be brought by either party more than one (1) year after the cause of action accrues.
- 25. U.S. GOVERNMENT CONTRACTS.** If this order is issued pursuant to a U.S. Government prime or subcontract, the foregoing conditions of sale are hereby modified as required (*mandatory flowdown only*) to include such terms and conditions of the Federal Acquisition Regulations in effect as of the date of order and only as directly applicable based on value of this order.
- 26. Restrictions on Export.** Buyer acknowledges that the Goods and any technical data related to the Goods may be controlled for export by the U.S. Department of Commerce or Department of State and that such items may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute the Goods or any technical data related thereto, in violation of any export control laws or regulations of the United States.
- 27. UNCISG.** With respect to transactions to which the 1980 United Nations Convention for the International Sale of Goods (UNCISG) would otherwise apply and notwithstanding the venue to which the parties to a particular order may have agreed for dispute resolution, the rights and obligations of the Parties hereto including these Terms and Conditions shall not be governed by the provisions of the UNCISG.

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