

## STANDARD TERMS AND CONDITIONS OF SALE

### 1. PRICE

- A. All quotations are made and orders accepted on the basis of Seller's prices in effect at the time of shipment, except as otherwise specifically agreed in writing. All prices are subject to change without notice.
- B. Any taxes or fees, which the Seller may be required to pay or collect will be charged to the Purchaser.
- C. Unless otherwise stated all prices are EXW Seller's factory (Incoterms 2000) and do not include insurance, duties, taxes, and similar charges.
- D. All payments shall be made in United States funds.

### 2. TERMS

The terms of payment are net 30 days from the date of invoice except as otherwise stated in a written agreement signed by a duly authorized representative of Seller. Past due accounts shall: (a) bear interest at the rate of one and one half (1 ½) per cent per month, an 18% annual rate, except to the extent otherwise provided by law and (b) accrue reasonable collection costs (including legal fees and expenses) payable as incurred.

### 3. SHIPPING AND DELIVERY

- A. The Seller shall have no responsibility to obtain or maintain insurance, and all responsibility of the Seller shall cease when products have been delivered to the appropriate carrier for shipment to the Purchaser, properly addressed or with the proper bills of lading attached, whether or not freight is prepaid.
- B. Unless specific shipping instructions are received from the Purchaser substantially before the shipment date, the Seller reserves the right to use its judgment in selecting the means of shipment. Additional shipping costs incurred at the request of the Purchaser will be charged to the Purchaser.
- C. Shipping dates given by Seller in advance of actual shipment are estimates only.

### 4. WARRANTY

- A. Seller warrants these products to be substantially free from defects in materials and workmanship. Seller will replace or repair any products which shall prove to be materially defective, providing the Purchaser shall have reasonably inspected products received and notified Seller of any apparent defects within 30 days of receipt of shipment. At Seller's option the Purchaser may be credited for the price charged for the defective product in lieu of replacement or repair. This warranty is for the benefit of, and must be exercised directly by, Purchaser only, and shall not convey any rights whatsoever to any third party. **Seller makes no other warranty, express or implied, and disclaims the existence of any other warranty whether of merchantability, fitness for a particular purpose, or otherwise. Seller shall not, in any event, be**

**liable for damages in respect to the sale or use of any products sold hereunder, in any amount greater than the amount of the purchase price received by Seller for such products.**

- B. Products delivered by Seller shall not be considered as defective if they substantially fulfill the Purchaser's performance requirements, or are in accordance with approved samples, specifications or drawings.
- C. No allowance will be granted for any repairs made by Purchaser without written consent of Seller.
- D. Seller shall not, in any event, be liable for any consequential, incidental or special damages, punitive damages, or costs or expenses in the event of any breach of warranty or in the event of any default in any term herein or in the event of any loss, damage, injury or cost resulting from or arising out of or in respect of the product's being sold hereunder.
- E. Except as Seller otherwise may agree in a separate agreement signed by its duly authorized officer, Seller makes no representations or warranties, express or implied, regarding compliance (including, without limitation, notification and/or registration) in the manufacture, distribution in commerce, processing, use, or disposal of the materials which are the subject of this order, or the constituent substances thereof, with the Toxic Substance Control Act (P.L. 94-469) or the regulations promulgated thereunder (or any similar federal or state statute or regulation), as said act and regulations may be amended from time to time; including in the above disclaimer, without limitation, representations and warranties regarding inclusion of said materials or substances in the various lists compiled by the U.S. Environmental Protection Agency and/or state authorities under any of the aforesaid acts and/or regulations.

**5. CLAIMS AND RETURNS**

- A. No products will be accepted for credit by the Seller if they are substantially in accordance with the product specifications described in the Purchaser's purchase order.
- B. All claims for shortages, differences in the products shipped, or poor quality must be made in writing within 30 days of receipt of shipment.
- C. No return shall be shipped to the Seller except after securing written instructions from the Seller. Seller shall have the sole right to determine whether returned articles or parts shall be repaired or replaced. Seller agrees to assume roundtrip transportation costs for defective or nonconforming articles or parts in an amount not to exceed normal truck common carrier shipping charges within the continental United States, provided, however, that if Seller's inspection discloses that the returned article or part does not require repair or replacement, Seller's usual charges will apply and the Purchaser shall assume roundtrip shipping charges.
- D. Damage incurred at the Purchaser's location such as in the process of inspection, handling, and repackaging shall be the sole responsibility of the Purchaser.

**6. LIABILITY FOR LOSS, DAMAGE, OR DELAY**

The Seller shall not be liable for any loss or damage suffered by the Purchaser, resulting directly or indirectly from, or through, or arising out of any delay in filling an order or in shipment or delivery of any products, or resulting directly or indirectly from or through delay arising out of any of the following: fire, flood, strike, accident, civil commotion, riot or war, shortage of labor, fuel, materials or supplies, regulations, priorities, orders or embargoes, imposed by any civil or military government; or any other cause or causes (whether or not similar to the foregoing) beyond the reasonable control of the Seller.

**7. CANCELLATION, ALTERATION OR DELAY REQUESTED BY THE PURCHASER**

- A. Requests by the Purchaser to cancel or alter an order or to temporarily or permanently stop work or delivery must be made in writing. Acceptance to be effective must be in writing. Seller reserves the right to accept or refuse any such request and to set the additional charges and other conditions under which a request is granted. Any such additional charges will be due and payable 30 days after notification of Purchaser by Seller.
- B. All products, parts or materials ordered or held by the Seller at the Purchaser's request shall be at the risk and expense of the Purchaser. The Seller, at its option, may invoice the Purchaser for all costs and expenses resulting from such a request. Such invoices are due and payable 30 days from issuance.

**8. TOOLS, DIES, DESIGNS, DRAWINGS, JIGS, AND FIXTURES**

- A. The Seller shall retain ownership, possession and control of all tools, dies, designs, drawings, jigs, and fixtures prepared for the manufacture of products subject to any order except where other written arrangements are specifically made between the Seller and the Purchaser.
- B. The Seller shall not be responsible for problems resulting from errors in artwork, drawings, and/or specifications supplied by the Purchaser.

**9. UNDER AND OVER SHIPMENTS**

The Seller reserves the right to over-ship or under-ship any order by any amount not to exceed five (5) percent of the amount ordered, payment to be based on the products shipped.

**10. PATENTS, TRADEMARKS, AND COPYRIGHTS**

The Seller shall indemnify the Purchaser for damages for infringement of patents, trademarks or copyrights relating solely to products sold hereunder which are products of the Seller's design, and the Purchaser shall so indemnify the Seller for products that are not of Seller's design. No indemnity shall apply to liability resulting from the manner of use of the products by the Purchaser or from combining the products with any other items. Each party shall give the other reasonable notice of any claim or infringement to

which this indemnity applies and offer to allow the other to defend any suit resulting therefrom; otherwise, the party to notice shall not be liable, directly or indirectly, for any damages from such infringement. Anything herein to the contrary notwithstanding, any claim for indemnification shall be subject to the limitations set forth in the last sentence of subparagraph 4.A. and in subparagraph 4.D.

#### **11. INSOLVENCY OF PURCHASER**

If the Purchaser shall make an assignment for the benefit of creditors or a voluntary or involuntary petition or other action in bankruptcy or for reorganization or under any other insolvency law shall be filed by or against the Purchaser or the Purchaser shall admit its inability to pay its debts or a trustee, receiver, or liquidator is appointed for any part of the assets of the Purchaser, then Seller's obligation to continue to perform hereunder immediately shall cease, unless Seller thereafter otherwise agrees in writing with the Purchaser's trustee or representative. Charges to the Purchaser shall be governed by the provisions of Paragraph 7.

#### **12. REPRODUCTION RIGHTS**

Drawings, specifications, reports, photographs and other data of Seller relating to this order and all proprietary rights and interests therein and the subject matter thereof shall remain the property of the Seller (which term, for purposes of this paragraph only, shall include any and all affiliates of Seller). The Purchaser agrees that it will not use the Seller's drawings, specifications, and other materials and information above mentioned for the production or procurement of products covered by this order or any similar product from any other source, or reproduce the same or otherwise appropriate them without the written authorization of the Seller. The Purchaser shall cause its employees, agents and others having access to such information to be aware of, and to abide by, the terms of this paragraph.

#### **13. NONDISCLOSURE**

The Purchaser agrees that it will not disclose or make available to any unauthorized third party any drawings, data, or other information pertaining to this order which is proprietary to Seller without obtaining Seller's prior written consent. The Purchaser shall cause its employees, agents and others having access to such information to be aware of, and to abide by, the terms of this paragraph.

#### **14. SALES TERMS AND CONDITIONS**

These terms and conditions constitute the entire agreement between the parties with regard to the subject matter hereof, and supersede all oral or written agreements and understandings with regard to such subject matter. No additions to or modifications of Seller's terms and conditions shall be binding upon Seller unless agreed to by Seller in a signed document executed by an authorized officer of Seller. If a purchase order or other communication from Purchaser includes any term or condition contrary to, or in addition to, the terms and conditions stated herein, Purchaser's acceptance of the products and services which are the subject hereof, after receipt of these terms and conditions from

Seller, shall constitute Purchaser's complete and unconditional assent to the terms hereof notwithstanding anything to the contrary in any such earlier purchase order or communication, unless Purchaser clearly instructs Seller in writing, prior to acceptance, to cancel the order. Purchaser's communication of contrary or additional terms and conditions following acceptance of the products and services, shall be construed as an offer to supplement and/or amend Seller's terms and conditions. Such offer shall be deemed rejected unless accepted by Seller in the manner set forth in the second sentence of this paragraph.

15. **MISCELLANEOUS**

Any unenforceable provision shall be reformed to the extent necessary to permit enforcement thereof. The parties both acknowledge that damages at law may be an inadequate remedy for the breach or threatened breach of Paragraph 12 and/or 13 of these terms and conditions and that, in the event of a breach or threatened breach by a party of any provision hereof, Seller's rights and obligations hereunder shall be enforceable by injunction or other equitable remedy, in addition to and not in lieu of any rights to damages at law. This agreement shall be construed in accordance with the laws of the Commonwealth of Massachusetts, without regard to conflicts of laws provisions thereof. Changes, amendments or modifications in or additions to any provision contained herein may be made only by a written instrument executed by the parties thereto. All notices and waivers must be by written instrument executed by the party to be bound thereby. Notices are deemed given when received, regardless of the means of transmission.