

## Terms and Conditions of Sale

1. Prices and Terms.
  - a. Unless otherwise provided on the face of the invoice, payment is due thirty (30) days from date of shipment or date of invoice, whichever is earlier. Seller's obligations hereunder shall be subject to the approval of Seller's credit Department and Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to such department.
  - b. Any sales, use, excise, property and other taxes applicable to this transaction and the goods and services furnished hereunder are not included in the purchase price therefore and shall be paid by Buyer when due. Seller may collect sales tax by adding such amount to the invoice as an itemized item which will be in addition to the purchase price to be paid by Buyer.
  - c. Buyer will notify Seller and supply proof of sales tax exemption, if applicable.
2. Limitation of warranties and remedies
  - a. The warranties stated in this section 2 and in section 3 are given in place of all other warranties, express or implied, of merchantability, fitness for a particular purpose, or otherwise and all such other warranties are hereby expressly disclaimed. No promise or affirmation of fact made by any agent or representative of Seller shall constitute a warranty by Seller or give rise to any liability or obligation.
  - b. Seller warrants that the goods furnished hereunder will be, at the date of shipment, free from defects in workmanship and materials. Seller makes no warranty with respect to any goods manufactured by others, such goods to carry only the warranty of the manufacturer. This warranty is terminated, and Seller shall not be liable to Buyer or any other person for any damage, injury or loss arising out of the use of the goods, whether by reason of any defect in the goods or services furnished hereunder or otherwise if, prior to such damage, injury or loss, the goods are
    - i. damaged or misused following delivery;
    - ii. repaired, altered or modified without Seller's written consent;
    - iii. not installed, maintained or operated in strict compliance with instructions furnished by Seller.
  - c. Seller's obligation in the event of breach of warranty or contract, or of negligence or otherwise with respect to goods or services furnished hereunder shall be strictly and exclusively limited to the repair or replacement, F.O.B. point of shipment, of any parts that Seller determines on inspection to have been defective at the date of shipment or to the correction of any work, or if Seller determines that such repair, replacement or correction is not feasible, to a refund of the purchase price upon return of the goods to Seller.
  - d. Seller's liability for any and all losses or damages from any cause whatsoever shall in no event exceed the purchase price of the product in respect of which the claim is made.

- e. Seller shall not be liable in any event for incidental or consequential damages as those terms are defined in Section 2-715 of the Uniform Commercial Code or Special Damages, whether Buyer's claim be in contract, tort, strict liability or otherwise.
- f. No claim against Seller for any defect in the goods or services, whether for breach of warranty or contract, or for negligence or otherwise shall be valid or enforceable unless Buyer's written notice thereof is received by Seller within one year from the date of shipment or 10 days from the date of discovery of the defect, whichever is earlier, and Buyer shall cease using the goods from the time of discovery of such defect until Seller has had a reasonable time to inspect the same and remedy any defect that the Seller determines to be covered by the warranty set forth in this Section. Any action against Seller for breach of this warranty or contract, or for negligence or otherwise must be commenced within one year after such cause of action accrues.

### 3. Patents

- a. Seller shall defend and hold Buyer harmless in any suit or proceeding brought against Buyer that is based on a claim that the goods furnished hereunder, when used in the manner and for the purpose for which said goods are manufactured and sold, constitute an infringement of any existing U.S. letters patent, providing that Buyer gives Seller prompt written notice thereof, permits Seller to defend and settle the same, and gives Seller all necessary assistance and authority. In case such use of said goods is held to constitute infringement and such use is enjoined, Seller shall, at its own expense and at its own option, either:
  - i. procure for Buyer the right to continue using said goods;
  - ii. replace the Same with non-infringing goods;
  - iii. modify said goods so as to become non-infringing; or
  - iv. remove said goods and refund the purchase price thereof, the foregoing states the entire liability of Seller to Buyer for patent infringement by the goods furnished hereunder and is in lieu of any other warranty relating to infringement.
- b. The provision of section a of this paragraph shall not apply to any goods specified by Buyer or manufactured to Buyer's design, modified by Buyer or at Buyer's request, or to any goods having non-infringing uses that are used by Buyer in an infringing manner. As to such goods, Seller shall have no liability for infringement and Buyer agrees to defend and hold Seller harmless in any suit or proceeding brought against Seller that is based on a claim that the manufacture and sale by Seller of such goods constitutes an infringement of any existing U.S. letters patent, providing that Seller gives Buyer prompt written notice thereof, permits Buyer to defend and settle the same, and gives Buyer all necessary assistance and authority.

### 4. Inspection

- a. Buyer shall inspect the goods as soon as received and, within 10 days after receipt, shall notify Seller in writing of any defect, loss or damage.

### 5. Delivery

- a. Deliveries shall be F.O.B. point of shipment unless otherwise specified herein.

- b. Shipping dates are estimates and Seller shall not be liable for any loss or damage because of delays occasioned by labor disputes, damage to Seller's facilities or failure by Seller's suppliers, manufacturers or subcontractors to meet scheduled deliveries or because of any similar or dissimilar cause beyond Seller's reasonable control or making Seller's performance hereunder commercially impracticable. Shipping dates are subject to any changes caused by procedures or priorities set by any governmental agencies having jurisdiction.
  - c. If shipment is delayed at the request of Buyer or because of Buyer's inability to receive the goods, such goods shall be stored at Buyer's risk and expense and Seller shall have the right to bill Buyer the full invoice price plus storage charges any time thereafter and Buyer shall pay such amounts within ten (10) days after the date of such invoice.
6. Indemnification - Safe Operation
- a. Buyer shall comply and require its employees to comply with directions set forth in manuals or instructions furnished by Seller, and any other relevant safety precautions, and Buyer shall use and require its employees to use reasonable care and all safety devices and guards in the use and maintenance of the goods. Buyer shall not remove or permit anyone to remove any safety guards, devices or warning signs. Buyer shall comply with all applicable laws pertaining to the use and maintenance of the goods. Buyer shall immediately give Seller written notice of, which notice shall in no event be more than forty-eight (48) hours after, any personal injury, death or property damage arising out of the use or maintenance of the goods and cease using such goods until Seller has had a reasonable time to inspect the same. Buyer shall cooperate with Seller in investigating any such accident, malfunction, or damage. If Buyer fails to strictly observe each and every obligation set forth above, Buyer shall indemnify and hold Seller harmless against any and all liabilities, losses, expenses and causes of action relating to injury, death, and damage to business or property arising from, connected with or related to the use or maintenance of the goods furnished hereunder.
7. Insurance
- a. Buyer shall be charged for at its own expense to keep the goods insured against any loss or damage to them after shipment, said insurance to be payable to Seller and Buyer as their interests may appear. Buyer shall deliver to Seller at Seller's request the policies or evidence of insurance satisfactory in form and content to Seller.
8. Changes – Cancellation & Returns
- a. Seller reserves the right to change or cancel this order because of any circumstance requiring allocation of production or delivery, or because such change or cancellation is deemed by it necessary to comply with applicable laws, ordinances, regulations, directives or administrative actions or necessary for the improvement or proper operation of the goods.
  - b. Buyer may cancel this contract by giving Seller written notice and subject to the following conditions if prior to the Goods being shipped, the Goods will not be

shipped and there will be no cancellation charge. If the Goods have been shipped, then the following will apply:

- i. Buyer must notify Seller within ten (10) days of receipt for all claims for shortages, damage and/or credit in writing;
- ii. The Goods may be returned for replacement or refund within 30 days of purchase provided that the Goods are in the same condition as when they were shipped by the Seller and are sent back at Buyer's expense in the original packaging;
- iii. With respect to the goods stocked by Seller, Buyer shall pay a cancellation or re-stocking charge of fifteen percent (15%) of the purchase price;
- iv. All returns are subject to approval and must be accompanied by an Return Merchandise Authorization (RMA) number and include all original packaging; and/or,
- v. With respect to the return of the goods stocked by Seller, no goods may be returned more than thirty (30) days after shipment.

#### 9. Repairs

- a. Seller reserves the right to repair or supervise the repair of goods incident to placing them in proper operation and shall not be responsible for work done, materials furnished, parts added, or repairs made by others unless Seller consents thereto in writing.

#### 10. Force majeure

- a. Seller shall not be liable for nonperformance or delay in performance due wholly or partly to commercial impracticability or any cause either not wholly or exclusively within its control or which it could not by reasonable diligence have avoided. Upon the occurrence of any such contingency, Seller shall have the right to suspend or reduce deliveries during the period of such contingency, and the total quantity deliverable under this contract shall be reduced by the quantities so omitted or to otherwise delay or cease its performance hereunder. The following shall not be considered wholly or exclusively within Seller's control: labor controversies; court decrees; inability to use the full capacity of plants or facilities as a result of government action, machinery malfunction or breakdowns; inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, without litigation or the payment of penalties or unreasonable prices, or the acceptance of unreasonable terms and conditions; or failures or delays by its suppliers or subcontractors.

#### 11. Miscellaneous

- a. Buyer and Seller intend this agreement to be the final expression of their agreement and as a complete and exclusive statement of the terms thereof. Seller hereby expressly rejects in advance any terms set forth in any purchase order or other documents from the Buyer which differ materially from, or are in addition to, the terms stated herein in the event Buyer has previously provided a purchase order or other document proposing terms for the sale, this agreement is expressly conditioned on Buyer's assent to any terms contained in this agreement that are different or in addition to any terms previously proposed by Buyer. Buyer agrees that no such

- different or additional terms, and no modification or waiver of any of the terms of this agreement, will be binding upon Seller unless approved by Seller in writing separate from such purchase order or other document stating the particular modification or waiver to be affected. Buyer's acceptance of the products to which this agreement relates manifests acceptance of these terms and conditions of sale.
- b. Any amendment or modification of this contract shall be void unless in writing and signed by Seller.
  - c. This contract shall be governed, construed and enforced by and under the internal laws of the state of Florida, without regard to principles of conflicts of laws. The state and federal courts in St. Augustine, Florida shall be the proper and exclusive jurisdiction for any dispute regarding this contract or otherwise relating to this transaction or the goods and services furnished hereunder. Each party waives any right to trial by jury in connection with this contract or otherwise relating to this transaction or the goods and services furnished hereunder.