

## TERMS AND CONDITIONS

### IMPORTANT:

Notwithstanding any conflicting, inconsistent or additional terms and conditions that may be embodied in BUYERS purchase order, SELLER accepts BUYERS purchase order subject only to the terms of the previous written contract between us under which BUYERS purchase order is placed. If no such contract exists, SELLER accepts BUYERS purchase order only on the express condition that BUYER assent to the terms and conditions on the front and reverse side hereof. The terms and conditions stated here were in effect at the time of order acceptance. BUYERS receipt and acceptance of the material shipped hereunder by SELLER shall constitute confirmation of assent to SELLER'S terms and conditions. No modification of SELLER'S terms and conditions will be binding upon SELLER unless made in writing and signed by SELLER'S authorized representative.

**1. WARRANTY:** All goods sold by SELLER under this order are sold with only the following warranty: SELLER warrants that the goods shall conform to SELLER'S specifications, SELLER'S obligation under this warranty is limited to replacing or giving credit, at its option, for goods which upon examination and determination by SELLER shall be found to be otherwise than as warranted. If, but only if, requested by SELLER, BUYER shall return allegedly defective goods to SELLER, and if they are replaced, SELLER will pay transportation costs thereon. THIS WARRANTY IS EXPRESSLY IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED (INCLUDING SPECIFICALLY, WITHOUT LIMITING THE GENERALITY OF THE FORGOING, ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS), AND ALL OTHER OBLIGATION AND LIABILITY ON THE PART OF THE SELLER. SELLER SHALL NOT BE LIABLE FOR CONSEQUENTIAL OR SPECIAL DAMAGES UNDER ANY CIRCUMSTANCES OR FOR MORE THAN REPLACEMENT OR REFUND OF THE PURCHASE PRICE ON DEFECTIVE GOODS.

**LIMITATION OF LIABILITY:** All claims for alleged defective goods, shortage or other cause are waived by BUYER unless made in writing and received by SELLER within fifteen (15) days after BUYER has noticed of such alleged defect, shortage or other such alleged cause, but in no event later than sixty (60) days after BUYERS receipt of goods. Upon request, SELLER will furnish such technical advice or assistance as it has available in reference to the use of the goods; however, it is expressly understood that (i) SELLER assumes no obligation to liability for the liability for the advice or assistance given or results obtained, (ii) all such advice or assistance is given and accepted at BUYERS risk and (iii) such advice or assistance shall not waive or affect SELLER'S liability as herein defined.

**2. PRICE:** All of SELLER'S prices are subject to adjustment to SELLER'S price in effect at time of shipment.

**3. PAYMENT TERMS:** Payment shall be made as set forth herein. SELLER reserves the right to require payment in advance or to require C.O.D payment.

**4. TAXES:** The amount of all taxes and other governmental charges, domestic and international, by whomever levied, which may be imposed on the goods sold under this order, or by reason of receipt, sale or delivery thereof shall be added without notice to the prices stated herein.

**5. TRANSPORTATION AND RISK OF LOSS:** Except as noted herein, all sales under this order are F.O.B. SELLER'S plant. SELLER reserves the right to select carrier. Prior to delivery of goods to the carrier at the F.O.B point, the risk of the loss or damage thereto shall be borne by SELLER. At and after the delivery of goods to the carrier at the F.O.B. point, the risk of loss or damage thereto shall be borne by BUYER.

**6. DELIVERIES:** All shipping dates for goods sold hereunder are approximate. SELLER will use its best efforts to ship orders for goods in accordance with the delivery schedules indicated herein; but SELLER shall not be liable for damages, whether general, consequential or otherwise, for failure to ship due to causes beyond SELLER'S reasonable control or for delays in shipping or for failure to give notice of any such failure or delay. Whenever the SELLER'S supply of the goods covered by order is insufficient to meet current shipping requirements or in the event of contingency mentioned below, SELLER may keep its available supply for its own use or allocate it for its own use and among its customers, including those not under contract, on such basis as SELLER may determine and in such event SELLER shall not be liable to BUYER for failure to deliver all or any part of the quantities sold hereunder. Any deliveries not made due to causes beyond the SELLER'S reasonable control including, but not limited to embargoes, civil commotion, labor trouble, strikes, fire, flood, accident, failure in production or production equipment, inability to obtain power, raw materials, or shipping capacity, or interruptions occasioned by governmental activities, may be cancelled at SELLER'S option, but the contract shall otherwise remain unaffected.

**7. BUYER'S ACTIONS:** If, for any reason whatsoever, BUYER shall cancel or suspend the contract resulting from this quotation or deliveries thereunder for more than 60 days, BUYER shall pay SELLER (i) for goods, the production of which has been completed at the time of such interruption, at the prices specified herein; (ii) for goods, the production of which has been started but not completed at the time of such interruption, all costs incurred by SELLER plus anticipated profits including administrative and overhead costs which would have been carried by such goods if SELLER has finished producing them. All as determined by SELLER; and (iii) for goods, the production of which has not been started at the time of such interruption, all costs incurred the SELLER in preparation for the production of such goods, plus anticipated profits including administrative and overhead costs which would have been carried by such goods if SELLER had produced them, all as determined by SELLER.

**8. QUANTITY VARIATIONS:** BUYER agrees that SELLER may ship reasonable quantity of goods in excess of the quantity ordered or may consider a contract with a reasonable under-shipment. Such excess or shortage will not exceed, usually, 10% of the quantity specified.

**9. PATENTS:** SELLER warrants that any sold pursuant to this contract, except as are made specifically for BUYER according to BUYER'S specifications, do not infringe any valid U.S. Patent. This warranty is given upon condition that BUYER promptly notify SELLER of any claim or suit involving BUYER in which such infringement is alleged, and if SELLER is affected, that BUYER permit SELLER to control completely the defense or compromise of any such allegation of infringement. SELLER does not warrant that the use of any goods sold hereunder, or articles made therefrom, either along or in conjunction with other materials will not infringe a patent.

**10. ASSIGNMENT:** This contract is not assignable or transferable by BUYER, in whole or in part, except with the written consent of SELLER.

**11. TOOLING:** Notwithstanding tooling charges, if any, to BUYER with respect to tools and fixtures required for the work covered by this contract, such tools and fixtures shall be and remain the sole property of SELLER. SELLER may dispose of any such tools and fixtures in any manner it sees fit without accounting BUYER therefor or the proceeds thereof.

**12. MISCELLANEOUS:** By its acknowledgement of any order, SELLER agrees to comply, to the best of its ability, with the provisions of any applicable federal law, and all valid regulations and orders hereunder to the extent required thereby. Any such provisions which are required to be included herein shall be deemed incorporated herein by reference. In addition, where BUYER specifies in the purchase order that its acknowledgement or acceptance will create a subcontract under a contract with the United States Government, and notes the Government contract number on the face of the order, any provisions which must under federal law be included in such sub-contract shall also be deemed incorporated herein by reference. This contract is to be constructed according to the laws of the state of SELLER'S location as shown on the face hereof.

**13. INDEMNIFICATION:** BUYER hereby agrees to indemnify, defend and hold harmless SELLER from and against any claims or losses that arise out of or result from infringement or misappropriation or alleged infringement or misappropriation of any patent, copyright, trade secret, or other intellectual property right of any third party by reason of the manufacturer, use, or commercialization of any goods or products based upon any concepts, designs, specifications or drawings provided by BUYER to SELLER.