

TERMS AND CONDITIONS OF SALE

- 1) Applicable Contract Provisions.** These terms and conditions, together with any other document, which Seller has attached as part of the contract (the "Agreement"), are the sole and complete contract between Buyer and Seller in respect to the products or services purchased by Buyer from Seller ("Products") and supersede all prior oral and written understandings. Seller rejects those provisions of any previous orders, offer, or other communication from Buyer, which are additional to or different from the terms hereof. Neither Seller's delivery of the Products nor any action at any time on the part of the Seller shall constitute acceptance of such additional or different terms. Buyer shall be bound by all of the terms of this Agreement when Buyer accepts this Agreement by any statement, act or course of conduct which constitutes acceptance under applicable law, including failure to object in writing hereto within a reasonable time and acceptance of delivery of the Products.
- 2) Price.** Prices are subject to change at any time without notice. All orders are subject to prices current at the time of Seller's receipt. All prices are quoted F.O.B. Seller's plant location unless specifically noted otherwise.
- 3) Credit and Terms of Payment.** Unless otherwise provided on the front hereof, payment in full is due thirty (30) days from invoice date. Seller may alter or revoke credit terms at any time without notice.
- 4) Buyer's Financial Condition, Insecurity.** If, in Seller's sole judgment, Buyer's financial condition or any other circumstance causes Seller to be insecure with respect to Buyer's performance of any obligation under this Agreement, Seller may accelerate and demand immediate payment of any amounts owed Seller, cancel this Agreement and suspend performance.
- 5) Sales and Similar Taxes, Shipping Costs, Insurance.** The purchase price does not include sales, use, excise, or similar taxes or any shipping, delivery or insurance costs. Seller will invoice Buyer for any such amounts incurred by Seller on behalf of Buyer.
- 6) Late Payment Fee.** Any amount not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one-half percent (1.5%) per month or the highest rate permissible under applicable usury law.
- 7) Shipment.** Seller will package the Products for domestic shipment in accordance with standard commercial practices. All shipments shall be delivered by Seller to the Buyer's designated point of delivery at the Buyer's expense unless otherwise agreed by Seller in writing. The carrier shall be deemed to be Buyer's agent, and Buyer shall make all claims with respect to damage in transit against the responsible carrier. Carrier and route will be Seller's choice.
- 8) Title to Products, Risk of Loss.** Title to and all risk of loss concerning the Products shall pass to Buyer upon delivery to a carrier for shipment to Buyer. Buyer's rejection of any Products shall not shift such risk until the Products are returned to Seller, freight prepaid, and restocking charge of up to 25% pursuant to Seller's written authorization. Custom-designed and printed products are not returnable. Buyer hereby expressly acknowledges and agrees that Section 2-510 of the Uniform Commercial Code shall not apply to this Agreement.
- 9) Delivery Schedule.** The delivery dates specified in the Agreement are estimates only based on prevailing conditions as of the date hereof, and Seller's failure to meet the same shall not be deemed a breach of this Agreement.
- 10) Force Majeure.** Seller shall not be liable to Buyer for any delay or failure of delivery or any other performance caused in whole or part by any contingency beyond Seller's reasonable control including, without limitation, acts of any government or any agency or subdivision thereof or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources.
- 11) Inspection and Acceptance.** Buyer shall inspect all shipments upon arrival and shall notify Seller in writing of any shortages or other failures to conform to this Agreement which are reasonably discoverable upon arrival.
- 12) Cancellation or Modification of Order.** This Agreement cannot be cancelled or modified after Buyer's acceptance or after the Products become Seller's work-in-process, whichever occurs first, except at Buyer's expense for all damages incurred by Seller due to such cancellation or modification.
- 13) Variation in Quantity.** Buyer agrees to accept a variation of 20% in quantity specified if the order is for less than 1,000 pieces, and on orders of more than 1,000 pieces, a variation of 10% in quantity specified because of the impossibility of manufacturing the exact quantity.
- 14) Drawings, Designs, Molds and Dies.** In the case of Products in which Buyer has any design input:
 - Buyer will allow extra charges for design services and authorized changes.
 - All tooling, molds, dies, drawings, plans, details, specifications and other data prepared by Seller, and confidential disclosures loaned to Buyer by Seller, are property of Seller and shall be received by Buyer subject to the conditions that each, and the information embodied therein: (1) shall be used only for record and reference purposes; (2) shall not be used or caused to be used in any way prejudicial to Seller, (3) shall not be reproduced or copied in whole or in part; (4) shall not be disclosed to others except Buyer's employees who need such information for job performance; and (5) shall be returned to Seller at its request. Drawings, manuals and the like supplied to Buyer shall be the property of Buyer solely for maintaining and operating the goods, and shall not be disclosed to others without Seller's consent.
 - Prints, patterns, special tools, dies, molds and designs owned and submitted by Buyer for Products manufacture may be used by Seller or scrapped at Seller's option without liability, unless notice is given to return these items within 90 days of completion of the order.
 - Tooling, molds or dies shall not be removed from Seller's possession while the Buyer's account remains unpaid or while there remains uncompleted production orders. Upon taking delivery of tooling, molds or dies, Buyer accepts such in their existing condition.
- 15) Special Design Indemnification.** Buyer will defend, indemnify and hold Seller harmless from any and all claims, suits, liabilities, damages, penalties, costs and expenses (including, but not limited to attorney's fees) asserted against, incurred by, or imposed upon Seller. BUYER WILL FURNISH SELLER A CERTIFICATE OF INSURANCE EVIDENCING GENERAL LIABILITY, INCLUDING BUT NOT LIMITED TO, CONTRACTUAL LIABILITY COVERAGE IN AN AMOUNT SATISFACTORY TO SELLER. BUYER WILL ALSO NAME SELLER AS AN ADDITIONAL INSURED AND AS A LOSS PAYEE WITH RESPECT TO THE PRODUCTS MANUFACTURED HEREUNDER AND SHALL FURNISH PROOF OF SAME TO SELLER.
- 16) Notification of Defect and Time Limitations.** Buyer must notify Seller in writing of any alleged defect in the Products within ten (10) days after discovery thereof but not later than 180 days from receipt. Buyer shall identify the defect in such manner and provide such documentation as the Seller reasonably may require. Buyer shall return any alleged defective Products to Seller, F.O.B. Seller's manufacturing plant, upon receipt of written request from Seller. Buyer must bring any lawsuit against Seller with respect to any Products within 180 days after providing notification of defect under this subparagraph or, if no notice is provided, within 180 days after such notice was required to be provided under this subparagraph.
- 17) DISCLAIMER OF WARRANTIES.** SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM PATENT INFRINGEMENT. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS AGREEMENT.
- 18) Default.** In the event of any default by Buyer, Seller may exercise any and all rights and remedies provided by law. Buyer shall pay to Seller all reasonable costs of collection, including reasonable attorney's fees, incurred by Seller in collecting any amounts owed by Buyer hereunder.
- 19) LIMITATION OF REMEDIES.** SELLER SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND. THESE LIMITATIONS ARE AGREED ALLOCATIONS OF RISK. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY WITH REGARD TO THE SALE OR USE OF THE PRODUCTS EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS.
- 20) Applicable Law.** The validity, performance and construction of this Agreement shall be governed by the laws of the State of Minnesota, USA.
- 21) Exclusive Jurisdiction.** The state and federal courts of the State of Minnesota have exclusive jurisdiction over any lawsuit or other legal proceeding arising out of this Agreement or relating to the Products. Seller and Buyer hereby consent to the jurisdiction of such courts.
- 22) Export Compliance.** These Products are subject to the United States Export Administration Regulations. Diversion contrary to U.S. law is prohibited.
- 23) Modification and Waiver.** No addition to or modification of this Agreement shall be binding upon Seller, and Seller shall not be deemed to have waived any provision of this Agreement, except pursuant to a written document signed by a duly authorized officer of Seller.
- 24) Severability.** If any provision of this Agreement is held to be unenforceable by final order of any court of competent jurisdiction, that provision shall be severed from this Agreement, and shall not affect the interpretation or enforceability of the remaining provisions of this Agreement.