



## Terms and Conditions of Sale

These Terms and Conditions of Sale ("Terms and Conditions") set forth the terms and conditions that apply to the sale of goods by Seller to Purchaser. "Seller" and "Purchaser" shall be as set forth and identified in Seller's quotation, or if not identified in the quotation, as set forth and identified in Seller's order acknowledgement. These Terms and Conditions, and Seller's accompanying documents, constitute the entire agreement between Purchaser and Seller, and any offer by Seller is expressly limited to these Terms and Conditions. Additionally, acceptance by Seller of any offer made by Purchaser is expressly made conditional on Purchaser's agreeing to these Terms and Conditions. Printed terms on a purchase order or other documents used by Purchaser shall be deemed not to constitute a counter-offer or an objection, specific or general, and such terms are hereby rejected. Notwithstanding anything to the contrary set forth herein, any reference to Purchaser's order quotation or other documentation does not imply acceptance of, any terms, conditions, or instructions contained in such document, and such terms, conditions, or instructions shall not become part of the purchase order unless expressly agreed to by Seller.

**1. Quotations.** Quotations and prices are for the periods of time specifically stated in a written quotation. If no time is stated, then quotations and prices are not firm and are subject to change without notice. Purchase orders based on a quotation are not binding on Seller until accepted in writing by an authorized officer at Seller's office.

**2. Taxes.** An amount equal to any tax or other governmental charge upon the production, sale, occupation of selling, shipment, storage, or use of goods or material, which is now, or may be hereafter, imposed by governmental authorities upon either Purchaser or Seller and which Seller is obligated to pay or collect, shall be added, to the extent attributable to the goods to be sold hereunder, to the price quoted herein and shall be paid by Purchaser.

**3. Terms of Payment.** Except as otherwise provided herein, the price and terms and time of payment are as shown on Seller's quotation or order acknowledgement. At any time and within Seller's absolute discretion, the amount of credit may be withdrawn by Seller and the terms of payment may be changed. Seller reserves the right, notwithstanding any other provision hereof, before or after making any delivery to require payment in cash or to require security for payment. All past due amounts shall bear interest from and after due date at the rate of 18% per annum, or the highest legally allowable rate. If collected through court, probate or bankruptcy proceedings, or if placed in the hands of an attorney for collection, Seller shall be entitled to recover reasonable attorney's fees and court costs. If the financial position of Purchaser becomes, in Seller's sole judgment, weakened, or if Purchaser shall fail to comply with any provisions hereof or fail to make payments in accordance with the terms hereof or of any other agreement between Purchaser and Seller, Seller may, at its sole option and in its sole discretion, defer further shipments or, without waiving any other rights it may have, terminate any agreement between Purchaser and Seller. Seller hereby reserves the right to claim drawback in any and every case where drawback is applicable, and this statement shall provide evidence that such reservation was made.

**4. Force Majeure.** Purchase orders and shipments are subject to pandemics, strikes, labor disputes, acts of God, accidents, machinery breakdown, delays of carriers or suppliers, governmental acts, fires, terrorism, floods, named storms, hurricanes, and any other causes, similar or dissimilar, which are beyond Seller's reasonable control, regardless of whether foreseeable, ("Force Majeure Event"); Seller shall not be liable for any late or delayed delivery, or shortages in quantity, which arises out of, or in connection with, any Force Majeure Event. Seller may, during period of shortage however caused and without liability, prorate its goods among its customers in such manner as Seller may deem fair and practicable.

**5. Delivery.** Unless otherwise agreed in writing, shipments, delivery, and risk of loss and damage shall be made in accordance with Incoterms 2020 Ex Works (Seller's shipping point), as such shipping point is expressly set forth in the Seller quote. Unless otherwise agreed in writing, title to the goods shall pass from Seller to Purchaser upon the earlier to occur: (a) Purchaser (or its nominee) taking care, custody, or control of the goods at the Seller's shipping point, whether or not freight is prepaid by Seller, or (b) Seller invoicing for the goods. Any quoted delivery time is approximate, and the extension of delivery time shall not be cause for termination of any purchase order accepted by Seller. If Seller makes the goods available to Purchaser, and so notifies Purchaser, Purchaser will immediately take delivery. Seller may store goods so made available to, but not accepted by, Purchaser for the account, and at



the sole risk, of the Purchaser and invoice Purchaser for the purchase price of the goods, plus any and all costs associated with making the goods available.

**6. Acceptance and Inspection.** Purchaser shall inspect the goods within eight (8) days of the invoice date (“Inspection Period”). Claims by Purchaser must be made promptly, in writing, within the Inspection Period, and Seller shall be given an opportunity to investigate. All Purchaser claims are deemed waived, and Purchaser shall be deemed to have accepted such goods, if objection is not made in writing within the Inspection Period. Written authorization must be obtained by Purchaser from Seller before Seller can accept returned goods.

**7. Specifications.** Seller may substitute goods on any purchase order accepted by Seller, provided such goods substantially conform to the descriptions on the purchase order. The goods to be sold hereunder are subject to standard manufacturing variations and tolerances.

**8. Limited Warranty.** **THE WARRANTIES CONTAINED IN THIS PARAGRAPH 8 ARE THE ONLY WARRANTIES MADE BY SELLER AND CAN ONLY BE AMENDED BY WRITTEN INSTRUMENT SIGNED BY AN OFFICER OF SELLER. THE FOLLOWING ARE IN LIEU OF ALL WARRANTIES, AND SELLER HEREBY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, FAILURE OF AN ESSENTIAL PURPOSE, OR FAILURE OF CONFORMITY TO MODELS OR SAMPLES OF MATERIAL, OR ANY OTHER WARRANTY ARISING BY TRADE USAGE, COURSE OF DEALING, OR COURSE OF PERFORMANCE.** At the time of shipment Seller will have title to the goods free and clear of any and all liens and encumbrances. To the extent Seller is permitted by its contracts with its suppliers, Seller endeavors to assign to Purchaser any rights Seller may have under any warranty from its suppliers. It is understood that any descriptions, statements, technical advice, or service rendered in connection with the purchase order, installation, or use of goods described hereby are opinions and not warranties; **SELLER MAKES NO WARRANTY AS TO, AND ASSUMES NO OBLIGATION OR LIABILITY FOR, SUCH DESCRIPTIONS, STATEMENTS, ADVICE, SERVICE, OR THE RESULTS OBTAINED.** If any goods fail to conform to the warranty contained in this Paragraph 8, Seller's sole and exclusive liability shall be (at Seller's sole option and absolute discretion) to replace the goods, or credit Purchaser's account for any such goods which are returned by Purchaser during the applicable warranty period set forth above, provided that (i) Seller is promptly noticed in writing upon discovery by Purchaser that such goods failed to conform to the warranties contained in this Paragraph 8, with a detailed explanation of any alleged failure and (ii) such goods are returned to Seller, Delivered Duty Paid (Seller's designated delivery point).

**9. Limitation of Liability.** Notwithstanding anything contained herein to the contrary, Seller's maximum liability shall not, in any event, exceed the difference between the total contract price specified in the purchase order, less the reasonable and customary purchase price for any replacement items. **FURTHERMORE, IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER OR ANY THIRD PARTY FOR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT BE LIMITED TO, COSTS OF REMOVAL AND REINSTALLATION OF ITEMS, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF PRODUCT, INTERRUPTION OF BUSINESS, COST OF CAPITAL, LOSS OF USE, OR ANY INJURY TO PERSON OR PROPERTY, OR FOR ANY POLLUTION OR CONTAMINATION, COST OF CONTAINMENT, CLEANUP, OR DISPOSAL. THE FOREGOING LIMITATIONS SHALL APPLY REGARDLESS OF HOW SUCH INJURY OR DAMAGES ARISE, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE, AND REGARDLESS OF HOW SAME ARE OR WERE CAUSED, INCLUDING BUT NOT LIMITED TO, THE NEGLIGENCE (ACTIVE, PASSIVE, JOINT, CONCURRENT, OR GROSS) OR STRICT LIABILITY OF, OR BREACH OF WARRANTY, DUTY, OR CONTRACT BY SELLER OR ANY OF SELLER'S RELATED OR AFFILIATED PARTIES, OR ANY OF THEIR RESPECTIVE OWNERS, DIRECTORS, MANAGERS, OFFICERS, EMPLOYEES, AGENTS, OR INVITEES, (COLLECTIVELY “RELATED PARTIES”) OR ANY OTHER THEORY OF LEGAL LIABILITY.**

**10. Indemnity; Insurance.** Purchaser hereby agrees to release, indemnify, defend, and hold harmless Seller and its Related Parties from and against any and all losses, causes of action, liabilities, claims, demands, damages, judgements, awards, costs, and expenses (including but not limited to attorney's fees and expenses, and witness



fees and expenses) (collectively “Claims”) arising out of, in connection with, or related to any of Seller’s goods, purchase order, or these Terms and Conditions, **REGARDLESS OF HOW SUCH CLAIMS ARISE AND REGARDLESS OF THE CAUSE, INCLUDING WITHOUT LIMITATION, THE NEGLIGENCE (ACTIVE, PASSIVE, JOINT, OR CONCURRENT) OR STRICT LIABILITY OF, OR BREACH OF WARRANTY, DUTY, OR CONTRACT BY SELLER OR ITS RELATED PARTIES, OR ANY OTHER THEORY OF LEGAL LIABILITY.** Purchaser agrees to maintain adequate insurance to support its obligations under the purchase order, and shall furnish to Seller certificates of insurance to evidence that adequate insurance is in place and is in full force and effect.

**11. Cancellation.** Special Items, and purchase orders for same, are not subject to cancellation or return. Special Items are defined as (i) any goods which are machined or altered in any way from their original form, (ii) goods which have internal lining or external coating, (iii) goods which are manufactured or purchased specifically for Purchaser, or (iv) any other goods which are not a Stocking Item. “Stocking Item” is defined as a good which is routinely held in inventory by Seller. Cancellation of any purchase order for, or return of any, Stocking Item is subject to a minimum of a 15% restocking charge, provided however that any purchase order for Stocking Item is only cancelable within 90 days of the purchase order.

**12. Compliance with Export Restrictions.** Seller’s goods and information may be subject to the export control laws of the United States and other countries where such goods are sold. Purchaser acknowledges that it will comply with all such laws and regulations, and obtain all licenses to export, re-export, or import Seller’s goods and information as may be required. Purchaser will not export or re-export any of Seller’s goods, information, or related technical data: (i) for any prohibited end uses; (ii) to any prohibited destinations or end destinations, or (iii) to any entities or individuals that are presently on any denied or prohibited party list. Diversion contrary to U.S. law is prohibited. Purchaser shall be responsible for obtaining any necessary end use statement required for Seller to deliver its goods. Seller shall not be liable for any failure to provide goods as a result of failure to obtain, or cancellation of, an export or re-export license. Seller reserves the right to not ship goods and terminate the purchase order in its entirety, without liability to Purchaser, if Seller has a good faith basis for believing Purchaser or any of its related parties has violated, or intends to violate, any export laws or regulations.

**13. Compliance with Anti-Corruption Laws.** Purchaser represents and warrants that it shall take no action, directly or indirectly, that would constitute a violation of the United States Foreign Corrupt Practices Act or any other applicable anti-bribery or anti-corruption law, convention, or regulation (collectively “anti-corruption laws”). Purchaser acknowledges and confirms that it and its related parties are familiar with anti-corruption laws. Seller reserves the right to terminate the purchase order in its entirety, without liability to Purchaser, if Seller has a good faith basis for believing Purchaser or any of its related parties has violated or intends to violate any anti-corruption laws.

**14. Governing Law; Dispute Resolution.** The sale of goods by Seller to Purchaser shall be governed by the laws of the State of Texas, excluding its conflicts laws. The UN Convention on the International Sale of Goods (“CISG”) shall not apply to any purchase order, and the parties hereby exclude the application of CISG. The parties hereto submit to the exclusive jurisdiction of the Texas courts located in Houston, Harris County, Texas. **EACH PARTY HERETO HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE PURCHASE ORDER OR THESE TERMS AND CONDITIONS.** In connection with any litigation, or similar proceeding arising pursuant to or under the purchase order or these Terms and Conditions, the parties agree to enter into a discovery control plan under the Texas Rules of Civil Procedure meeting the requirements of this Section.

**15. Notices.** All notices required or permitted to be given hereunder must be in writing and shall be deemed effectively given when received or, if not received, when deposited with the post office as certified mail, return receipt requested, to the address of the party as contained in the purchase order, or as otherwise provided by either party upon notice to the other party. Email shall constitute a writing and shall be deemed received when the giver of notice receives a delivery receipt confirming the message was delivered to the recipient’s email server, or similar receipt.



**16. Assignment.** Purchaser shall not assign its rights or obligations hereunder without the prior written consent of Seller, which consent shall be within Seller's sole discretion. Any attempted assignment in contravention of the foregoing shall be void and of no force or effect.

**17. Termination.** In addition to any other remedies available to Seller at law or in equity, Seller may revoke any quotation or terminate any purchase order in the event that: (a) Purchaser fails to perform its obligations under or otherwise breaches any provisions of the purchase order or any other contract between Purchaser and Seller or any of their respective affiliates; (b) Purchaser ceases to carry on its business substantially as such business is conducted on the date of the quotation or purchase order; (c) Purchaser is the subject of creditor protection of bankruptcy, reorganization, liquidation receivership, or similar proceedings; (d) Purchaser is unable to pay its debts as they become due; (e) any term, condition, or provision of these Terms and Conditions, any purchase order, or any other contract between the Purchaser and Seller becomes invalid or illegal under any applicable law, rule, or regulation; or (f) a Force Majeure Event continues for a period of more than forty five (45) days.

**18. Waivers; Modifications; Other Provisions.** No representations or statements of any kind made by any representative of Seller, which are not stated herein, shall be binding on Seller. No addition to or modification of any provision upon the face or reverse of the order acknowledgement or any other Seller document shall be binding upon Seller unless made in writing and signed by a duly authorized representative of Seller located in Houston, Texas. Failure of either party to exercise any right or remedy to which they are entitled shall not constitute a waiver thereof and shall not cause a diminution of the obligations under these Terms and Conditions or any agreement. No waiver of any of the provisions of this or any agreement shall be effective unless it is expressly stated to be such and signed by both parties. The fact that a provision contained herein is held invalid, illegal or unenforceable by a court of competent jurisdiction will not affect the other provisions hereof. No provision of these Terms and Conditions may be construed against Seller as the drafting party. The term "including" means "including without limitation." The term "days" means calendar days unless otherwise expressly stated.