

## TERMS AND CONDITIONS

1. **Acceptance:** No acceptance can be made by Seller except by the issuance of its Order Acknowledgment form. Pursuant to UCC § 2-207(2) (a) acceptance by Seller of Buyer's order is expressly made conditional on assent to these Terms and Conditions, either by written acknowledgment or by conduct by Buyer that recognizes the existence of a contract with respect to the goods described on Seller's Order Acknowledgment. These Terms and Conditions also serve as notice of Seller's objection to and rejection of any terms and conditions of purchase or sale included in Buyer's purchase order or other writing that are different from or additional to these Terms and Conditions. Any terms and conditions contained in Buyer's purchase order or other writing that represents Buyer's offer are not a part of the agreement and do not apply.
2. **Entire Agreement:** These Terms and Conditions of Sale, and any descriptions on the face of Seller's Order Acknowledgment form, constitute a complete and exclusive statement of the terms and conditions of the sale of the goods by Seller to Buyer. There are no other promises, conditions, understandings, representations or warranties. All provisions are severable.
3. **Modification:** Except as provided by paragraph 19, below, the agreement may be modified only in a writing signed by Seller. No waiver of any right will be effective against Seller unless supported by consideration and expressly stated in a writing signed by Seller. The failure of Seller to enforce any right will not be construed as a waiver of Seller's right to performance in the future.
4. **Assignment:** Buyer may not assign any rights due or delegate any performance owed under the agreement without the written consent of Seller.
5. **Price:** The price to be paid by Buyer will be Seller's price in effect on the day shipment is made. Although Seller anticipates supplying the exact quantity ordered, Seller reserves the right to ship, and Buyer shall accept and pay for, up to 10% more or 10% less than the quantity provided to be shipped by the agreement and consider the order complete. In the event of any such overshipment or undershipment, an appropriate adjustment in the total quantity charge will be made.
6. **Delivery:** Unless stated to the contrary on the face of Seller's Order Acknowledgment, Seller's obligation is to deliver the goods F.O.B. place of manufacture. Risk of loss passes to Buyer at the moment of delivery. Delivery dates appearing on Seller's Order Acknowledgment, or given to Buyer in any other manner, are approximate. Seller will not be liable for failure to make delivery or delay in making delivery that directly or indirectly results from or is contributed to by any cause beyond Seller's reasonable control, including but not limited to: fire, flood or other act of God; strikes or other labor disagreement; accidents; acts or requirements of government or civil authorities; riot, war, embargo; shortages of labor, material or energy; delays in transportation; failures or delays by subcontractors or suppliers; or necessary changes in production or shipment schedules. In the event of such delay, Seller will have the right to apportion available supplies among its customers, including Buyer, in any manner that Seller decides to be fair and reasonable, and any delivery date will be postponed for a period of time equal to the delay. If shipments are held at Seller's premises at request of Buyer, invoices will be rendered for all completed goods as though actually shipped, and Buyer will also pay Seller for all extra expenses incurred.
7. **Installment Deliveries:** Seller, at its option, may deliver the goods sold to Buyer in lots of any size that Seller determines to be reasonable. The delivery of nonconforming goods or a default of any nature with respect to one or more installment deliveries will not substantially impair the value of the agreement as a whole and will not constitute a breach of the agreement as a whole.
8. **Warranty:** If Buyer has not provided specifications, Seller warrants that the goods when delivered (F.O.B. place of manufacture) will meet Seller's Inspection Quality Levels for goods of the type sold in effect on the day of delivery unless Buyer has received a sample or model, in which case Seller's warranty will be satisfied if the goods conform either to the sample or model or to the Seller's Inspection Quality Levels. If Buyer has provided specifications, Seller warrants that the goods will conform to the specifications unless Buyer has received a sample or model, in which case Seller's warranty will be satisfied if the goods conform either to the sample or model or to Buyer's specifications. The supply of a sample or model by Seller does not create any warranty that the goods will conform to the sample or model. Seller's warranty will apply only to the goods found by Seller to be nonconforming within one (1) year from the day of delivery and for which a claim is made by Buyer in accordance with paragraph 12 of these Terms and Conditions. Seller's warranty will not extend to any goods that have been subjected to: (a) improper installation or storage; (b) accident, damage, abuse or misuse; (c) abnormal or unusual operating conditions or applications; (d) operating conditions or applications above the rated capacity of the goods; (e) operating conditions or applications not made known to Seller prior to the date of the agreement; or (f) a purpose or application in any way different from that for which they were designed. Any description of the goods made by Seller does not create an express warranty different from that provided in this paragraph 8.
9. **EXCLUSION OF WARRANTIES:** THE WARRANTY STATED IN PARAGRAPH 8 IS THE ONLY WARRANTY MADE BY SELLER WITH RESPECT TO THE GOODS SOLD UNDER THIS AGREEMENT. THERE IS NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Certification by Seller by separate writing as to compliance with specifications, blueprints, part numbers, quantity, tests or otherwise will not create any warranty by or other obligation of Seller.
10. **LIMITATION OF REMEDIES:** IN THE EVENT OF SELLER'S LIABILITY, WHETHER BASED ON CONTRACT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, BUYER'S SOLE AND EXCLUSIVE REMEDY WILL BE LIMITED TO, AT SELLER'S OPTION, THE REPAIR OR REPLACEMENT (F.O.B. SELLER'S PLANT) BY SELLER OF ANY NONCONFORMING GOODS FOR WHICH CLAIM IS MADE BY BUYER IN ACCORDANCE WITH PARAGRAPH 12 OF THESE TERMS AND CONDITIONS, OR TO THE REPAYMENT OF THE PORTION OF THE PURCHASE PRICE PAID BY THE BUYER ATTRIBUTABLE TO THE NONCONFORMING ITEM. SELLER WILL NOT BE LIABLE FOR ANY OTHER DAMAGES, EITHER DIRECT, INCIDENTAL OR CONSEQUENTIAL (AS DEFINED IN UCC § 2-715) OR OTHERWISE.
11. **Inspection and Waiver of Defects:** Buyer must inspect or test all goods upon receipt. Buyer waives any right to assert any claim against Seller arising from any nonconformity which would have been observable on reasonable inspection or testing at the time of delivery, unless Seller is advised of the nonconformity within ten (10) days after receipt of the nonconforming goods by Buyer, a period which the parties agree is reasonable for this purpose.
12. **Claims:** All claims under Seller's warranty must be made within 30 days of the discovery of the defect. Buyer must obtain shipping instructions from Seller prior to returning the material, which must be returned at Buyer's expense in accordance with Seller's instructions.
13. **Payment; Seller's Insecurity:** Terms of payment are effective from the actual date of invoice. If complete payment is not made when due, the unpaid balance will be subject to a finance charge of one percent (1%) of the unpaid balance per month. The amount of all finance charges will be added to the balance owed to Seller. If Buyer fails to pay any invoice when due, or if the financial condition or credit of Buyer becomes unsatisfactory to Seller, Seller, at its option and without affecting any other lawful remedy, may change the terms of payment or suspend work and further deliveries, or both, until Buyer provides security or other assurances of performance as demanded by Seller. The failure or refusal of Buyer to provide assurances within ten (10) days after a request by Seller will constitute a repudiation of the entire contract.
14. **Solvency of Buyer:** By submitting any purchase order or other writing, either prior or subsequent to the date of Seller's Order Acknowledgment, Buyer represents that it is solvent for the purposes of UCC § 2-702, and that it is not insolvent as defined by UCC § 1-201(23). Buyer will notify Seller promptly if Buyer becomes insolvent. The transmission of any writing by Buyer to Seller during the course of performance of the agreement will be understood to constitute a written representation of continued solvency for the purposes of UCC § 2-702(2).
15. **Title:** Title to any goods sold will remain vested in Seller until payment in full of all amounts owed to Seller under the agreement, or under any other agreement between Seller and Buyer. In the event of Buyer's default in payment or any other breach of the agreement, Seller or its legal representative may enter Buyer's premises and may dismantle, repossess and remove any goods sold under the agreement, including goods that might have become fixtures. Buyer will not hold Seller liable for any action taken pursuant to this paragraph. The rights of Seller provided by this paragraph will be in addition to any other rights under applicable law, all of which will be cumulative.
16. **Seller's Remedies:** In addition to any remedies provided in these Terms and Conditions, Seller will be entitled to all remedies provided under applicable law. All remedies will be cumulative. In the event of any breach by Buyer, Seller will recover any special, incidental or consequential damages arising from Buyer's breach.
17. **Indemnification:** Buyer will protect, defend and hold Seller harmless from all claims, expenses, loss or damage resulting from alleged or actual infringement of patents, trademarks or other proprietary rights of third persons that result from Seller's compliance with Buyer's designs, specifications or instructions. Buyer also assumes all risk and liability for loss, damage or injury to third persons or to property arising out of the use or possession of the goods sold by Seller to Buyer, and Buyer agrees to protect, defend and hold Seller harmless from any such claims by third persons. Buyer will also hold Seller harmless against liability or obligation, whether in contract, tort (including but not limited to negligence and strict liability) or otherwise with respect to any expense, loss or damage to Buyer or any other person resulting from goods subjected to: (a) improper installation or storage; (b) accident, damage, abuse or misuse; (c) abnormal operating conditions or applications; (d) operating conditions or applications above the rated capacity of the goods; (e) operating conditions or applications not made known to or contemplated by Seller at the time of the agreement; or (f) a purpose or application other than or varying in any degree from that for which the goods were designed.
18. **Tool Charges:** Charges by the Seller for dies, tools or gauges do not convey any right of ownership or possession to Buyer. Tool charges relate to tool use only, and do not reflect a purchase of the tool by Buyer.
19. **Cancellation by Buyer:** Buyer may cancel its order, or any part of it, by sending written notice of cancellation to Seller and by paying to Seller a reasonable cancellation fee. The reasonable cancellation fee will be determined by Seller and will reflect, among other factors, the expenses already incurred and commitments made by Seller, sales and administrative overhead, and profits. If Buyer has received any price discounts due to the quantity of goods ordered by Buyer, but has not purchased the applicable quantity at the time of cancellation, Buyer must also pay to Seller the difference between the price Buyer paid and the price it would have paid had Seller's price been based on the quantity actually purchased.
20. **Taxes:** Unless otherwise stated, Seller's prices do not include any sales, use, excise, value added or other tax. All present or future tax obligations are the responsibility of and must be paid by Buyer. If Buyer claims that the goods sold are exempt from any particular tax, Buyer must provide Seller with a tax exemption certificate acceptable to the taxing authorities.
21. **Clerical Errors:** Seller has the right to correct any stenographic or clerical errors in any of the writings issued by it.
22. **Limitation of Actions:** Any cause of action arising from the agreement or the breach of it must be commenced within two years after the cause of action accrues.
23. **Governing Law:** The interpretation, construction and validity of the agreement is to be governed by the law of the state from which Seller's Order Acknowledgment is issued in force at the time of agreement. References to the "UCC" are to the Uniform Commercial Code as adopted by that state.
24. **Consent to Suit:** Buyer consents to the jurisdiction of the courts of the state from which Seller's Order Acknowledgment issues, and the federal courts located there, with respect to any action brought in connection with the agreement.