



## TERMS AND CONDITIONS OF SALE

### Revision A, April 25, 2012

#### 1. Acceptance.

Unless acceptance in writing occurs within the date specified by Seller herein, this quotation shall automatically expire. This quotation may not be accepted in part without Seller's written consent.

No quotation becomes a binding contract until Seller dispatches an acknowledgement of order to Buyer.

#### 2. Prices.

Prices of Articles quoted to Buyer (the "Articles") apply only to the quantity and to the delivery schedule specified. Prices are F.O.B. Seller's manufacturing plant or branch unless Seller otherwise specifies. (Where the contract, is to be performed in the United Kingdom prices are ex-works.) Additional services are subject to charge at Seller's standard rates. Seller reserves the right to apply a minimum order charge to all orders. Payment by Buyer shall not prejudice claims on account of omissions or shortages in shipment, but any such claim shall be deemed waived unless submitted within 30 days after receipt of shipment by Buyer. Prices of accessory components not guaranteed to Seller by the manufacturer are subject to adjustment to reflect costs of accessory components in effect at the time of shipment. Unless otherwise stated in Seller's quotation, prices include ordinary packing only.

#### 3. Delivery.

Unless Seller otherwise specifies, delivery will be made F.O.B. Seller's manufacturing plant or branch. Title and risk of loss shall pass to Buyer at Seller's plant or branch except where transportation from Seller's plant or branch is by Seller's private carriage, in which case Seller will retain title and risk of loss until the first occurring of (1) Delivery by Seller to a common carrier for continuation of transportation, or (2) Delivery to Buyer's designated destination point. Seller shall select means of transportation and route of shipments when specific instructions are not included with Buyer's order. Freight discounts by common carriers resulting from Seller's aggregation of shipments shall accrue to Seller. Seller shall have no liability whatsoever, nor shall this order be subject to cancellation, for delay in delivery due to act of God or civil or military authority, fire, labor disturbance, war, insurrection or riot, failure of or delay in transportation, unusually severe weather, default of a supplier or subcontractor or due to any other cause beyond Seller's reasonable control. In the event of delay for any such cause, the specified delivery date shall be extended for a reasonable length of time, but not less than the period of delay. If Buyer delays shipment at anytime, payments are to be made as specified in the quotation and the Articles shall be held at Buyer's risk and subject to reasonable storage fees.

#### 4. Terms of Payment.

Subject to credit approval by Seller, net 30 days unless otherwise specified in the quotation. Where delivery of goods is extended *over* a period of time Seller may request prepayment in accordance with the amount of goods delivered or work done.

#### 5. Partial Shipments.

Seller reserves the right to make and to invoice for partial shipments of completed articles.

#### 6. Warranty.

Seller warrants the articles sold hereunder to be free from defects in material and workmanship and to conform to applicable specifications set forth in the quotation.

THESE EXPRESS WARRANTIES ARE THE SOLE WARRANTIES OF SELLER AND ANY OTHER WARRANTIES. EXPRESS, IMPLIED IN LAW OR IMPLIED IN FACT (INCLUDING ANY WARRANTY FOR MERCHANTABILITY OR FITNESS FOR PURPOSE), ARE HEREBY SPECIFICALLY EXCLUDED.

Seller's sole obligation under its warranty shall be, at its option, to repair or replace or repay the price of any article or part thereof which is proved to be other than as warranted. Seller's obligations as set forth in the next and preceding sentence(s) shall be the limit of Buyer's remedies in the event of breach of warranty. Except as Seller may agree in writing with regard to each specific incident of breach of warranty, Buyer shall have no right to recover "incidental damages" or for labor charges, adjustments or repairs or any other work.

All warranties set forth above shall expire 12 months from the date the article is shipped by Seller to the Original Buyer. Notice of claimed breach of warranty must be given within the applicable warranty period.

No allowances shall be made by Seller for any transportation, labor charges or parts, adjustments or repairs, or any other work, unless such charges are authorized in advance by Seller. Seller shall in no event be liable for special or consequential damages.

If an article within the warranty period is claimed to be defective in material or workmanship or not to conform to specifications, Seller, upon notice promptly and timely given, will either examine the article at its site, or issue shipping instructions for return to Seller. The warranties shall not extend to any articles or parts thereof which have been installed, used or serviced, otherwise than in conformity with Seller's applicable specifications, manuals, bulletins or instructions, or, if none, which have been subjected to improper installation, misuse or neglect. The warranties shall not apply to any articles or parts thereof furnished by Buyer or acquired from others at Buyer's request *and/or* to Buyer's specifications. The foregoing limitations on Seller's liability in the event of breach of warranty shall also be the absolute limit of Seller's liability in the event of Seller's negligence in manufacture, installation or otherwise, with regard to the articles covered hereby, and at the expiration of the period as above stated with regard to warranties, all such liabilities shall terminate.

#### 7. Patents.

Seller will defend any suit or proceeding against Buyer, based on a claim that any article or part thereof furnished hereunder constitutes an infringement of any patent, registered design, trademark or trade name protected in the United States or in the case of contracts to be performed in the United Kingdom, those patents, registered designs, trademarks or trade names, protected in the United Kingdom. Seller shall not be required to defend or indemnify Buyer unless Seller is notified promptly in writing and given authority, information and assistance (at Seller's expense) for the defense or settlement of the same, and Seller will pay all damages and costs which by final judgment (or by settlement agreed to by Seller) awarded therein against Buyer, provided, however, that no obligation or liability shall result from the foregoing provision if (a) any such article or part, is manufactured in accordance with any design, drawing or specification that is furnished to Seller by or for Buyer and that is not based upon Seller's design, drawing or specification, or (b) such infringement or alleged infringement arises out of or is based upon the use of the article with another article or material or in a particular manner not specified by Seller. If, in a suit or proceeding in respect of which Seller is liable, as above provided, the article or part is held to constitute infringement and the use thereof is enjoined (or Seller consents to the non-use thereof), Seller will, at Seller's expense, at Seller's option, procure for Buyer the right to continue using such article or part, or replace it.



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with a non-infringing article or part, or modify it so that it becomes non-infringing, or refund the purchase price and the transportation costs upon return to Seller of the infringing article or part. The foregoing provisions set forth Seller's entire liability for, or resulting from an infringement or claim thereof.

### 8. Taxes.

Prices do not include any present or future federal, state or local sales, use, value added, excise, manufacturing, processing or importation tax, tariff levy, import or export duty, or any other tax or charge, that is or may be imposed on the articles or services covered hereby or on subsidiary articles or material incorporated therein. Any such taxes or charges are the responsibility of buyer and will be added to the invoices as separate items, unless appropriate exemption certificates are furnished to Seller.

### 9. Compliance with Laws.

Seller to the best of its knowledge and belief is complying with all laws, orders, and regulations applicable to the manufacturer of the articles ordered. Seller has no duty to insure and has not advised Buyer on compliance with any laws, orders, or regulations applicable to the use of the Articles.

### 10. Termination.

Orders are not subject to termination, complete or partial, without Seller's written consent. Seller will defer manufacture or delivery of any articles only if and to the extent agreed to in writing. Any reduction in quantities ordered shall constitute a partial termination subject to this clause. If Seller consents to termination, settlement will be made on the following basis: Buyer Will pay to Seller, upon delivery to Buyer, the full purchase price of all articles completed at the time Seller agrees to terminate and, if Seller elects to complete any part or all of the articles scheduled for delivery within 30 days from such time, the full purchase price of such articles so completed, and Buyer will further pay to Seller a percentage of the purchase price of all other articles equivalent to the percentage of completion thereof as determined by Seller's normal cost accounting methods. Buyer will also pay the full unamortized costs of materials, dies, tools, patterns and fixtures, made or contracted specifically for Buyer's order. Invoices for all termination charges are payable promptly upon presentation. If within 60 days from the presentation of such invoice Buyer does not instruct Seller as to the disposition of the material, etc., arising from the termination. Seller may also pay the reasonable costs and expenses incurred by Seller in making a settlement hereunder and in protecting property in which Buyer has an interest. Where United States Government contracts are involved termination shall be in accordance with the appropriate Federal Acquisition Regulations.

### 11. Default.

Where the Seller discovers Buyer to be insolvent, or commit any act of bankruptcy, or make an assignment for the benefit of creditors, or if Buyer is a foreign company, and arrangement or events occur under the law of the country or domicile which shall have a similar effect to those hereinbefore described, or, where Buyer wrongfully rejects or revokes acceptance of goods or fails to make the payment due on or before delivery or repudiates with respect to a part or the whole, Seller's remedies for contracts performed in the United States shall be as set forth in Sections 2-702 through 2-710, both inclusive, of the Uniform Commercial Code. With respect to contracts performed in the United Kingdom, Seller may: (1) determine all contracts on hand at the time by notice in writing without obligation to the Seller, (2) claim all monies due to it under this contract to supply the goods and carry out work and all compensation due to it for breach of the Contract and such monies will become payable immediately upon demand, (3) recover any goods from the Buyer's premises for which payment has not been made in full, (4) without prejudice the preceding remedies, demand security prior to any future deliveries either by payment in cash or by a bank guarantee notwithstanding any terms of payment previously agreed, and in the event that Buyer is unable to provide such security Seller shall be entitled to rescind the contract, without liability.

### 12. Confidentiality.

Drawings, specifications, and other information submitted with a Quotation marked as proprietary are confidential to Seller and must not be disclosed to any other party. Such items remain the property of Seller and must be returned to Seller if its Quotation is not accepted by Buyer. Such drawings, specifications and other information are for evaluation purposes only and shall not be deemed to form part of the Contract.

### 13. Indemnification.

Seller (including its parent, affiliates, or subsidiaries) will not have any liability for liquidated damages, or for collateral, indirect, consequential, or special damages, including loss of profits or loss of use, and the aggregate total liability of any damages under this Order shall in no event exceed its contract price of the individual Product giving rise to the claim (or claims) of liability, whether resulting from delays in delivery or performance, breach of warranty, claims of negligent manufacturing, patent or copyright infringement, or otherwise. Buyer agrees to indemnify and hold harmless Seller from all claims by third parties which extend beyond the foregoing limitations of Seller's liability.

### 14. General.

The provisions of the quotation or acknowledgment form to which this page is attached, including all of the terms and conditions of this page, shall, unless otherwise specifically agreed to by Seller in writing, be the sole terms and conditions governing any purchases and sale contract entered into pursuant to such quotation or acknowledgement. Commencement of any work or service shall not be construed as constituting acceptance on the part of Seller or any conflicting terms and conditions.

NO MODIFICATION OF OR ADDITION TO OR WAIVER OF ANY OF THE TERMS AND CONDITIONS HEREOF WILL BE EFFECTIVE UNLESS AGREED TO IN WRITING BY SELLER.