



## Conditions of Sale

**1. Priority of Terms and Conditions.** Unless otherwise agreed to in writing by Seller, the following terms and conditions are part of Seller's quotation and shall govern any resulting order. No term or condition stated in any Buyer solicitation, purchase order or contract shall become part of an order or shall otherwise be binding on Seller unless expressly agreed to in writing by Seller. Seller's failure to object to any term or condition contained in any customer communication shall not be construed as consent to such terms or conditions nor be deemed a waiver of any term or condition set forth herein. All international shipping terms specified herein shall be construed in accordance with the 1990 INCOTERMS published by the International Chamber of Commerce.

**2. Commercial Contract.** All sales are made in strict accordance with these commercial conditions and prices, and shall not be subject to the procurement regulations of the US government or of any state, local or foreign government unless agreed to in writing by Seller.

**3. Quotation, Prices and Taxes.** Quotations are valid for a period of 30 days. Quotations are available for other specific time periods upon request. Unless specified otherwise, prices do not include retailer's occupation, sales, use, privilege, value-added tax, excise or any other tax (except for gross income tax), duty, tariff or assessment which may arise from the sale of the products or services quoted. Such amounts shall be added to the contract price in the event Seller becomes liable to pay or bear the burden thereof. A request for exemption from any such tax, duty or assessment must be accompanied by a properly executed exemption certificate prior to shipment.

**4. Shipments and Risk of Loss.** Products will be packed, packaged and crated in accordance with Seller's standard commercial practices. Export packing is available upon request at an additional charge. Orders delivered within the United States are shipped F.O.B. Seller's Factory, Freight Prepaid and Billed. Orders delivered outside the United States are shipped Ex Works, Seller's Factory, unless otherwise requested. Title to and risk of loss of the products shall pass to Buyer upon delivery to the common carrier. Seller may make partial shipments and submit invoices for such partial shipments in accordance with the payment terms set forth below. International shipments are contingent upon receipt of required United States export licenses.

**5. Terms of Payment.** Payment for orders delivered in the United States is due within 30 days from the invoice date, unless otherwise specified by Seller. Orders delivered outside the United States shall be paid by an irrevocable letter of credit or by cash in advance. Orders accepted on other terms shall be due in strict accordance with the terms quoted. Past due payments are subject to a service charge of 1.5% per month (18% annual) on the unpaid balance or the maximum legal rate permitted by state law, whichever is lower. Seller reserves the right, in its sole discretion, to reject Buyer purchase orders or to withhold shipment of Buyer orders if Buyer's account is in arrears. Buyer is responsible to Seller for all reasonable attorney fees, court costs, and/or collection agency fees should Buyer default on payment. Buyer acknowledges that Seller retains full security interest in all products until Buyer renders payment in full and upon request, agrees to execute any documents necessary to perfect Seller's security interest.

**6. Shipping Reel and Skid Deposits.** Buyer's use of certain reels and skids requires a deposit. The deposit will be refunded if Buyer returns the reels and skids in good condition, reasonable wear and tear accepted, to Seller's factory within one year after the original shipment date.

**7. Delivery.** Seller shall make every reasonable effort to meet Buyer's requested delivery and performance dates, but shall not be liable for delays due to causes beyond its control, including, but not limited to, acts of God, acts of public enemy, acts of the United States, its States, Territories, or any political subdivision of the foregoing acts of the Buyer, its employees, agents, or subcontractors, fires, floods, strikes, freight embargoes, unusually severe weather conditions, inadequate transportation facilities, or any cause whatsoever beyond the control and without the fault or negligence of Seller, its suppliers or subcontractors, whether similar to or dissimilar from the causes herein enumerated, in the event of any such delay. Seller shall be given a reasonable extension of time within which to complete performance.

**8. Final Acceptance.** Buyer's express acceptance of the products or Buyer's possession, use or beneficial use of the products for more than 30 days after delivery shall constitute final acceptance and, except as provided in Seller's warranty below, shall waive all Buyer claims of nonconformity of the products.

**9. Limitation of Liability.** Seller shall not be liable to Buyer for any indirect, exemplary, incidental, special or consequential damages arising from any action for breach of contract, breach of warranty, or for any action based on the tortious act or omissions of Seller. Buyer acknowledges that such lack of liability includes, but is not limited to, loss of actual or anticipated revenue or profits, loss of actual or anticipated value of the business to Buyer, or damage to the business reputation or goodwill of Buyer.

**10. Assignment.** Seller reserves the right to assign, delegate or subcontract any order, in whole or in part, to its subsidiaries or affiliates without the prior consent of Buyer. Seller's subsidiaries and affiliates shall fully comply with Seller's performance obligations and shall be entitled to assert its rights against the Buyer.

**11. Certificate of Compliance.** All products are inspected in accordance with Seller's current product specifications and quality control procedures and are accompanied by a Certificate of Compliance upon shipment. Products manufactured in accordance with Buyer specifications will not be issued a Certificate of Compliance unless requested by Buyer at the time of order placement.

**12. Inspections and Equipment Testing.** Prices do not include source inspections or product testing and the cost of performing any such tests shall be added to the purchase order price.

**13. Governing Law.** An order is valid only when accepted in writing at Seller's main office, 5130 Commercial Drive, Suite H, Melbourne, FL. The contract arising therefrom shall be deemed to have been entered into in the State of Florida and its interpretation, construction, and the remedies for its enforcement shall be governed in accordance with Florida law.

**14. Specification Changes.** Seller's product specifications are subject to change without notice to Buyer, provided such changes do not materially affect performance. Title to all materials and information provided by Seller to Buyer, including, but not limited to, specifications, drawings, engineering data, and technical designs, shall be treated as confidential by Seller and shall not be disclosed to any third party without the written consent of the Buyer.

**15. Warranty.** Seller warrants that its products are transferred rightfully and with good title; that its products are free from any lawful security interest or other lien or encumbrance unknown to Buyer, and that for a period of one year from the date of installation or fifteen months from the date of original shipment, whichever period expires first, such products will be free from defects in material and workmanship which arise under proper and normal use and service. Buyer's exclusive remedy hereunder is limited to Seller's repair or replacement (either at its plant or at such other place as may be agreed upon between Seller and Buyer) of such defects at no cost to Buyer. Buyer shall pay transportation costs in connection with the return of products to Seller's plant or designated facility. The provisions of this warranty shall be applicable with respect to any product, which Seller repairs or replaces pursuant to it. SELLER MAKES NO WARRANTY TO EXPRESS OR IMPLIED, OTHER THAN AS STATED ABOVE. EXPRESSLY EXCLUDED ARE THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR PURPOSE. THE FOREGOING SHALL CONSTITUTE ALL OF SELLER'S LIABILITY UNDER THIS WARRANTY WITH RESPECT TO THE PRODUCTS. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, INSTALLATION COSTS, LOST REVENUE OR PROFITS, OR ANY OTHER COSTS OF ANY NATURE AS A RESULT OF THE USE OF PRODUCTS MANUFACTURED BY THE SELLER, WHETHER USED IN ACCORDANCE WITH INSTRUCTIONS OR NOT, UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY TO BUYER UNDER THIS WARRANTY EXCEED THE ACTUAL SALES PRICE OF THE PRODUCTS PROVIDED HEREUNDER. No representative is authorized to assume for Seller any other liability in connection with the products.

**16. Patent Infringement Assurance.** Seller shall, at its own expense, settle or defend any claim, suit or action, which may be brought against Buyer for infringement of United States patents arising out of Buyer's use of Seller's products or services. Seller shall pay any final judgment for damages and costs which may be awarded against Buyer, provided that Buyer promptly notifies Seller of any such claim, suit or action and affords Seller complete control of the conduct of such settlement or defense, and that Buyer provides Seller with all available information regarding such claim, suit or action. Seller may, at its own expense, elect to procure for Buyer the right to continue using the allegedly infringing products, or replace it with non-infringing products, or modify it so that it becomes non-infringing products, or remove it and repay the purchase price applicable thereto, as well as transportation costs. This paragraph shall not apply to any infringement arising out of any feature incorporated in the product at the request of Buyer or from the use of the product for purposes other than as advertised, sold or intended by Seller. In no event shall Seller's total liability to Buyer under the provisions of this article exceed the aggregate sum paid to Seller by Buyer for the allegedly infringing product. The foregoing states the entire warranty by Seller for patent infringement of the product and any part of it.

**17. Cancellations.** Seller shall not begin to order parts until Buyer has given authority. In the event Buyer terminates such orders, Buyer shall be liable to Seller for any and all actual costs incurred and termination charges, including, but not limited to, reasonable profits.

**18. Shipment Delays/Billing in Place.** Upon completion of Buyer's order, any delay in shipment attributable to Buyer, including, but not limited to, Buyer's request to defer delivery date, shall cause the following to occur: Thirty (30) days after the original shipment date, a storage charge of 1.5% of the invoice price per month will be billed to Buyer and title to the shipment will automatically pass to Buyer. Seller will invoice Buyer for completed goods and Buyer will pay in accordance with the terms of the original sale, as the goods will be deemed to have shipped in place. Seller will insure against risk of loss until physical shipment of the goods to a common carrier.

**19. Change Orders.** Buyer change orders must be in writing and no change shall be made pursuant to this clause unless agreed to in writing and signed by duly authorized representatives of Seller and Buyer. If any such change causes an increase or decrease in the cost or the time required for the performance of any part of the work, an equitable adjustment shall be made in the contract price and schedule. Seller shall have no obligation to commence any extra or changed work without written agreement as to adjustments to contract price and delivery schedules affected thereby.

**20. Services.** Seller shall perform certain services as more particularly described in the Scope of Services portion of the Proposal attached hereto. Seller shall perform the services in accordance with Buyer's projected schedule however, Buyer acknowledges that Seller's ability to perform in accordance with such schedule will be adversely affected by any failure of Buyer to perform Buyer's responsibilities.

**21. Termination.** In the event Buyer fails to render payment on any invoice or Buyer's account is in arrears, or Buyer becomes insolvent, enters into bankruptcy or has a receiver appointed to protect its assets, Seller shall have the right without prejudice to any other remedy, to immediately cease all work, and all Buyer orders, and to stop all shipments to Buyer, including stoppage in transit.