

Terms and Conditions of Sale

The terms and conditions of sale as listed below are exclusive and in lieu of all other terms and conditions appearing on Buyer's purchase order or elsewhere and apply to all quotations made and orders accepted by the Seller unless specifically stated to the contrary on the face of this document. Seller is not responsible for typographical or clerical errors made in any quotations, orders or publications. All such errors are subject to correction.

1. Price. Shipping allowances and prices are subject to change by Seller without notice. Increases in labor, transportation and other costs before completion of contract plus applicable overhead may be invoiced to Buyer. If a delivered price has been quoted, any charges at destination for spotting, switching, handling, storage and other accessorial services and demurrage shall be borne by Buyer, and the quoted price shall be adjusted accordingly. Seller reserves the right to correct any errors in specifications or prices.

2. Delivery. Unless otherwise specified on the face of this document, all deliveries are FOB point of shipment. Shipment shall be made in accordance with instructions issued by Seller. Upon delivery of goods to carrier, Buyer assumes risk of loss and damage resulting from any cause whatsoever. Shipping, delivery or performance dates are approximate and are not guaranteed. Seller reserves the right to ship and invoice for a quantity of goods which may vary up to ten percent (10%) over or under the quantity specified, and Buyer shall accept delivery and pay for such revised quantity and consider the shipment to be complete. Partial deliveries shall be accepted by the Buyer and paid for at contract prices and under contract terms.

3. Force Majeure. Seller shall not be liable for any delay or other failure of performance due to causes beyond its reasonable control including without limitation: acts of God; acts of Buyer; acts of military or civil authorities; government regulations, order, directives and/or restrictions; fire or other casualty; strikes; lockouts; weather; epidemic; war; riot; delays in transportation or car shortages; or inability to obtain necessary labor, materials, components, equipment, services, energy or utilities through Seller's usual and regular sources at usual and regular prices. In any such event, Seller may at any time and from time to time without further liability to Buyer, (a) postpone its performance under this contract, (b) make partial performance or cancel all or any portion of this contract, or (c) allocate available quantities among its customers in any manner which Seller deems reasonable. Cancellation of any part of this contract shall not affect Buyer's duty to pay for performance of any other part hereof.

4. Warranty. Unless otherwise specified on the face of this document, and except as otherwise provided in this paragraph 4, Seller warrants that the goods supplied hereunder shall conform to the description stated on the face of this document (subject, however, to tolerances and variances consistent with usual trade practices regarding dimensions, straightness, section, composition and mechanical properties and normal variations in surface and internal conditions and quality, and shall also be subject to deviations from tolerances and variations consistent with practical testing and inspection methods); that it shall convey good title to the goods supplied hereunder; that such goods shall be delivered free from any lawful security interest or lien or encumbrance; and that any services supplied hereunder shall be performed by qualified personnel consistent with good professional practices.

Where Buyer specifies methods or procedures to be followed by Seller in providing goods or services hereunder, Seller warrants that it has reasonably followed such methods and procedures, **BUT MAKES NO OTHER WARRANTIES WHATSOEVER REGARDING SUCH GOODS OR SERVICES.** Goods furnished by supplier to Seller are warranted by Seller only to the extent of the original producer's express warranty to Seller.

If within thirty (30) days from the date of shipment the Buyer notifies the Seller that any goods do not meet the warranty specified above, Seller shall thereupon correct any such defect by repairing any defective goods, or at Seller's option, by making available at Seller's place of business repaired or replacement goods; provided, however, that Buyer shall pay all transportation charges. Notwithstanding the foregoing, if upon inspection of the goods at the time of the delivery to the Buyer, which inspection can be conducted without opening shipping cartons or dismantling pallets, goods are found to be damaged or the quantities received do not agree with quantities indicated on the shipping documents, Buyer shall have a claim against Seller only where Buyer adequately marks the nature of the damage or discrepancy in quantity on the carrier receipt, and notifies Seller in writing of its claim within forty-eight (48) hours of Buyer's receipt of the goods.

THE FOREGOING WARRANTIES ARE EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL OR IMPLIED, INCLUDING ANY WARRANTY OF PERFORMANCE, MERCHANTABILITY OR FITNESS FOR PURPOSE, AND SUPERSEDE AND EXCLUDE ANY ORAL OR WRITTEN WARRANTIES OR REPRESENTATIONS MADE OR IMPLIED IN ANY MANUAL, LITERATURE, ADVERTISING BROCHURE OR OTHER MATERIALS.

5. Limitation of Seller's Liability. Seller's liability on any claim of any kind, including negligence, for any loss or damage arising out of, connected with, or resulting from manufacture, sale, delivery, resale, repair or use of any goods or relating to the services supplied hereunder, shall in no case exceed the lesser of the cost of repairing or replacing the goods or resupplying the service or the price of the goods or services or part thereof that gives rise to the claim. IN NO EVENT SHALL SELLER BE LIABLE FOR SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOSS OF ANTICIPATED PROFITS), OR DAMAGES IN THE NATURE OF PENALTIES.

6. Limitation of Time for Commencement of Action by Buyer. Any action for any loss or damage with respect to the goods or services which are supplied hereunder or for breach of the terms hereof must be commenced by Buyer within one (1) year after Buyer's cause of action has accrued.

7. Indemnification and Waiver. Buyer shall defend, indemnify and hold harmless Seller from and against all loss or damage sustained directly by Seller, and from and against all claims asserted against Seller with respect to the goods or services supplied hereunder, and from attorneys' fees/costs incurred by Seller in connection therewith, arising in whole or in part out of Buyer, its agents, employees and/or customers (a) failing to follow specifications, instructions, warnings or recommendations furnished by Seller; (b) failing to comply with all applicable legal requirements, including but not limited to, the Occupational Safety and Health Act of 1970, as amended; (c) misusing the goods; (d) making misrepresentations; (e) being solely or contributorily negligent; and/or (f) providing designs, plans, specifications or other instructions which infringe or are alleged to infringe any patent, trademark, copyright or other intellectual property right. Buyer hereby waives and releases Seller from all right of contribution or indemnity to which it may otherwise be entitled. As used in this paragraph 7, the term "Seller" shall include Seller, its officers, directors, agents, employees, subcontractors, parents, subsidiaries, divisions and affiliates.

8. Cancellation by Buyer. Buyer may cancel this contract only upon written notice to Seller and payment of reasonable cancellation charges including (1) the price for goods and services completed, whether goods have been shipped or not, prior to Seller's receipt of such notice; (2) all costs previously incurred in connection with uncompleted goods or services together with reasonable profit thereon; and (3) the expenses incurred by Seller by reason of such cancellation, including reimbursement for any charges arising from termination of subcontracts.

9. Taxes/Other Charges. All taxes and other charges imposed by federal, state, local or foreign governments/authorities on the manufacture, sale, shipment, import, export, or use of the goods or in connection with the services supplied hereunder (other than income taxes) shall be paid by Buyer. Buyer shall defend, indemnify, and hold harmless Seller from and against all liabilities for such taxes or charges and attorneys' fees or costs incurred by Seller in connection therewith.

10. Technical Assistance. Unless otherwise expressly provided in the face of this document, (a) any technical advice provided by Seller with respect to the goods or services supplied hereunder shall be without charge; (b) Seller shall not assume any obligation or liability for any such advice, or for any results occurring as a result of the application of such advice; and (c) Buyer shall have sole responsibility for selection and specification of the goods and services supplied hereunder which are appropriate for the end use of such goods or services.

11. Buyer's Materials. All of Buyer's tooling, goods, storage containers, and other materials in Seller's possession shall be fully insured by Buyer, and Buyer releases Seller from all liability for loss or damage to such materials caused by Seller's negligence or otherwise. Whenever one (1) year has elapsed since the completion of any order from Buyer requiring the use of such materials, Seller may make any use or disposition of such materials without any liability to Buyer.

12. Seller's Proprietary Rights. Unless otherwise expressly provided on the face of this document, any tools, dies or fixtures which may be developed for use in the production of goods under this contract shall be owned by Seller or any supplier to Seller, as appropriate, even though Buyer may be charged in whole or in part for the cost of such tools, dies or fixtures. Seller shall be the sole owner of all drawings, inventions or improvements made by or for Seller in connection with the performance of this contract. Buyer shall not reproduce any drawing furnished by Seller. Buyer shall not use or disclose any of Seller's trade secrets or confidential information, whether or not designated as such, except as required in connection with the use or resale of the goods supplied hereunder.

13. Payment; Security Agreement. Unless otherwise provided on the face of this document, payments to Seller shall be made in United States dollars within thirty (30) days after the date of Seller's invoice. On orders to countries other than the United States, payment shall be made to Seller through the medium of a Letter of Credit to be established by the Buyer at its expense including any bank confirmation charges. All Letters of Credit shall be in favor of and acceptable to Seller, shall be maintained in sufficient amounts and for the period necessary to meet all payment obligations; shall be irrevocable and issued or confirmed by a bank in the United States satisfactory to Seller within thirty (30) days after acceptance of any order; shall permit partial deliveries; and shall provide for *pro rata* payments upon presentation of Seller's invoices and Seller's certificate of delivery of goods to Buyer, or of delivery into storage with certification of cause therefor, and for the payment of any termination charges.

To secure payment of all sums due hereunder or otherwise, Seller shall retain a security interest in the goods supplied hereunder and this contract shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect such security interest.

Seller is relying on Buyer's representation of solvency, and if Seller at any time reasonably believes that Buyer is insolvent or that Buyer's credit is impaired, or if Buyer shall fail to make payment when due which payment is not cured within ten (10) days after receipt of notice of the same from Seller, Buyer shall be in material breach hereof, and Seller may, without liability to Buyer, withhold performance hereunder, stop any goods in transit, change the payment terms, and/or repossess goods theretofore delivered. Title to the goods supplied hereunder shall remain in Seller until payment in full is received. Payment amounts in arrears shall bear interest at the maximum amount allowed by law or at three percent (3%) above the prime rate prevailing at the principal New York branch of Chase Manhattan Bank, or its successor, as of the date each amount falls due pending actual payment thereof in full without prejudice to any other remedy available to the Seller. Buyer shall be liable to Seller for all costs of collection, including attorneys' fees.

14. Notices. Notices supplied hereunder shall be deemed to have been duly given if delivered or mailed first class, registered mail, postage prepaid, or via any overnight courier, to the addresses set forth on the face of this document or to such other address as is reasonably appropriate.

15. Miscellaneous. This contract constitutes the entire agreement between Buyer and Seller relating to the goods and services supplied hereunder. The terms of this contract shall be governed by and interpreted in accordance with the laws of the Commonwealth of Pennsylvania. Any litigation under this contract if commenced by Buyer shall be brought in a court in Chester County in the Commonwealth of Pennsylvania, and Buyer shall accept venue in such court. However, if the issue in dispute is not covered by Pennsylvania law, or there is a conflict between Pennsylvania law and the federal law, the Chester County court shall apply the federal law. No modifications to this contract shall be binding upon the Seller unless in a writing signed by Seller's duly authorized representative. No waiver by Seller of default by Buyer shall be deemed a waiver of any subsequent default. The captions used herein shall have no substantive significance. The invalidity, illegality or unenforceability of any one or more provisions hereof shall in no way affect or impair the validity, legality or enforceability of the remaining provisions hereof, which shall remain in full force and effect. This contract may not be assigned by the Buyer without the prior written consent of the Seller.