

## STANDARD TERMS AND CONDITIONS OF SALE

**1. GOVERNING PROVISIONS; ACCEPTANCE.** When accepted by the buyer ("Buyer") named on the face of this quotation, proposal, order or other agreement with respect to the sale of goods and/or services hereunder (this "order"), this order (including any schedules or addenda attached hereto) will constitute the entire agreement between the seller named on the face of this order ("Seller") and Buyer with respect to the goods or services covered by this order, unless a written agreement expressly referring to this order and signed by Seller's contract administrator and Buyer expressly modifies or supplements the terms of this order. Buyer's acceptance of Seller's offer to sell products and/or services to Buyer is limited to the terms and conditions of this order (including any schedules or addenda attached hereto) and any terms and conditions incorporated by reference. Any provisions on Buyer's purchase order or other documents issued by Buyer which are at variance with or in addition to these terms and conditions are rejected hereby. All previous or concurrent negotiations and agreements with respect to the goods and services covered by this order are superseded. Seller rejects any additional or inconsistent terms and conditions offered by Buyer at any time, whether or not such terms or conditions materially alter this order and regardless of shipment of or acceptance of payment of Seller's goods or services. This order shall be deemed accepted by Buyer upon the return of the acknowledgment copy of this order, by acceptance of goods or services, by partial performance or by any other expression of acceptance. Seller shall not have any obligation to Buyer with respect to products and/or services unless Seller accepts, in writing, this order or any other purchase order incorporating these terms and conditions.

**2. PRICES.** Except as may be set forth on any schedule or addendum attached hereto, prices are net and are not subject to trade or other discounts, and do not include any federal, state, county, local or other taxes, however designated, or costs of special packaging and insurance. Said charges, when applicable, shall be paid by Buyer. However, Buyer may provide Seller with an appropriate tax exemption certificate acceptable to the taxing authorities.

Unless requested by Buyer and approved by Seller's contract administrator, Seller shall have no obligation to obtain insurance for Buyer. However, Seller may obtain insurance at Buyer's expense for C.O.D. shipments. If any insurance required to be maintained by Seller ceases to become available on a commercially reasonable basis (including the limits on deductibles or any other terms under policies for such insurance), at the time of the renewal, Seller shall provide written notice to Buyer accompanied by a letter from Seller's insurance broker stating that such insurance is unavailable on a commercially reasonable basis. Such notice shall be given not less than thirty (30) days prior to the scheduled date for renewal of any such policy. Upon receipt of such notice, Seller and Buyer shall immediately negotiate in good faith to obtain a commercially reasonable alternative to such insurance.

**3. ACCEPTANCE OF PRODUCTS.** Up to thirty (30) days are allowed for inspection and acceptance of products. Failure to reject nonconforming products during such period constitutes an irrevocable acceptance of such products. Damage due to shipping problems are the responsibility of the carrier and do not constitute grounds for rejection. In such a case, a claim must be filed with the carrier. In the event of nonacceptance, Buyer must immediately notify Seller of the reasons. Seller may repair or replace or credit Seller the purchase price at Seller's option. Buyer shall not pay for goods which do not conform as a result of Seller error. Rejected products must be in original packaging and shipping cartons and must contain all packaging materials included therewith on delivery by Seller to the Buyer. Buyer will pay any shipping charges to return any products, and the Seller will pay for re-shipment if applicable, except for goods rejected which do not conform as a result of Seller error, in which case Seller shall pay such shipping charges.

**4. PAYMENT.** Payment for products and/or services and all other charges shall be made in full within thirty (30) days of the date of invoice, unless otherwise specified. If, in the judgment of Seller, the financial condition of Buyer at any time does not justify shipment or performance on the terms of payment originally specified, Seller may require full or partial payment in advance or may ship C.O.D. In the event of the bankruptcy or insolvency of Buyer, whether or not under the federal bankruptcy laws and regardless of any termination pursuant to Section 9 hereof, Seller may, at its option, refuse delivery or performance except for cash (including payment for all goods and/or services theretofore delivered or performed), stop delivery of goods in transit, reclaim the goods upon demand, or cancel or resell any order then outstanding and be entitled to reimbursement for all cancellation or resale charges.

If the invoiced amount or any part thereof is not paid by Buyer when due, Buyer hereby agrees to pay Seller interest at the rate of eighteen percent (18%) per annum on all such amounts from the date due until paid or the highest rate permitted by law, whichever is less. If shipment or performance is delayed by Buyer, payments shall become due on the date Seller is prepared to make shipment or to perform. Products held for Buyer shall be at the expense of Buyer. Any amount received by Seller from Buyer may be applied against any amount owing by Buyer to Seller, regardless of any statement appearing on any check or otherwise without discharging any other amount owed by Buyer to Seller. The acceptance of any check or writing marked payment in full shall not discharge Buyer's obligations to Seller or act as a discharge or waiver of Seller's right to be paid other amounts which Buyer owes to Seller under any order. Time is of the essence with respect to Buyer's obligations to make payment to Seller. All of Buyer's obligations to make payments under this Agreement shall be absolute and unconditional, and notwithstanding any provisions contained herein or any other documents to the contrary, none of such obligations shall be subject to any set-off or counterclaim under or with respect to this or any other agreement.

**5. PACKAGING AND SHIPMENT.** Seller's products will be packaged in accordance with standard commercial practices for domestic shipment. Shipping charges will be paid by Buyer. In the absence of specific instructions, Seller will select the carrier. Buyer acknowledges that it is responsible for all acts and omissions of the carrier, and that Buyer shall be deemed to have designated the carrier even if Seller has made arrangements on Buyer's behalf with the carrier.

**6. DELIVERY AND RISK OF LOSS.** Unless otherwise provided for in advance, all shipments will be made F.O.B. Seller's facility, and upon Seller's delivery of a shipment to the carrier, Buyer shall assume the risk of any loss or damage to the shipment thereafter. Delivery and/or completion dates furnished by Seller represent the best estimates of the time required to make shipment or complete services, and Seller does not guarantee delivery or completion by a particular date unless otherwise stated herein or in any schedule or addendum attached hereto. If a delivery date for products is guaranteed herein, (a) Seller's unexcused delay in delivering one installment to the carrier at Seller's facility shall permit Buyer to cancel only that installment, and acceptance by Buyer or the act of taking possession of products by the carrier shall constitute a bar to any claim of late delivery with respect to such products and (b) Buyer shall not be excused from performance if for any reason, the carrier does not pick up products on the date specified for shipping, and Seller may dispose of any products which the carrier does not pick-up within five (5) days of the date agreed for delivery to the carrier at Seller's facility if Buyer refuses acceptance based on such delay, in which case Seller may cancel the order without notice to Buyer and Buyer shall be responsible for a 25% restocking fee as to the products ordered. In any such event, Seller shall have no duty to mitigate its damages. Seller may deliver any products subject to an order to the carrier at its facility in part and in such event, Buyer shall be responsible for payment for that part of the order received by the carrier, and Seller shall only be responsible for that portion of an order which Seller is required to but does not deliver.

Unless otherwise required by a contract of Buyer with a customer of Buyer with respect only to products ordered by such customer, Title shall not pass with respect to any products ordered until Buyer makes payment in full thereof. In the alternative, Seller reserves a purchase money security interest in the products sold as well as any other products or property forwarded to Seller by Buyer for servicing or evaluation until full payment has been received. Buyer agrees to execute any document appropriate or necessary to perfect Seller's security interest or to acknowledge that title remains with Seller. In the alternative, Seller may file this order as a financing statement and/or chattel mortgage. Buyer agrees that, upon its failure to pay any invoice when due, Seller may immediately foreclose upon and sell, in a manner determined by Seller, any products or property owned by or provided by Buyer to Seller, regardless of whether such products or property are the subject of the unpaid invoice, in order to allow Seller to recover all amounts, including but not limited to interest and penalties, owed by Buyer to Seller.

**7. FAIR LABOR STANDARDS ACT.** Seller certifies that products furnished hereunder have been or will be produced in compliance with applicable requirements of the Fair Labor Standards Act, as amended, and regulations and orders of the United States Department of Labor issued thereunder.

**8. WARRANTY.** Seller shall provide Buyer/distributor with a standard warranty as provided on Attachment A hereto for each Product purchased by buyer. Buyer shall pass through such standard warranty to all parties that purchase the Products from Buyer, without varying any of its terms or provisions. The Seller may change the standard warranty on new products by giving the Buyer at least 60 days' prior to its effective date. For a period of twelve (12) months, products are warranted against defects in material and workmanship. The warranty does not cover abuse, alterations, improper application or installation, accident or negligence in use, storage or handling, or exceeding ratings. Seller's obligation and Buyer's exclusive remedy under this warranty will be limited to the repair or replacement of, or the reimbursement for, nonconforming products, at Seller's option, and will be conditioned upon Seller's receiving written notice of any alleged nonconformity or defect during the applicable warranty period and the return of defective products to Seller at Seller's expense provided Seller designates the shipper and shipment method. Return authorization must be granted by Seller, and unauthorized returns will be refused. Products shall be returned to Seller with transportation and insurance prepaid by Buyer. Seller will have a reasonable period of time to repair or replace nonconforming or defective products and to remedy defects in services. If Seller determines that any product or service is not defective or that Seller is not liable for the defect, Buyer will be notified; thereafter, Seller will repair or replace such product upon Buyer's written consent and at prevailing prices.

Every product has a date code which determines the date of warranty expiration for products. Standard products may have an earlier date code which is recorded at the time of shipping to initiate the warranty period. If the date code is removed, the warranty may be voided at the Seller's option. This warranty applies only to the original Buyer and is not transferable except at the discretion of the Seller. Repairs and replacements made under this warranty are not warranted beyond the remainder of the warranty period. Buyer's sole and exclusive remedy with respect to the warranty given by Seller shall be strictly limited, at Seller's sole election, to the remedy or remedies provided for in the manufacturer's product warranty. Seller is not responsible for products to which repairs or changes have been made without Seller's prior written consent.

THERE ARE NO WARRANTIES, EXPRESS, IMPLIED OR STATUTORY (INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INTENDED USE, NON-INFRINGEMENT, OR ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE) THAT EXTEND BEYOND THE WARRANTY SET FORTH IN THIS ORDER OR IN ANY SCHEDULE OR ADDENDUM ATTACHED HERETO.

**9. TERMINATION.** Seller may terminate any order from Buyer in whole or in part at any time and from time to time for Buyer's default if Buyer (is) does not perform strictly in accordance with any of the terms or conditions of this order, (ii) fails to make payments under any order on a timely basis, or (iii) becomes insolvent or suspends any of its operations or if any petition is filed or proceeding commenced by or against Buyer under any state or federal law relating to bankruptcy, reorganization, receivership or assignment for the benefit of creditors. Buyer will be liable for damages caused by or resulting from its default. Termination of this order for default shall be without prejudice to any other rights and remedies of the Seller under statute, common law or otherwise, including, without limitation, the right to withhold delivery of products and/or to stop delivery of products in the possession of a carrier and the suspension of any services to be performed hereunder. Buyer may terminate this order upon payment to Seller of all expenses incurred by Seller to the date of termination in connection with the order plus twenty-five percent (25%) of the price set forth in this order. Seller will not incur any liability for any reason other than an arbitrary refusal of Seller to perform.

**10. LIMITATION OF LIABILITY.** IN NO EVENT SHALL SELLER OR ITS AFFILIATES BE LIABLE FOR INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR SIMILAR DAMAGES, INCLUDING WITHOUT LIMITATION, ANY DAMAGES RESULTING FROM LOSS OF USE, LOSS OF BUSINESS, LOSS OF REVENUE, LOSS OF PROFITS, OR ARISING IN CONNECTION WITH THIS ORDER OR BUYER'S PURCHASE OR ATTEMPT TO PURCHASE PRODUCTS AND/OR SERVICES, OR OF ANY OTHER OBLIGATIONS RELATING TO ANY ORDER, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Further, the aggregate liability (whether claims arise in contract, tort, personal injury, product liability, under warranty or otherwise) of Seller (and its officers, directors, employees, agents, representatives and affiliates), and Buyer's sole and exclusive remedy, arising with respect to or in connection with this order, shall not exceed: (i) the aggregate of Seller's invoiced purchase price with respect to any products and/or services as to which there is a dispute; or (ii) in the event of Seller's failure to deliver products and/or services, 20% of its invoiced purchase price of such products and/or services. The price stated herein for the products and/or services is consideration for limiting Seller's liability. Failure to give notice of claim within ten (10) days after the occurrence upon which such claim is based shall constitute a waiver by the Buyer of all claims. No action, regardless of form, arising out of the transactions under this order may be brought more than one year after the cause of action has accrued.

**11. PROPRIETARY INFORMATION.** Buyer agrees that any data, such as Seller's specifications, drawings, and information (including, without limitation, designs, reports, documentation, manuals, models, process information and the like), revealed by Seller to Buyer and containing proprietary information marked or identified as proprietary, shall be kept in confidence by Buyer with at least the same care and safeguards as are applied to Buyer's own proprietary information. Such data shall not be duplicated, disclosed to others, or used without the written permission of Seller. These obligations shall not apply to any information which is in or comes into the public domain without violation of this agreement, or is received lawfully by Buyer from a third party subsequent to this agreement, or is developed by Buyer independently and without benefit or information received from Seller. The restrictions and obligations relating to Seller's proprietary information shall expire seven (7) years after the execution of this order or any contract incorporating these terms and conditions, unless otherwise agreed to in writing.

In lieu of any other agreement, no license of design rights is conveyed to the Seller by the Buyer. The Seller agrees to keep notes or data provided by the Buyer in confidence and not manufacture similar products based on confidential information provided by Buyer.

**12. ESSENTIAL VENDOR.** Buyer hereby acknowledges that Seller is an "essential vendor" as such term has been used and developed by certain courts pursuant to U.S. bankruptcy laws, and hereby agrees, in the event Buyer pursues protection under such U.S. bankruptcy laws, to take any actions reasonably requested by Seller to obtain "essential vendor" status in any related proceeding.

**13. GOVERNING LAW; JURISDICTION; WAIVER OF IMMUNITY.** The terms and conditions stated herein shall be governed by and construed in accordance with the laws of the State of Florida (other than any choice of law provisions that would result in the application of the laws of another jurisdiction). The Courts of the State of Florida in Miami-Dade County, Florida or the United States Court for the Southern District of Florida will have exclusive jurisdiction over any dispute arising hereunder. The prevailing party in any litigation arising hereunder will be entitled to recover its reasonable costs thereof, including without limitation, attorneys' fees and expenses. If Buyer is incorporated outside of the United States, to the extent that Buyer or any of its property is or becomes entitled at any time to any immunity on the ground of sovereignty or otherwise from any legal action, suit or proceeding, or other legal process in any jurisdiction, Buyer for itself and its property does hereby irrevocably and unconditionally waive, and agree not to assert, plead or claim, any such immunity with respect to its obligation, liabilities or any other matter resulting from or arising under or in connection with this order or the subject matter hereof.

**14. ASSIGNMENT; INTERPRETATION.** Buyer shall not assign this order without the prior written consent of Seller. This order and rights under this order may be assigned by Seller without the consent of or notice to Buyer. The terms and conditions stated herein shall not be varied, supplemented, qualified, or interpreted by any prior course of dealings between the parties or by custom or usage of trade.

**15. CHANGES; AMENDMENT.** Buyer may with advanced written notice make changes in any one or more of the following: (i) drawings, designs, or specifications, where the products to be furnished are to be specifically manufactured for the Buyer in accordance therewith; (ii) method of shipment or packing; (iii) place or time of inspection, delivery, or acceptance; (iv) the quantity and/or type of services ordered; and (v) the work or services schedule. If any such change causes an increase or decrease in the cost of or time required for performance of this order, whether or not changed by the order, or if material or information supplied by Buyer is incorrect or inaccurate or Buyer's failure to approve drawings and specifications promptly causes a delay in production, Seller shall have the right to increase the price charged in order to reflect actual increases in the cost of materials, supplies and/or funds expended on labor for the product upon notice to Buyer. Other than as set forth herein, this order may not be amended except by a writing signed by Seller.

**16. ORDER ADJUSTMENTS AND CANCELLATIONS.** Buyer shall provide Seller with 45 calendar days advanced written notice prior to making any adjustments to their order. Buyer is to also provide Seller with 60 calendar days advanced written notice prior to cancelling any orders. All order adjustments, reschedules and/or cancellations must be authorized and accepted by Seller in order for Buyer's request to be processed. Without Buyer's written advanced notice or Seller's acceptance of said notice, all order adjustments and cancellations will be denied and may be subject to cancellation fees.

**17. FORCE MAJEURE.** Neither party shall be liable for failure to perform its obligations under this order if such failure results from an event beyond such party's reasonable control ("Force Majeure"), which event such party is unable to provide against by the exercise of reasonable diligence. Force Majeure events shall include, without limitation, acts of God or of the public enemy; war or warlike operations, civil war or commotion, mobilizations or military call-up, and acts of similar nature; revolution, rebellions, sabotage, and insurrections or riots; acts of terrorism; fires, floods, epidemics, quarantine restrictions; strikes and other labor actions; and freight embargoes. The time provided for performance shall be extended for a period equal to the time lost due to such Force Majeure event. The extension arising from such Force Majeure event shall only be granted if notice is given by the party requesting a delay to the other party within ten (10) days after knowledge of the event constituting the Force Majeure. Force Majeure shall not excuse the late payment of money.

**18. PATENT INFRINGEMENT.** Unless otherwise provided in any schedule or addendum attached hereto, Seller makes no warranty that the material furnished hereunder will not, in the form in which furnished, infringe any valid United States patent, and further Seller does not warrant against infringement by reason of Buyer's use thereof in combination with other materials or in the operation of any process. In the event of any infringement claim based solely on the products provided by Seller, Buyer shall provide prompt notification in writing to Seller and shall authorize Seller to assume full and exclusive control of the defense or settlement of such claim or any legal action based thereon. With respect to products hereunder made especially for Buyer, Buyer warrants there is no U.S. patent covering them or Buyer has a right to have them made. Seller shall not be liable to Buyer if sued for any U.S. patent infringement by any products made especially for Buyer hereunder and, if Seller is sued, Buyer will defend and indemnify Seller against all costs, damages and expenses incurred by Seller relating thereto. Buyer assumes all responsibility for use of any design, trademark, trade name, or part thereof, appearing on the products at Buyer's request.

**19. ENVIRONMENTAL REGULATIONS.** If Seller is required to suspend the operation of any facility where it is producing any quantity of material deliverable hereunder because the operation thereof and/or the product therefrom allegedly fails to comply with any applicable governmental law, regulation, ordinance, standard, order or decree relating to environmental or health matters, then Seller shall have the right either to suspend or to terminate this order in its entirety by written notice to Buyer or to allocate any available supply of said material among its customers and its divisions in a fair and equitable manner. If Seller resumes operation of any such facility and this order has not terminated, Seller shall be obligated to supply Buyer pursuant to the terms of this order provided that any firm delivery dates set forth in this order shall be delayed by the number of days by which the operation of the facility was suspended. In no event shall Seller be obligated to purchase products from others in order to enable it to deliver products to Buyer.

**20. INDEMNIFICATION.** Each party shall hold the other party harmless and indemnify it from and against any and all claims, loss, cost, damage and expenses (including reasonable attorney's or solicitor's fees) which the other party may suffer as a result of a breach of this agreement by the indemnifying party. The Seller shall hold Buyer harmless and indemnify it from and against any and all claims, loss, cost, damage and expenses (including reasonable attorney's fees or solicitor's fees) which Buyer may suffer as a result of any loss to the person or property of a third person arising directly or indirectly from the sale to or use by a third party of a Product; provided, however, that the Seller shall have no such claims, loss, cost, damage and expense which arise from the deliberate or negligent action of Buyer. The Buyer shall hold Seller harmless and indemnify it from and against any and all claims, loss, cost, damage and expenses (including reasonable attorney's fees or solicitor's fees) which Seller may suffer as a result of any loss to the person or property of a third person arising directly or indirectly from the sale to or use by a third party of a Product; provided, however, that the Buyer shall have no such claims, loss, cost, damage and expense which arise from the deliberate or negligent action of Seller.

**21. CONFIDENTIAL RELATIONSHIP.** Except as required by law, Buyer shall treat as confidential and proprietary to Seller and not directly or indirectly disclose (or permit its employees, agents, subcontractors or suppliers to disclose) any and all information supplied by or on behalf of Seller which Seller deems to be confidential, valuable or proprietary or which Buyer should reasonably believe to be confidential, valuable or proprietary to Seller, including, but not limited to, the prices and terms hereof. Unless the written consent of Seller shall first be obtained and except as required by law, Buyer shall not in any manner advertise or publish or release for publication any statement mentioning Seller or the fact that Buyer shall have purchased or contracted to purchase goods and services from Seller or quote the opinion of any employee of Seller. This section is in addition to, and not in abrogation of, any confidentiality agreement executed by the parties.

**22. GENERAL PROVISIONS.** In the event legal action is brought to enforce any of the terms hereof, or to obtain payment for the products furnished, the prevailing party hereto in such action shall be reimbursed by the non-prevailing party hereto in such action for all reasonable costs and expenses, including but not limited to reasonable attorneys' fees. The rights and remedies herein reserved to Seller are cumulative and in addition to any further rights and remedies available to it at law or in equity. All notices, receipts or demands of any kind hereunder will be effective (I) when actually delivered (or attempted to be delivered if rejected) by certified mail or overnight courier to the parties' addresses set forth herein, or (ii) upon receipt thereof if sent by facsimile transmission to the parties' telecopier numbers if specified herein, provided such transmission is promptly confirmed by mail or courier as provided in clause (a) of this section. The failure or delay by Seller to enforce any right hereunder will not be a waiver of such right or a waiver of any other right or provision hereunder, nor will any waiver constitute a continuing waiver; and

any such waiver by Seller shall be effective only if in writing and signed by Seller making reference to this order. If for any reason any provision contained in this order should be illegal, invalid or unenforceable in any jurisdiction, such illegality, invalidity or unenforceability shall not affect the legality, validity, or enforceability of the remaining terms and provisions hereof or the legality, validity, or enforceability of such provision in any other jurisdiction. The parties agree that any court of competent jurisdiction making any such determination of illegality, invalidity, or unenforceability shall have the power to reduce the scope of the provision, to delete specific words or phrases, or to replace the invalid provision with a provision that is valid and enforceable and that comes closest to expressing the intention of the invalid or unenforceable provision. Buyer agrees to operate its business in compliance with applicable laws and to obtain all necessary permits, licenses and the like relating to all products and services provided hereunder, and to indemnify Seller for any failure to do so. Buyer agrees to obtain all permits necessary to transport, purchase, sell or export any products acquired hereby. In the event of any inconsistency between the terms of this order and any other document executed in connection herewith, the terms of this order shall prevail. The parties understand and agree that each of them and their affiliates are independent contractors, and nothing in this order will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. Buyer will have no authority to make or accept any offers or representations on Seller's behalf or to otherwise bind Seller.

BY PLACING AN ORDER FOR GOODS AND/OR SERVICES FROM SELLER, BUYER IS AFFIRMATIVELY STATING THAT IT HAS READ AND UNDERSTANDS ALL OF THESE TERMS AND CONDITIONS AND AGREES TO BE BOUND BY THEM. BUYER ACKNOWLEDGES THAT SELLER HAS ADVISED BUYER TO SEEK THE ADVICE OF ITS OWN LEGAL, BUSINESS, TAX AND FINANCIAL ADVISORS BEFORE AGREEING TO BE BOUND HEREBY.

**THE PARTIES HEREBY ACKNOWLEDGE THAT THESE TERMS AND CONDITIONS SHALL APPLY TO THIS ORDER AND HEREAFTER SHALL APPLY TO ANY SUBSEQUENT ORDERS OR SIMILAR AGREEMENTS BETWEEN THEM.**

Seller's Name: \_\_\_\_\_

Seller's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Buyer's Name: \_\_\_\_\_

Buyer's Signature: \_\_\_\_\_ Date: \_\_\_\_\_