



TERMS AND CONDITIONS OF SELLER

1. **CONTROLLING TERMS AND CONDITIONS.** Seller objects to, and is not bound by any term or condition in Buyer's order which is different from or in addition to the terms and conditions set forth herein, and Seller agrees to sell to Buyer, the goods or services described or referred to herein, at the prices indicated, only on the express condition that Buyer assents to these terms and conditions. Buyer's acceptance is limited to the exact terms and conditions set forth herein, and any additional or different terms or conditions proposed by Buyer are hereby expressly rejected. If this document is construed as an expression of acceptance or as a confirmation of a verbal agreement, such acceptance or confirmation is expressly made conditional on the assent of the Buyer to the terms and conditions set forth herein. Any confirmatory action by Buyer hereunder or any acceptance of the goods or services described or referred to herein shall constitute assent to the terms and conditions set forth herein. In the event this document is deemed an offer, the offer is expressly conditioned upon agreement by Buyer to the exact terms and conditions set forth herein, and any additional or different terms or conditions proposed by Buyer are hereby expressly rejected.
2. **QUOTATIONS, CHANGES, AND CANCELLATION.** Quotations are valid and firm for fifteen (15) days unless otherwise stated. No terms, conditions, description, price, quantity, or delivery schedule may be changed by Buyer, and no agreement or understanding in addition to or different from the terms and conditions set forth herein shall be binding upon Seller, unless accepted in writing by Seller's authorized representative. Buyer may not, under any circumstances or for any reason, cancel its order or any part thereof, unless Seller has received written notice of the cancellation more than thirty (30) days prior to the shipping date last agreed upon by Seller for the order or the portion thereof being cancelled and such cancellation has been agreed to in writing by Seller's authorized representative. In the event of any such cancellation of any order by Buyer, Buyer shall reimburse Seller for all costs and expenditures made or committed to be made by Seller as a result of Buyer's order, as well as reasonable overhead costs, and profits lost because of such cancellation.
3. **ACCEPTANCE.** Buyer shall immediately and irrevocably accept goods and services when tendered. If Buyer refuses to receive or take possession of such goods and services when tendered, Seller may exercise any or all of the remedies afforded to sellers by section 2-703 *et seq.* of the Uniform Commercial Code in addition to any or all remedies provided by law. Seller shall have no obligation to hold or resell such goods for Buyer's account.
4. **REPRESENTATION OF SOLVENCY.** By placing its order, Buyer represents that it is not insolvent as that term is defined in section 1-201(23) of the Uniform Commercial Code. In the event that Buyer becomes insolvent as defined in section 1-201(23) before delivery of goods, it will notify Seller. Failure to notify Seller shall constitute a written reaffirmation of Buyer's solvency at the time of delivery.
5. **WARRANTY.** Seller warrants for a period of twelve (12) months from the date of shipment that the goods shall be of the kind and quantity designated or referred to herein, shall conform to the specifications provided by Buyer, and shall be free from defects in material and workmanship. The sole and exclusive remedy for breach of Seller's warranty is set forth in this Section 5.

Buyer shall inspect goods within fifteen (15) days after delivery of such goods to their shipping destination. In the event goods fail to conform to the kind and quantity designated or referred to herein, or to the specifications provided by Buyer, or are not free from defects in material or workmanship, if Buyer notifies Seller of such nonconformity or defects within ten (10) days after Buyer's inspection, then Seller shall, at Seller's option, repair or replace such goods found in fact to be nonconforming or defective. Replace means to provide substitute goods of the kind ordered hereunder. Before returning any items to Seller, Buyer shall request return authorization from Seller, and shall follow all reasonable instructions with respect to the return. Unless otherwise instructed, Buyer shall return by prepaid shipment all allegedly nonconforming or defective goods, subject to reimbursement by Seller for the cost of shipping such goods found in fact to be nonconforming or defective. Seller's warranty is voided if Buyer fails to inspect or fails to provide notification as required above if defects in material or workmanship or a failure to conform to specifications could have been detected by such inspection. Goods may not be rejected based on specifications or criteria that were unknown to Seller.

EXCEPT AS SET FORTH IN THIS SECTION 5, SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF DESIGN, MERCHANTABILITY, FITNESS FOR PURPOSE OR USE, AGAINST INTELLECTUAL PROPERTY INFRINGEMENT, OR OTHERWISE.

Seller makes NO WARRANTY with respect to any goods that have damage, nonconformity, or failures resulting from accident, disaster, neglect, abuse, misuse, alteration, modification, improper handling, testing, storage or installation. To the extent that any Buyer-designated material or components are alleged or found to be non-conforming or defective, Seller shall have no liability to Buyer, provided, however, that to the extent possible and upon reasonable request of Buyer, Seller shall assign Seller's claims against such supplier of the non-conforming or defective material or components.

6. LIMITATIONS OF LIABILITY.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY (EXCEPT FOR SELLER'S OBLIGATION TO REPAIR OR REPLACE AS SET FORTH IN SECTION 5), THE EXTENT OF LIABILITY OF SELLER ARISING OUT OF THE GOODS OR SERVICES, OR THEIR USE (WHETHER USED SINGLY OR IN COMBINATION WITH OTHER PRODUCTS), WHETHER ARISING FROM WARRANTY, CONTRACT, NEGLIGENCE OR OTHERWISE, SHALL NOT IN ANY CASE EXCEED, IN VALUE, THE GREATER OF EITHER FIFTY THOUSAND DOLLARS (\$50,000) OR TWO (2) PERCENT OF THE TOTAL DOLLAR AMOUNT OF ANNUAL SALES FROM SELLER TO BUYER FOR THE TWELVE (12) MONTHS PRIOR TO SHIPMENT OF THE GOODS PURCHASED HEREUNDER. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, ANY TYPE OF INTANGIBLE LOSS, LOST GOODWILL OR BUSINESS REPUTATION, LOST PROFITS, LOSS OF USE, LOSS OF DATA, WORK STOPPAGE, LIABILITY OF BUYER TO ITS CUSTOMERS OR OTHERS, IMPAIRMENT OF OTHER PRODUCTS, OR COST OF SUBSTITUTE PRODUCTS OR SERVICES, WHETHER ARISING OUT OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER THEORY OF LIABILITY.

Any litigation asserting a claim against Seller must be commenced within twelve (12) months of the date of shipment by Seller.

7. DELIVERY AND FORCE MAJEURE. Each delivery shall stand as a separate sale and is subject to credit arrangements to the satisfaction of Seller, or to payment in cash. If payments are not made in accordance with such arrangement, or if at any time Seller in its judgment determines that Buyer's credit standing has been impaired, Seller may withhold delivery of any goods until cash or credit arrangements satisfactory to Seller have been established. All delivery dates specified by Seller are approximate and are based on its best estimate and are subject to change due to conditions beyond its reasonable control, including without limitation: (i) acts of God, unforeseeable circumstances, acts (including delay or failure to act) of any governmental authority (*de jure* or *de facto*), government regulation, war (declared or undeclared), riot, revolution, unrest, acts of terrorism, priorities, fires, strikes, explosions, floods, quarantine restrictions, sabotage, or epidemics; (ii) inability to timely obtain, at normal prevailing market prices, necessary or suitable labor, material, components, energy, manufacturing facilities, or transportation; and (iii) any other cause beyond Seller's reasonable control if by reason thereof Seller is unable to supply the total quantity of goods to be delivered hereunder. Seller may make partial delivery of Buyer's order, or may distribute the available supply of goods among any or all of Seller's customers on such basis as it may deem appropriate without liability for any failure of performance which may result therefrom. In the event of any delay, the date of delivery shall be extended for a period equal to the time lost by reason thereof.
8. NO REQUIREMENTS CONTRACTS. Seller shall not, under any circumstances, be bound to provide Buyer's requirements of goods, and to the extent that Seller's costs increase, Seller may increase prices or refuse to deliver goods at formerly acknowledged prices.
9. PAYMENT, TITLE, AND RISK OF LOSS. Payment is to be made by Buyer in United States dollars or other medium of exchange acceptable to Seller, upon presentation of invoice to Buyer by Seller, subject to the terms and conditions of payment stated therein. On any invoice not timely paid, Buyer shall pay interest from due date to date of payment at the rate of 1.5% per month or the highest rate allowed by applicable law, whichever is less. Seller's prices are subject to change upon fifteen (15) days' notice. Seller's prices are quoted FCA (as defined by INCOTERMS® 2000) Hong Kong unless otherwise specified herein. All shipments of goods shall be FCA Hong Kong unless otherwise specified herein. Seller's prices do not include sales, use, excise, value added, custom duties, or other similar taxes. The amount of any such present or future taxes applicable to the shipping destination, sale of the goods by Seller or the sales or use of the goods by Buyer shall be paid by Buyer. Prices do not include qualification or other testing. Except as otherwise expressly provided herein, title to the goods and risk of loss shall pass to Buyer at the FCA point. For all return shipments title to the goods passes to Seller at Buyer's shipping point of origin, and risk of loss or damage passes to Seller upon delivery of the goods to Seller.

Seller shall have no obligation to make any further shipments until all payments for prior shipments shall have been received by Seller. The existence of a claim or dispute between Buyer and Seller does not relieve Buyer of the obligation to remit payment in full to Seller, and Buyer has no right of set-off. Furthermore, Seller may suspend production until such payment is received, and may suspend production if Buyer is in default under this or any other contract with Seller.

10. **SPECIAL TOOLING.** In the event that Seller manufactures or purchases special tools, dies, or equipment in connection with Buyer's order, such tools, dies, and equipment, unless otherwise agreed to in writing by an authorized representative of Seller, shall remain the exclusive property of Seller, notwithstanding that part of the cost thereof is included as a part of the specified price.
11. **INFORMATION DISCLOSED BY SELLER.** Any knowledge or information that Seller has disclosed or may hereafter disclose to Buyer, or which may hereafter be acquired by Buyer, in connection with Seller's goods or services, shall be deemed to be confidential or proprietary information of Seller and shall not be disclosed by Buyer. Any technical advice or recommendation made by Seller concerning the goods is intended for use by persons having appropriate skill, know-how, and judgment in the selection, uses, and applications of such goods. Buyer represents that it is not relying upon such technical advice or recommendations nor the skill or judgment of Seller, in selecting suitable goods for Buyer's use or application.
12. **INTELLECTUAL PROPERTY.** Buyer shall defend, indemnify and hold harmless Seller from and against all claims and liabilities resulting from allegations that, because of Buyer-supplied designs, specifications, processes, information, or documentation, any goods or portion thereof infringe any third party intellectual property right or result in unfair competition, and also from allegations that product liability has resulted from any Buyer-supplied designs, specifications, processes, information, or documentation.
13. **ASSIGNMENT.** Buyer shall not assign any interest herein or any rights or obligations hereunder without the written consent of an authorized representative of Seller.
14. **RoHS COMPLIANCE.** If Buyer requests that Seller use any non-RoHS compliant material, Buyer shall indemnify Seller from any losses, damages, and costs relating to Buyer's request and/or the use of such material.
15. **WAIVER OF TERMS AND CONDITIONS.** The failure of Seller in any one or more instances to insist upon performance of any terms or conditions set forth herein or to exercise any right or privilege hereunder, or the waiver by Seller of any breach by Buyer of these terms or conditions, shall not be construed as generally waiving any term, condition, right, or privilege, and these terms and conditions shall continue and remain in full force and effect as if no failure or waiver had occurred.
16. **GOVERNING LAW/CHOICE OF FORUM.** This contract shall be construed under and governed by the laws of the State of Missouri without regard to its conflicts of laws principles. Buyer and Seller hereby irrevocably consent to the exclusive jurisdiction and venue of either the state courts in St. Louis County, Missouri or the federal District Court for the Eastern District of Missouri, Eastern Division, for all disputes arising hereunder. **NEITHER THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS NOR THE PROVISIONS OF THE UNITED NATIONS CONVENTION ON THE LIMITATION PERIOD IN THE INTERNATIONAL SALE OF GOODS SHALL APPLY TO THIS CONTRACT.**
17. **SEVERABILITY.** Whenever possible, each provision of this contract shall be interpreted in such manner as to be effective and valid under applicable law. If any of the covenants or agreements in this contract are determined to be unenforceable by reason of extent, scope, duration or otherwise, then the parties agree that the court hearing the matter shall reduce such extent, scope, duration or other provision only to the extent necessary for enforcement. If the choice of law provision set forth herein is not enforced, then the parties agree that the court hearing the matter shall enforce the provisions of this contract to the fullest extent possible under applicable law. If any provision of this contract shall be deemed prohibited or invalid under such applicable law, said provision shall be ineffective only to the extent of said prohibition or invalidity, and said prohibition or invalidity shall not invalidate the remainder of said provision or any other provision of this contract.
18. **ENTIRE AGREEMENT.** This contract can only be modified, terminated, or rescinded in writing by Seller's authorized representative. This contract constitutes the entire agreement between Seller and Buyer with respect to the goods and services covered hereby and supersedes any prior or other agreements, written or oral, between Buyer and Seller, concerning the subject matter hereof.