



## TERMS AND CONDITIONS OF SALE

1. **Applicable Contract Provisions.** These terms and conditions, together with any other documents, which Seller has attached hereto as part of the contract (the "Agreement"), are the sole and complete contract between Buyer and Seller in respect to the Products and supercede all prior oral and written understandings. Seller rejects those provisions of any previous order, offer, or other communication from Buyer, which are additional to or different from the terms hereof. Neither Seller's delivery of the Products nor any other action at any time on the part of Seller shall constitute acceptance of such additional or different terms. Buyer shall be bound by all of the terms of this Agreement when Buyer accepts this Agreement by any statement, act or course of conduct which constitutes acceptance under applicable law, including failure to object in writing hereto within a reasonable time and acceptance of delivery of the Products.
2. **Description of Products.** The products subject hereto are those described on the front hereof (the "Products"). Seller may substitute reasonably equivalent materials, components or units for any one or more of the products based upon its then current formulation. The only specifications which are a part of this Agreement are the written specifications listed in the "Specifications" section of the Technical Data Sheet, if any, made available to Buyer by Seller regarding the Products. All other material describing the Products is intended only to provide Buyer with a general idea about the Products and may not be relied upon as a "basis of the bargain" for this Agreement.
3. **Purchase Price and Terms of Payment.**
  - a. **Price.** The price for the Products shall be the price agreed upon between the parties. Typographic or other clerical errors in stated prices are subject to correction.
  - b. **Credit and Terms of Payment.** Unless otherwise provided on the front hereof, payment in full is due thirty (30) days from invoice date. Seller may alter or revoke credit terms at any time without notice.
  - c. **Buyer's Financial Condition; Insecurity.** If, in Seller's sole judgment, Buyer's financial condition or any other circumstance causes Seller to be insecure with respect to Buyer's performance of any obligation under this Agreement, Seller may accelerate and demand immediate payment of any amounts owed Seller, cancel this Agreement and suspend performance.
  - d. **Sales and Similar Taxes; Shipping Costs; Insurance.** The purchase price does not include sales, use, excise or similar taxes or any shipping, delivery or insurance costs. Seller will invoice Buyer for any such amounts incurred by Seller on behalf of Buyer.
  - e. **Late Payment Fee.** Any amount not paid when due will be subject to a late payment fee computed daily at a rate equal to one and one-half percent (1.5%) per month or the highest rate permissible under applicable usury law.
4. **Shipment, Delivery and Terms of Acceptance.**
  - a. **Shipment.** Seller will package the Products for domestic shipment in accordance with standard commercial practices. All shipments shall be delivered by Seller to the Buyer's designated point of delivery at the Buyer's expense unless otherwise agreed by Seller in writing. The carrier shall be deemed to be Buyer's agent, and Buyer shall make all claims with respect to damage in transit against the responsible carrier.
  - b. **Title to Products, Risk of Loss.** Title to and all risk of loss concerning the Products shall pass to Buyer upon delivery to a common carrier, or to any private carrier designated by Buyer, for shipment to Buyer. Buyer's rejection of any Products shall not shift such risk until the Products are returned to Seller, freight prepaid, pursuant to Seller's written authorization. Buyer hereby expressly acknowledges and agrees that Section 2-510 of the Uniform Commercial Code shall not apply to this Agreement.
  - c. **Delivery Schedule.** The delivery dates specified in this Agreement are estimates only based on prevailing conditions as of the date hereof, and Seller's failure to meet the same shall not be deemed a breach of this Agreement.
  - d. **Force Majeure.** Seller shall not be liable to Buyer for any delay or failure of delivery or of any other performance caused in whole or in part by any contingency beyond Seller's reasonable control, including, without limitation, acts of any government or any agency or subdivision thereof or shortage of or inability to secure labor, fuel, energy, raw materials, supplies or machinery at reasonable prices or from regular sources.
  - e. **Inspection and Acceptance.** Buyer shall inspect all shipments upon arrival and shall notify Seller in writing of any shortages or other failures to conform to this Agreement which are reasonably discoverable upon arrival.
  - f. **Cancellation or Modification of Order.** This Agreement cannot be cancelled or modified after Buyer's acceptance or after the Products become Seller's work-in-process, whichever occurs first, except at Buyer's expense for all damages incurred by Seller due to such cancellation or modification.
5. **WARRANTIES, LIMITATIONS OF WARRANTIES, DISCLAIMER OF WARRANTIES AND LIMITATION OF DAMAGES.**
  - a. **Limited Warranty to Buyer.** If Seller provides Technical Data Sheet(s) to Buyer with respect to one or more of the Products, Seller warrants that those Products, when supplied to Buyer in production quantities, will conform to any specifications listed in the "Specifications" section of the most recent Data Sheet provided by Seller with respect to that Product. Unless otherwise agreed in writing, Seller's sole obligation in the event of a breach of any warranty shall be to repair or replace the defective Product or to refund all payments made by Buyer to Seller for such Product, at Seller's option.
  - b. **Notification of Defect and Time Limitations.** Buyer must notify Seller in writing of any alleged defect in the Product within ten (10) days after discovery thereof but not later than 180 days from receipt. Buyer shall identify the defect in such manner and provide such documentation as a Seller reasonably may require. Buyer shall return any alleged defective Product to Seller, F.O.B. Seller's manufacturing plant, upon receipt of written request from Seller. Buyer must bring any lawsuit against Seller with respect to any Product within 180 days after providing notification of defect under this subparagraph or, if no notice is provided, within 180 days after such notice was required to be provided under this subparagraph.
  - c. **LIMITATION OF WARRANTY.** THE LIMITED WARRANTY SET FORTH IN SUBPARAGRAPH a ABOVE SHALL NOT APPLY TO ANY PRODUCT WHICH HAS BEEN ABUSED, ALTERED, MODIFIED, USED IN A MANNER NOT ORIGINALLY INTENDED, USED AFTER THE SHELF LIFE OF THE PRODUCT, OR STORED OR APPLIED IN A MANNER CONTRARY TO SELLER'S WRITTEN INSTRUCTIONS.
  - d. **DISCLAIMER OF WARRANTIES.** EXCEPT AS EXPRESSLY PROVIDED IN SUBPARAGRAPH a ABOVE, SELLER MAKES NO REPRESENTATION OR WARRANTY WITH RESPECT TO THE PRODUCTS SOLD HEREUNDER, AND SELLER DISCLAIMS ALL IMPLIED WARRANTIES INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND FREEDOM FROM PATENT INFRINGEMENT. NO AGENT, EMPLOYEE OR REPRESENTATIVE OF SELLER HAS ANY AUTHORITY TO BIND SELLER TO ANY AFFIRMATION, REPRESENTATION OR WARRANTY EXCEPT AS STATED IN THIS AGREEMENT.
6. **Default.** In the event of any default by Buyer, Seller may exercise any and all rights and remedies provided by law. Buyer shall pay to Seller all reasonable costs of collection, including reasonable attorney's fees, incurred by Seller in collecting any amounts owing by Buyer hereunder.

7. LIMITATION OF REMEDIES. SELLER SHALL HAVE NO LIABILITY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND. THESE LIMITATIONS ARE AGREED ALLOCATIONS OF RISK. UNDER NO CIRCUMSTANCES SHALL SELLER'S LIABILITY WITH REGARD TO THE SALE OR USE OF THE PRODUCTS EXCEED THE PURCHASE PRICE PAID BY BUYER FOR THE PRODUCTS.
8. General Provisions.
  - a. Applicable Law. The validity, performance and construction of this Agreement shall be governed by the laws of the State of Minnesota, USA.
  - b. Exclusive Jurisdiction. The state and federal courts of the State of Minnesota shall have exclusive jurisdiction over any lawsuit or other legal proceeding arising out of this Agreement or relating to the Products. Seller and Buyer hereby consent to the jurisdiction of such courts.
  - c. Modification and Waiver. No addition to or modification of this Agreement shall be binding upon Seller, and Seller shall not be deemed to have waived any provision of this Agreement, except pursuant to a written document signed by a duly authorized officer of Seller.
  - d. Severability. If any provision of this Agreement is held to be unenforceable by final order of any court of competent jurisdiction, that provision shall be severed from this Agreement, and shall not affect the interpretation or enforceability of the remaining provisions of this Agreement.
  - e. Debt Disputes. Per UCC 3-311(c)(1) all disputed debts or full payment checks remitted to settle debts must be communicated to the Director of Credit.