

Order Acknowledgment Terms and Conditions

1. General. This acknowledgment includes the following terms and conditions, and unless written notice of objections to any of such terms and conditions (including inconsistencies between Buyer's purchase order (the "Purchase Order") and this acceptance) is given by Buyer to Seller promptly on receipt of this acknowledgment, Buyer agrees that they shall govern the contract between Buyer and Seller. This acknowledgment shall operate as Seller's acceptance of Buyer's Purchase Order, but such acceptance is made expressly conditional on assent by Buyer to the terms and conditions included in this acknowledgment. Seller hereby rejects all terms and conditions proposed by Buyer different from or additional to those specified herein. Buyer and Seller agree that this acknowledgment, including the following terms and conditions, shall constitute the complete and final agreement between Buyer and Seller in respect of this order and that such terms and conditions and the rights and duties of Buyer and Seller shall be governed by the laws of the Commonwealth of Pennsylvania. None of the terms and conditions contained in this acknowledgment may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Seller and delivered by Seller to Buyer. The Goods (as defined herein) received by Buyer from Seller shall be deemed to be delivered only upon the terms and conditions contained in this acknowledgment, except as they may be so added to, modified, superseded or otherwise altered as provided in this acknowledgment. No prior course of dealings or usage of trade shall be relevant to supplement or explain any terms herein unless otherwise expressly stated herein.

2. Offers; Orders; Acknowledgment of Orders.

- (a) An offer made in writing by Seller is valid if accepted by Buyer within 14 days from the date of the offer.
- (b) If Buyer has sent in, telephonically provided or otherwise transmitted an order without any offer having previously been made by Seller, any contract shall be deemed to have been entered into only when Seller has dispatched a written acknowledgment of the order.

3. Description of Goods.

- (a) Seller agrees to sell, and Buyer agrees to purchase, the goods described on the reverse side of this form (collectively, the "Goods").
- (b) Seller may substitute items of comparable quality for the Goods if Seller determines that such Goods will not be available on a timely basis to support the delivery scheduled by the parties. Any such substitution shall not affect the contract price.
- (c) Statements made in printed materials are binding only if the contract explicitly refers to them. Samples provided to Buyer are to be regarded as type samples: conformity of delivered Goods with samples is not guaranteed.

4. Prices; Invoices.

- (a) Prices are subject to change without notice. All orders are accepted subject to Seller's price in effect at the time of shipment.
- (b) All changes in freight rates or transportation charges used by Seller in computing prices and charges shown on this acknowledgment occurring after the date of this acknowledgment will be paid by Buyer. Seller shall not be liable for any transportation charges incurred at destination, such as spotting, switching, drayage, demurrage, pier unloading charges, etc.
- (c) Unless the parties agree otherwise in writing, but subject to prior approval and extension of credit by Seller, Buyer shall pay the net invoiced amount in United States currency within thirty (30) days from the date of Seller's invoice.

5. Drawings and Technical Documents. All drawing and technical documents delivered by either of the parties to the other party remain the property of the delivering party, and the receiving party may not improperly use, reproduce or otherwise disclose such materials to third parties.

6. Warranty. Seller shall manufacture all Goods in accordance with the applicable specifications.

7. Warranty Disclaimer. EXCEPT AS SET FORTH IN SECTION 6, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Delivery; Risk of Loss.

- (a) Terms of shipment shall be FOB Seller's manufacturing facility – USA. If a delivery is required to be made within a certain period, the period will be calculated beginning on the date of this acknowledgment, unless the parties agree otherwise in writing. Shipping, delivery or performance dates are approximate and are not guaranteed. Seller may ship and invoice for a quantity of Goods of up to ten percent over or under the quantity of Goods specified in Buyer's order. Buyer agrees to accept and pay for such quantity, and Seller's performance under such order between Buyer and Seller shall be deemed complete. Partial deliveries shall be accepted and paid for by Buyer at Seller's price in effect at the time of shipment and in accordance with the terms and conditions of this acknowledgment.
- (b) Risk of loss shall pass to Buyer when Goods are delivered to a designated carrier at Seller's manufacturing facility. Seller shall not be responsible for any damage, loss or expense resulting from any action or omission occurring during, or attributable to, transportation of the Goods.

9. Cancellation or Delay by Buyer. All of Buyer's orders are firm and not cancellable. In the event that Seller permits Buyer in writing to cancel or delay an order or a partial order, Buyer may cancel or delay such order only upon payment of all cancellation and delay charges imposed by Seller, at Seller's discretion, including, without limitation, (a) the price for Goods completed prior to Seller's receipt of such notice; (b) all costs previously incurred in connection with uncompleted Goods together with reasonable profits thereon; and

- (c) the expenses incurred by Seller by reason of such cancellation or delay (collectively, the "Cancellation or Delay Charges").

10. Buyer's Delay in Acceptance.

- (a) If Buyer determines that it cannot observe an agreed time for the delivery or receipt of the Goods (in whole or in part), or if delay appears probable, Buyer shall promptly give notice in writing to that effect to Seller. In such event, Buyer may be subject to Cancellation or Delay Charges at the sole discretion of Seller.
- (b) In such event, Seller shall, at its option, have the right to (i) deliver the Goods at the time agreed upon in the contract, (ii) extend the date for delivery for a reasonable period, or
- (iii) cancel the contract subject to applicable Cancellation or Delay Charges. If Seller extends the period for delivery, Buyer shall remain liable to make all payments as if the Goods in question had been delivered, and Seller shall, as necessary, arrange for storage of the Goods and insure the Goods at Buyer's risk and expense.

11. Seller's Delay in Delivery.

- (a) If Seller cannot observe an agreed upon time for the delivery of the Goods, or if delay appears probable, Seller shall promptly give notice to that effect to Buyer, listing the time when Seller will deliver.
- (b) A reasonable delay by Seller shall not be grounds for Buyer to terminate the contract, unless the parties agree otherwise in writing.

12. Inspection; Complaints.

- (a) Buyer shall inspect the Goods upon delivery. Failure of Buyer to inspect the Goods and notify Seller of faults or shortages within 14 days after the Goods have been delivered shall act as a complete waiver of Buyer's rights with respect to any claims against Seller.
- (b) Complaints regarding any faults in the Goods shall be made in writing, specifying the nature and extent of the fault in reasonable detail.

13. Seller's Liability for Faulty Goods Upon Notification by Buyer; Limitation on Remedies; Exclusion of Certain Damages.

(a) If the Goods shipped by Seller to Buyer are defective or not in conformity with the specifications for such Goods, Seller shall reasonably and promptly, at its own expense and after consultation with Buyer,

(i) remedy the fault (e.g., by repair or reprocessing), (ii) after Buyer's return of the faulty Goods to Seller, promptly deliver new and conforming Goods to Buyer, or (iii) in the event that repair or replacement is not practicable, credit Buyer amounts paid by Buyer for Goods.

(b) If Seller repairs or replaces the Goods, Seller shall pay the costs of transportation for return and reshipment but shall not be required to pay for any expenditure incurred for dismantling and reinstallation.

(c) **UNDER NO CIRCUMSTANCES SHALL SELLER OR ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, PREDECESSORS, SUCCESSORS, PARENTS, SUBSIDIARIES, ASSIGNS OR AFFILIATES BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF PROFITS) ARISING FROM ANY CLAIM WHATSOEVER, WHETHER BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND SELLER'S AGGREGATE LIABILITY TO BUYER SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNT PAID BY BUYER UNDER THE CONTRACT FOR THE PURCHASE OF GOODS.**

14. Indemnification Generally. Buyer agrees to indemnify and hold harmless Seller, its officers, directors, agents, employees and authorized representatives from and against any and all claims arising out of or relating to:

(a) the failure of Buyer, its agents, employees or customers to follow specifications, instructions, warnings or recommendations furnished by Seller; (b) the failure of Buyer, its agents, employees or customers to comply with all applicable legal requirements; or (c) the sole or contributing negligence of Buyer, its agents, employees or customers.

15. Infringement of Rights of Third Parties. If Goods are manufactured in accordance with drawings, models, or other prototypes or patterns supplied by Buyer, or in accordance with any other form of documentation supplied by Buyer, Buyer agrees to indemnify and hold harmless Seller, its officers, directors, agents, employees and authorized representatives for any infringement of the rights of third parties arising from the use and manufacture of such materials, including, without limitation, infringement of patents, copyrights or trademarks of such third parties.

16. Taxes. All taxes and other charges imposed by local, state, federal or foreign governments or taxing authorities on the manufacture, sale, shipment, import, export or use of the Goods (other than Seller's income taxes) shall be paid by Buyer. Buyer agrees to indemnify and hold harmless Seller, its officers, directors, agents, employees and authorized representatives from and against all liabilities for such taxes or charges and attorneys' fees or costs incurred by Seller in connection therewith.

17. Product Liability Insurance. Buyer shall obtain and maintain product liability insurance in respect of the Goods in amounts of not less than \$1,000,000 per occurrence and not less than \$3,000,000 in the aggregate. Buyer will provide Seller with thirty (30) days' prior written notice in the event of a policy cancellation or a material change in the terms or provisions of the policy or policies. Buyer will deliver a certificate evidencing such insurance to Seller within fifteen (15) days of the date of the accompanying invoice.

18. Force Majeure.

(a) Seller shall not be responsible for delays, failures or omissions under this contract due to any cause beyond its control, including labor disturbances, war, mobilization, political disturbances, governmental intervention of various kinds, riots, fires, earthquakes, floods, storms, lightning, epidemics, shortage of power, interference with transport, extensive operational breakdowns, or by deficient performance on the part of suppliers owing to any circumstance such as is referred to in this section (each, a "**Force Majeure**" event). In such event, Seller may, at any time without further liability to Buyer:

(i) postpone performance under the contract between Buyer and Seller; (ii) make partial performance, or cancel all or any portion of the contract between Buyer and Seller; or

(iii) allocate available quantities among Seller's customers in any manner which Seller deems appropriate in Seller's discretion. Cancellation of any part of this contract shall not affect Buyer's duty to pay for performance of any other part hereof.

(b) If a Force Majeure event occurs, Seller shall give Buyer notice to that effect as reasonably practicable.

(c) If any Force Majeure event will delay the contract for a period exceeding ninety (90) days, Buyer may, by written notification to Seller, cancel the contract to the extent that the contract has not already been performed. If Buyer cancels the contract due to a Force Majeure event, Seller shall be entitled to receive compensation for the expenditures it has incurred until the time of cancellation, but excluding any consequential damages.

19. Overdue Payment; Security Interests; Credit.

(a) In case Buyer shall fail to make payments in accordance with the terms set forth in this acknowledgment or Seller has any doubt at any time as to Buyer's financial liquidity and viability, Seller, in addition to its other rights and remedies hereunder, may at its option defer further shipments until such payments are made or may terminate this contract, and Buyer shall not have any cause of action or be entitled to any setoff, counterclaim or recoupment against Seller by reason of such action.

(b) Amounts overdue for payment will be charged interest at the rate of the then Prime Rate as published in the Wall Street Journal plus six (6) percent, but in no event more than the maximum interest rate permitted by applicable law. If Buyer fails to make payment when due, Buyer shall be liable to Seller for all costs of collection, including, without limitation, attorneys' fees.

(c) Seller may, at its election, retain a security interest in the Goods until paid for in full. Buyer authorizes Seller as its attorney-in-fact to execute and file on Buyer's behalf all documents, including, without limitation, financing statements, Seller deems appropriate in its discretion to perfect such security interest. Title to the Goods covered hereby shall remain in Seller until full payment is received by Seller.

(d) Buyer represents that it is solvent and an on-going concern. If Seller at any time in its discretion believes (i) Buyer's credit is impaired, (ii) Buyer is insolvent, or (iii) that Buyer is otherwise no longer a viable on-going concern, Buyer shall be deemed to be in material breach hereof and Seller may, without liability to Buyer, withhold its performance hereunder, change the payment terms hereunder, and/or repossess the Goods previously delivered.

20. Assignment. This contract may not be assigned, in whole or in part, by either party except with the prior written consent of the other party, except that (a) Seller may assign any of its rights to receive any payment from Buyer hereunder, and (b) Seller may subcontract the performance of any of its obligations hereunder.

21. Entire Agreement. This acknowledgment represents the entire agreement between the parties with respect to the Goods and supersedes all prior discussions or understandings between them.

22. Amendment; Waiver.

(a) This contract may not be changed orally, and no amendment or modification of any of the terms and conditions herein, nor any waiver of said terms and conditions, shall be valid or binding unless such amendment, modification or waiver is contained in a written agreement or instrument signed by both parties.

(b) The failure of Seller to insist on strict compliance with these terms and conditions, or to delay in exercising its rights hereunder, shall not constitute an amendment or waiver of such rights.

23. Applicable Law. This contract shall be governed by the laws of the Commonwealth of Pennsylvania, with regard to any conflicts of law or choice of law provision which would compel the application of the laws of any other jurisdiction.

24. Disputes. Any disputes between the parties shall be settled at the option of Seller either by (a) arbitration in Pittsburgh, Pennsylvania, in accordance with provisions of the regulations regarding conciliation and arbitration of the American Arbitration Association, by one or more arbitrators appointed in the means prescribed in the said regulations, or (b) by a court of competent jurisdiction in Pittsburgh, Pennsylvania, and in such event, the parties hereby consent to the exclusive venue and jurisdiction of such courts.