

TERMS OF SALE

1. Acceptance of these Terms of Sale: Buyer will be deemed to have assented to these Terms of Sale when (i) Buyer acknowledges acceptance hereof by signing the first page; (ii) when Buyer has received delivery of the whole or part of the goods; or (iii) when Buyer has otherwise assented to the terms and conditions hereof. These Terms of Sale shall supersede any provisions, terms and conditions contained on any confirmation order, or other writing by Buyer, and the rights of the parties shall be governed exclusively by these Terms of Sale. It is expressly understood and agreed that these Terms of Sale shall prevail over any conflict with the terms and conditions set forth in Buyer's order form.
2. Payment Terms: The amount due as shown on this invoice shall be due and payable on the terms, if any, set forth on the face of this invoice, upon Buyer's receipt of the goods described herein or upon the date of this invoice, whichever is later. If such amount is not paid in accordance with such terms (or if no terms are specified, when it otherwise becomes due and payable), the overdue payment will bear interest from date of shipment at the highest legal rate. Seller reserves the right to withhold shipments if any payment is past due. If, in Seller's opinion, the financial condition of Buyer at any time does not justify continuance of shipment on the terms of payment specified, Seller may require full or partial payment in advance. All payments shall be in United States Dollars unless otherwise specified by Seller. Unless and until paid in full for any amounts owed by Buyer to Seller (hereunder or otherwise), Seller shall retain a first priority security interest in the goods delivered hereunder and Buyer agrees to execute and deliver such documents as Seller may request in order to perfect such security interest.
3. Shipment: Unless otherwise stated, all prices are F.O.B. Seller's warehouse. Method and route of shipment are at Seller's discretion, unless Buyer and Seller otherwise agree. Identification of the goods to the contract shall occur as each shipment is placed in the hands of the carrier.
4. Claims: This invoice shall be presumed correct unless the Buyer notifies Seller of any claimed error or deficiency within fourteen (14) days of receipt. Any suit by Buyer arising from this invoice or sale of the goods evidenced hereby shall be commenced within one (1) year of Buyer's receipt of the goods or shall forever be deemed waived and time barred.
5. Seller's Warranties and Disclaimer of Warranties: Unless otherwise expressly set forth on the face of this invoice, Seller warrants only that the goods described in this invoice meet its standard specifications and are free from material defects. This warranty will survive for a period of one year after the delivery date of the goods. This warranty shall not apply to goods altered by Buyer or defects caused by Buyer's actions or inaction. NO EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES WHETHER OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, OR OTHERWISE, OTHER THAN THOSE EXPRESSLY SET FORTH HEREIN WHICH ARE MADE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, SHALL APPLY TO GOODS SOLD BY SELLER.
6. Remedies: If the goods described in this invoice fail to conform to Buyer's order or to any warranty and Buyer notifies Seller of such nonconformity, Seller upon receipt of such notice shall instruct Buyer as to the disposition of such nonconforming goods and shall at Seller's option either refund the invoice price thereof (if previously paid) or replace such nonconforming goods at the place of original delivery. The refund or replacement of such nonconforming goods in accordance herewith shall be Buyer's sole and exclusive remedy. IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, EVEN IF ADVISED OF THE POSSIBILITY OF SAME, OR FOR TRANSPORTATION OR OTHER EXPENSES WHICH MAY ARISE IN CONNECTION WITH SUCH GOODS.
7. Indemnity: Buyer agrees to defend, indemnify and hold Seller harmless from and against all claims, demands, costs, (including reasonable attorneys' fees) and liabilities arising from or arising in connection with Buyer's use, handling, transport or resale of the goods, including but not limited to claims by Buyer's employees and subcontractors; provided, however, that Buyer shall not be required to indemnify Seller for claims arising solely from Seller's negligence or intentional misconduct.
8. Cancellation: An order once placed with and accepted by Seller can be cancelled only with Seller's consent and upon terms that will indemnify Seller against loss.
9. Returned Material: In no case are goods to be returned without first obtaining Seller's permission. Only unused material as currently manufactured, which has been invoiced to the Buyer within 30 days will be considered for return. Material accepted for credit may be subject to a service charge, plus all transportation charges. Custom print or special order items are not subject to return for credit, without express agreement from Seller. Goods must be securely packed to reach Seller without damage.
10. Particular Transactions: If the transaction evidenced by this invoice has been agreed upon between Seller and Buyer to be priced at cost plus an agreed upon percentage, the cost used to compute the price shown on this invoice and agreed to by Buyer is cost unadjusted for any advertising or promotional allowances, discounts or any other vendor concessions.
11. Freight: Freight charges added to the invoice may include an amount greater than the freight charges paid to the carrier for handling and administrative expenses, and are not subject to discounts.
12. Taxes: The amount of the present or future sales, revenue, excise, or other taxes applicable to the goods listed in this invoice shall be added to the purchase price and shall be paid by the Buyer, or in lieu thereof, the Buyer shall provide Seller with a tax exemption certificate acceptable to the taxing authorities of any relevant jurisdiction.
13. Attorney's Fees: In the case of a failure to pay the invoice amount when due or any other breach of these Terms of Sale, Seller may recover legal fees and any additional costs and expenses incurred in enforcing payment or the terms hereof.
14. Miscellaneous. If any part of the invoice shall be held to be illegal, void or unenforceable, the remaining portions shall remain in full force and effect. The failure of Seller to insist in any instance, upon the performance of any of these Terms of Sale, or to exercise any right hereunder, shall not be construed as a waiver of any of the other Terms of Sale or the right to enforce the future performance or the future exercise of any other rights herein. The remedies provided herein shall be the sole and exclusive remedies of Buyer with respect to the subject matter hereof. Seller shall not be liable for loss or damage of any kind resulting from delay or inability to deliver on account of fire, labor troubles, accident, acts of civil or military authorities, or from any other cause beyond its control. These Terms of Sale and the invoice shall constitute the entire agreement between Seller and Buyer, superseding all prior oral or written communications and negotiations with respect to the subject matter hereof. These Terms of Sale may not be changed or modified orally, but may only be modified or amended, in whole or in part, in a writing signed by both Seller and Buyer.