

Terms & Conditions of Sale

TERMS AND CONDITIONS OF SALE – FORM TC-4

- ACCEPTANCE.** The terms and conditions set forth in this document express all of the terms of the Agreement between the parties. "Seller" is the entity who manufactures, prints and/or distributes the goods described on the face hereof. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Purchaser are hereby objected to and are not part of the agreement. No other terms and conditions will be included unless they are in writing and signed by both parties. Acceptance or acquiescence in a course of performance rendered under this agreement shall not be relevant to determine the meaning of this agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection.
- WARRANTIES AND LIMITATION OF REMEDIES.** All goods sold by the Seller are warranted to be free from defects in material and workmanship is valid for 30 (thirty) days following date of shipment. Seller's liability, whether under the theory of breach of contract or warranty, negligence or strict liability to the amount equal to the purchase price for the goods or replacement of the goods. This exclusive remedy shall not be deemed to have failed of its essential purpose so long as the Seller is willing and able to replace defective goods or provide a credit adjustment in the prescribed manner. Seller's warranty does not apply to any goods which have been subjected to misuse, mishandling, misapplication, neglect, accident, improper installation or storage, etc. Any action brought relating to the goods must be commenced within 1 (one) year from notification of defect. Seller shall be entitled to recover costs and attorneys fees in the enforcement or defense of any rights hereunder. In no event shall Seller be liable for consequential damages arising out of or in connection with this agreement, including without limitation, breach of any obligation imposed by Seller hereunder or in connection herewith. Consequential damages for purposes hereof shall include, without limitation, loss of use, income or profit, or losses sustained as a result of injury (including death) to any person, or loss of or damage to property (including, without limitation, property handled or processed by the use of the goods). Purchaser shall indemnify Seller against all liability, cost or expense which may be sustained by Seller on account of any such loss, damage or injury. THE EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE THEREOF, GOODS WHICH MAY BE SOLD BY SELLER, BUT WHICH ARE NOT MANUFACTURED BY THE SELLER, ARE SOLD ONLY WITH THE WARRANTIES, IF ANY, OF THE MANUFACTURER THEREOF.
- INSPECTION OF GOODS.** Upon Purchaser's receipt of shipment, Purchaser shall immediately inspect the goods. Unless Purchaser provides Seller with written notice of any claim or shortages of or defects in the goods within 10 (ten) days after receipt of shipment, such goods shall be deemed finally inspected, checked and accepted by Purchaser.
- CLAIMS – NOTICE OF DEFECT.** Purchaser has 30 (thirty) days from date of receipt of goods to notify Seller of claimed defective goods. Seller shall be given reasonable amount of time for inspection once Seller has received defective samples.
- RETURNED GOODS.** (A) AUTHORIZED – Goods may be returned only upon Seller's approval. Seller will issue a Returned Goods Authorization Number (RGA#) which must accompany the returned goods in a packing slip form. When goods are returned a credit adjustment for purchase price of the quantity of goods returned will be made to Purchaser if warranted under seller's return policies. Purchaser will be liable for all other miscellaneous charges accrued for the return of non-defective goods and will be subject to all shipping/handling and restocking fees. (B) UNAUTHORIZED – No credit will be allowed for unauthorized returns. Purchaser will be liable for all other miscellaneous charges accrued including but not limited to shipping/handling and restocking fees. (C) No returns after 90 (ninety) days. (D) No returns of specially manufactured products, except for defective product caused by seller's error.
- DEFAULT.** Each order accepted by Seller shall be sold and delivered under a separate contract. Any party in default in respect to any such shipment shall be liable for such default. Any default shall not entitle the other party to repudiate the contract in regard to any shipments to be made in the future.
- PRICES.** Unless otherwise stated all prices on goods are valid for no more than 30 (Thirty) days from the date of the sales quotation. Prices are then subject to change without notice. Prices are exclusive of all taxes – federal, state or local unless otherwise stated. There will be added to the quoted price any sales or other tax or duty which Seller may be required by law to collect to pay upon the sale of goods quoted. If such amount is not included or is incorrect in the invoice of goods, it may be invoiced separately later.
- PRICING FOR TRANSPORTATION.** All prices are F.O.B. Seller's plant. Purchaser is obligated to pay the price for Seller's shipment of the goods. Prices quoted for shipping/handling fees will be ONLY AN ESTIMATE for the cost of shipment. Seller reserves the right to collect from Purchaser any additional fees if such amount is NOT included or is incorrect in the invoice of goods. This fee may be invoiced separately later. These prices are subject to change at any time, without notification at the discretion of the Seller.
- MISCELLANEOUS PRICES.** Any prices quoted for tooling, patterns, plates, jigs, dies and gauges or similar equipment consist of charges for engineering and development, and do not entitle the Purchaser to ownership or right of removal of such tooling or equipment. Any orders that must be delivered sooner than Seller's allotted delivery schedule will be considered a "RUSH ORDER", and Seller reserves the right to charge a fee to complete the order within the time specified by Purchaser.
- PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging materials in pallets, bulk or individual cartons. Packaging will be standard commercial packaging acceptable to commercial carrier. Seller shall not be responsible for insuring shipments unless specifically requested by Purchaser and any insurance so requested shall be at Purchaser's expense and valuation. Special customer packaging will be furnished only when specified and so stated herein and the cost thereof shall be borne by Purchaser.
- QUANTITY SHIPPED.** STOCKED GOODS will be delivered in exact quantities according to prepackaged quantities. Invoicing will reflect the total quantity shipped. SPECIALLY MANUFACTURED GOODS will have a variance of plus/minus 10% of the quantity ordered. The invoice will be adjusted to reflect the exact quantity shipped. All Seller's counts are final.
- FORCE MAJEURE.** Seller shall not be liable for any delay in delivery or for non-delivery, in whole or in part, caused by the occurrence of any contingency beyond the control either of Seller or of Suppliers to the Seller, including but not limited to failure or delay in transportation, acts of any government or any agency or subdivision thereof, judicial action, labor disputes, fire, accident, or acts of nature, shortage of labor, fuel, raw material or machinery or technical failure. If any contingency occurs, Seller may allocate production and deliveries among Seller's customers.
- DELIVERY.** The promised delivery date is the best estimate possible of when the goods will be shipped and are subject to the provisions of Paragraph 12, Force Majeure.
- ENGINEERING AND DEVELOPMENT.** Title for any tooling, patterns, plates, jigs, dies and gauges or similar equipment remains with the Seller.
- CONFIDENTIALITY.** Any information provided to Purchaser shall be retained as confidential and cannot be used or disclosed to any third party without the written consent of Seller. Seller retains all rights in any invention, improvement, discovery or patent it conceives relating to the goods delivered hereunder. Any sketches, models or samples submitted to Seller shall remain the property of Seller, and shall be treated as confidential information unless the Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models and samples, or any design or production techniques revealed thereby, shall be made without the express written consent of the Seller.
- DISCLAIMER FOR DESIGN AND PRINTING.** Seller shall not be liable for incorrect printed or designed goods which Purchaser has approved and signed for manufacturing. Seller will only print or design information the Purchaser has supplied to Seller. Purchaser shall defend hold harmless and indemnify Seller against any claims, liability, costs or attorneys/collection fees incurred in relation to any claim made to Purchaser for misrepresentation of printed or designed goods. Purchaser shall hold Seller harmless for breach of laws (such as trademark law).
- OWNERSHIP OF NEGATIVES AND ART WORK.** All negatives and art work prepared or made by Seller for any order shall remain solely the property of Seller to be used in any manner as Seller desires. Seller shall have no obligation to retain such negatives or art work for any period of time and shall have complete freedom to dispose of same in its sole discretion.
- CANCELLATION.** Orders accepted by Seller cannot be canceled or deliveries deferred without the consent of Seller. Orders canceled or terminated by the Purchaser for reasons not the faults of Seller are subject to a cancellation charge in addition to actual costs incurred by Seller for the portion of the order that has been completed at the time of cancellation. Purchaser will indemnify Seller against all loss due to cancellation.
- USE OF PRODUCT IN ADVERTISING/PROMOTION.** Purchase grants Seller permission to use samples and/or reproduction of any custom or printed products in Seller's advertising and/or promotional materials.
- CREDIT APPROVAL.** Shipment and delivery of goods and performance of work shall at all times be subject to the approval of Seller's Credit Department. Seller may at any time decline to make any shipment, delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to Seller. The Seller has sole discretion of terminating the credit line to the Purchaser. On request, the Purchaser agrees that the continued solvency of the Purchaser is a precondition to any sale made by Seller. The Purchaser agrees to provide Seller with a statement representing that the Purchaser is and remains solvent. The Purchaser acknowledges and agrees that Seller may utilize outside credit reporting services to obtain information on the Purchaser. If Purchaser's credit status is C.O.D., Seller reserves the right to charge additional shipping/handling fees.
- PAYMENT TERMS.** Subject to the provisions of Paragraph 18, Credit Approval, unless otherwise stated, terms of payment hereunder shall be in U.S. Funds, Net 30 (thirty) days from the date of the invoice. In cases of international purchases, by an Irrevocable Letter of Credit confirmed on a U.S. bank with Seller as the designated beneficiary. On all past due invoices, Seller reserves the right to charge an interest rate of one and half percent per month which shall accrue and shall be payable by Purchaser to Seller. If Purchaser defaults with respect to any Terms and Condition under this agreement, including with respect to any payment described herein above, it shall pay Seller for all costs and expenses including legal expenses and attorney/collection fees incurred by Seller in exercising any of its rights or remedies. Until the purchase price and all other sums due pursuant hereto are paid in full, Seller retains a security interest in the materials described on the face hereof (herein referred to as "Goods") and in all proceeds of said goods. Payments may be applied as against open charges at the discretion of creditor. It is understood that in the event it becomes necessary for creditor to retain the services of an attorney/collection agency in order to collect amount due Seller from Purchaser or for any other purpose, Seller shall be entitled to recover from Purchaser, costs and reasonable attorney/collection fees.
- GOVERNING LAW.** The parties hereto knowingly and intentionally waive the right to a jury trial on any issue or dispute that may arise between them. All accounts shall be due and payable in Sussex, Wisconsin. In the event of litigation, venue shall be in Waukesha County, Wisconsin.
- FAIR LABOR STANDARDS.** Seller warrants that the products manufactured are produced in accordance with the requirements of the Fair Labor Standard Acts, as amended.
- GENERAL CONDITIONS.** Agents who are authorized to bind Seller to any Agreement, Warranty, statement, promise or understanding not herein expressed are individuals appointed with the following titles; Chief Executive Officer, President, Vice President of Finance.
- ENTIRE AGREEMENT.** This instrument contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by the party against whom enforcement of any such waiver, change, modification extension or discharge is sought.