STANDARD TERMS AND CONDITIONS OF SALE

1. Seller hereby notifies Buyer in advance that Seller objects to any terms and conditions in Buyer's purchase order or other document which are additional to or different than these terms and conditions of sale, whether or not such additional or different terms would materially alter the contract. If a contract between Buyer and Seller is established through performance or other conduct of the parties, the terms and conditions of that contract will not be deemed to consist only of terms and conditions as to which the parties' writings agree, but rather these terms and conditions of sale will be a part of that contract and will prevail over the conflicting and/or different terms and conditions of any other document forming a part of the contract.
2. It is Buyer's responsibility to make a careful inspection of the cargo for evidence of loss or damage, both apparent and concealed. For loss or damage in transit by Parcel Post or United Parcel Service, report to Seller immediately and retain damaged products and shipping container for our instructions. For loss or damage by motor freight, freight forwarders, railway express, rail or air shipments, secure a notation of any loss or damage on your copy and on the carrier's copy of the delivery receipt, retain products and shipping containers and call carrier immediately for an inspection and file a claim with the carrier.
3. To the extent that this order is covered by a prior written contract between us, it is accepted on the terms and conditions in that contract and the terms and conditions expressed, herein are not intended to modify, change or supersede such prior contract. To the extent that this order is not covered by such a contract, this instrument contains all of the terms and conditions with respect to the sale and purchase of products named herein. Seller can change its applicable terms and conditions at any time unless otherwise explicitly stated on the face hereof or in an effective prior written contract. No modification of these terms and conditions shall be of any force unless such modification shall be in writing and signed by the party claimed to be bound thereby. This sales agreement is not assignable or transferable by Buyer, in whole or in part, except with the written consent of Seller.
4. Seller's liability as to delivery ceases upon making delivery of products purchased hereunder to carrier at shipping point in good condition. Title and risk of loss for the products supplied hereunder will pass at the Seller's shipping location for all products shipped by Seller. Title to and risk of loss for all products picked up by Buyer at Seller's designated shipping location will pass to Buyer at the point the products are deposited by Seller onto Buyer's owned or leased equipment. Seller's weight taken at shipping point shall govern.
5. IT IS UNDERSTOOD AND AGREED THAT SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES OF FITNESS OR OF MERCHANTABILITY OR ANY OTHER WARRANTY WHATSOEVER EXCEPT THAT THE PRODUCTS SOLD HEREUNDER SHALL BE OF THE QUANTITY SPECIFIED AND THAT THE PRODUCTS SHALL CONFORM TO SELLER'S CURRENT PUBLISHED SPECIFICATIONS AND THOSE SPECIFICATIONS LISTED ON PRODUCT LABELS. AS TO ANY PRODUCTS WHICH SELLER HAS ITSELF PURCHASED AND HAS SUBSEQUENTLY SOLD WITH NO FURTHER PROCESSING, SELLER MAKES NO WARRANTIES WHATSOEVER, AND DISCLAIMS ANY RESPONSIBILITY FOR SUCH PRODUCTS FAILING TO MEET ANY SPECIFICATIONS PUBLISHED BY ANY PERSON OTHER THAN SELLER.
6. Seller will not be liable to Buyer, its customers, employees or agents, under any claim or circumstances (including without limitation any circumstance involving a finding that a warranty or remedy has failed of its essential purpose), whether the claim sounds in contract, tort or other legal theory, for indirect, incidental or consequential damages, including without limitation damages for lost profits or revenue, lost sales, lost goodwill or loss of use of any product.
7. Buyer shall examine all products for damage, defect or shortage. All claims for any cause whatsoever (whether such cause be based on contract, breach of warranty, negligence, strict liability, tort or otherwise) shall be deemed waived unless made in writing and received by Seller within thirty (30) days after Buyer's receipt of products or before products are used, whichever shall occur first. Claims for non-delivery of products must be made within thirty (30) days after the date upon which such products were to be delivered; provided that as to any claim not reasonably discoverable within such thirty (30) day period (including claims discoverable only in processing, further manufacture, other use or resale), such claim shall be made in writing and received by Seller within 120 days after Buyer's receipt of the products. Failure of Seller to receive written notice of any claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of such claim irrespective of the facts giving rise to such claim. Products sold under this Agreement shall not be returned without Seller's permission and transportation charges for return shall not be paid by Seller unless authorized in advance.
8. Payment terms are net ten (10) days from invoice date unless otherwise agreed in writing. In the event Buyer fails to fulfill the terms of payment or in case Seller shall have any doubt at any time as to Buyer's financial responsibility, Seller may decline to make further deliveries except upon receipt of cash or satisfactory security. Buyer shall reimburse Seller for all taxes, excise or other charges, which Seller may be required to pay to any government (national, state or local) upon the sale, production or transportation of the products sold hereunder. Buyer shall pay all reasonable costs, fees (including attorney's fees) and expenses incurred by Seller in collecting monies due or to become due hereunder.
9. Performance of Seller will be excused in case of acts of God, war, riots, fire, explosions, floods, strikes, lockout, injunctions, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, accidents, breakage of machinery or apparatus, national emergency or because performance is made impracticable by the occurrence of any other unforeseeable contingency, or because of compliance in good faith with any applicable foreign or domestic governmental statute, regulation or order whether or not it later proves to be invalid, preventing the manufacture, shipment or acceptance of a shipment of the product, or preventing any manufacture of a material upon which the manufacture of the products of this contract is dependent. Any delivery so suspended shall be canceled without liability, but the contract shall otherwise remain unaffected.
10. Buyer assumes complete responsibility for, and agrees to defend, indemnify and hold Seller and its employees harmless from all claims, demands, actions and causes of action, including attorney's fees and actual costs incurred as a result thereof, on account of injury to any person or any property damage, arising out of the handling, transportation, storage, possession, processing, further manufacture or other use or resale of the products after the products are delivered to Buyer or upon Seller's delivery to carrier at shipping point, whether or not such products are handled, stored, or used singly or in conjunction with other products. This paragraph shall not operate to relieve Seller from liability resulting solely from Seller's negligent acts or omissions.
11. It is expressly understood that any technical advice furnished by Seller with reference to the use of its products is given gratis and Seller assumes no obligation or liability for the advice given or results obtained. All such advice is given and accepted at Buyer's risk.
12. When in the opinion of Seller there is a period of shortages of supply of said products for any reason, Seller may allocate its available supply among any or all of its various customers upon such basis as it shall deem fair and practicable, with no liability on its part for failure to deliver the quantity or any portion therein specified.
13. Buyer shall not resell products that are governed by this Agreement unless Buyer uses such products to create a new product.
14. Buyer agrees that products will be used, handled, stored, transported and disposed of in such a manner as is necessary for the safety and protection of persons, property and the environment, and in accordance with Seller's recommendations and applicable governmental laws and regulations. Buyer agrees to instruct its employees and customers with respect to, and make certain that they know and understand procedures necessary to enable them to comply with the requirements set forth herein and to make certain that they are adequately trained to handle emergency situations arising from the use, handling, storage, transportation and disposition of the products.
15. This contract, the construction of this contract, all rights and obligations between the parties to this contract, and all claims arising out of or relating to the subject matter of this contract (including all tort claims), will be governed by the laws of the State of Kentucky, without regard to its conflict of laws principles. The applicability of the U.N. Convention on the International Sale of Goods is hereby expressly excluded. Any litigation or other legal proceeding of any kind based upon or in any way related to this contract, its subject matter, or the rights or obligations of the parties to this contract, will be brought exclusively in an appropriate court of competent jurisdiction (state or federal) located in Boone County, Kentucky (if the action is brought in state court) or in the Eastern District of Kentucky – Covington (if the action is brought in federal court), and must be brought within two years after the date on which the claim accrued. Any action brought in such courts will not be transferred or removed to any other state or federal court. The parties consent to the exercise of jurisdiction over them by the above-named courts as their freely negotiated choice of forum for all actions subject to this forum selection clause.