

TERMS AND CONDITIONS

1. THERE ARE NO WARRANTIES OF FITNESS OR MERCHANTABILITY WHICH EXTEND BEYOND THE DESCRIPTION ON THE FACE HEREOF. See Paragraph 12 for additional limitations and exclusions of warranties.
2. This contract includes the provisions on the reverse hereof, and may state terms additional to or different from any prior sales contract or offer. Buyer shall be deemed to accept all provisions of this contract unless objection is made to seller within 10 days.
3. ACCEPTANCE. Goods sold pursuant to this contract shall be inspected by Buyer on arrival and any use of the goods for purposes other than inspection and testing during the thirty (30) period referred to below shall constitute an acceptance. Except as otherwise provided in Section 11, if the goods fail to conform to the contract in any way, Buyer shall notify Seller within thirty (30) days of arrival and failing such notification the goods shall be deemed to have been accepted, and it is expressly agreed that Buyer shall have waived all claims based on any defects that were or would have been discovered on reasonable inspection during this period. Without limiting the generality of the foregoing, any acceptance hereunder shall be deemed to have been made with knowledge of any defects that a reasonable inspection during the allowed time period would have revealed.
4. DELIVERIES. If packing and/or shipping instructions are not set forth on the face of this contract and Buyer has not otherwise provided packing and/or shipping instructions that have been accepted in writing by Seller, Seller will pack and ship the goods covered by this contract in accordance with sound commercial practices, based on customary usage in the trade. Unless otherwise specified on the face of this contract, Seller may deliver and Buyer shall accept up to ten percent (10%) more or less than the contract quantity. If the goods are sold on an actual weight basis, factory or supplier weight shall be conclusive.

Unless otherwise specified on the face of this contract, Seller shall have the right to make partial deliveries. Each partial delivery shall be deemed a separate sale and shall be paid for by Buyer at the contract price and terms. Unless otherwise stated on the face of this contract, all sample requirements furnished pursuant to this contract shall be charged by Seller and paid for by Buyer at the contract price. Any delay in delivering samples or other sample requirements shall not constitute a breach of this contract. Any defect in quality or delay in delivery of any partial shipment or installment shall not affect the balance of this contract. Where Buyer has declared or manifested an intention that it will not accept delivery in accordance with the provisions of this contract, no tender shall be necessary, but Seller may, at its option, give notice in writing to Buyer that Seller is ready, willing and able to deliver in accordance with the provisions of this contract, and such notice shall constitute a valid tender of deliver.

5. DIFFICULTIES IN SHIPMENT OR DELIVERY. If, without the fault of either Seller or Buyer, (a) the agreed berthing, loading or unloading facilities fail, (b) the type of carrier agreed on becomes unavailable, or (c) the manner of delivery agreed on becomes commercially impracticable, then Seller, as to all or any portion of the goods still undelivered, shall have the option of (x) postponing the shipment for such time as may be reasonable under the circumstances, (y) if a commercially reasonable substitute is available, substituting another place of shipment, carrier or route, or (z) canceling the sale. If Seller substitutes a commercially reasonable alternative, Buyer shall be obligated to accept the substitute performance, and any increased costs incident to the substitute performance shall be borne by Buyer unless otherwise agreed by the parties.

If, after the goods have been shipped, their arrival is delayed or prevented because, without fault of Seller, the carrier is delayed in arriving, berthing or unloading or the carrier unloads at a different point of destination, Seller shall not be liable therefore, and the delivery time shall be extended until the goods are in fact unloaded. In such case, the point of arrival shall be the place, whether or not the agreed point of destination, at which the goods are actually unloaded by the carrier. Seller shall advise Buyer of any such delay or change in the point of destination within a reasonable time and shall cooperate with Buyer, at Buyer's expense, in shipping the goods to the agreed point of destination or direct to Buyer's warehouse or other facility, with due allowance to Buyer for inland transportation charges, if any, included in the selling price.

6. CHANGES IN COSTS. Shipping, freight, terminal and other transportation expenses ("Transportation Expenses"), and any duties or taxes imposed upon the goods and/or their containers by the United States or any foreign country, or any state, county, municipality or local governmental body or political subdivision of the United States or any foreign country ("Taxes"), if included in the contract price, are based on the rates, charges and tariffs in effect on the date hereof. Any increases in Transportation Expenses or Taxes after the date hereof (including any Tax increases resulting from an increase in assessed valuation, a change in classification or the imposition of a new or additional Tax) are for Buyer's account, and, if any such Transportation Expenses or Taxes are included in the contract price or are otherwise payable by Seller, the amount of the increases shall be added to the contract price and shall be paid by Buyer at the same time as the purchase price originally provided for in this contract. The amount of any such increase, as computed by Seller in a written notice to Buyer, shall be binding upon Buyer except for clerical or mathematical errors.

7. PAYMENT. Payment terms are as set forth on the face of this contract. All invoices are payable in United States dollars, and no discount may be taken unless specified on the face of this contract. Invoices that are not paid by the due date shall be assessed a late payment charge at the rate of 1.5% per month on the unpaid balance, retroactive to the date of the invoice, but in no event shall the late payment charge exceed the maximum lawful rate. Any invoice not in dispute shall be paid by the due date without offset, defense or counterclaim and regardless of controversies relating to other delivered and/or undelivered goods or any other contract between Buyer and Seller, except that Buyer may setoff or deduct from sums due Seller those sums owed by Seller to Buyer as agreed to by the parties in writing or as finally determined by arbitration or other dispute resolution. Any check or remittance received from or for the account of Buyer may be accepted and applied by Seller against any indebtedness or obligation owing by Buyer, as shown by the books and records of Seller, without prejudice to or the discharge of the remainder of any such indebtedness or obligation or any other indebtedness or obligation, regardless of any condition, proviso, statement, legend or notation appearing on, referring to or accompanying such check or remittance.

If this contract provides for delivery in installments or if Seller makes any partial deliveries, on the failure of Buyer to pay for any installment or partial delivery as set forth herein, Seller may suspend delivery of all further installments under this contract and deliveries under any other contract between Buyer and Seller until such payment is made. Payment of each installment, and payment for any partial deliveries, is essential to the continuance of this contract and any other contracts between Buyer and Seller, and, if Buyer fails to pay for any installment or partial delivery as set forth herein and does not cure the default within ten (10) days of a written demand by Seller, Seller may cancel this entire contract and any other contracts between Buyer and Seller, with full reservation of all rights and remedies.

8. LIMITED WARRANTY. Seller warrants that the goods sold pursuant to this contract will be as described (subject to the provisions of Section 10) and will be free of any defects in parts and workmanship for a period of twelve (12) months from delivery if used under normal circumstances and in a manner consistent with the performance criteria for such goods, if any, specified by Buyer in writing prior to the entry into this contract. Any such warranties which cannot be waived shall in any event be limited in duration to the duration of the foregoing limited warranty. Seller warrants only to Buyer and to no other person that its goods will meet the foregoing limited warranty on the date of delivery to Buyer.

THE SUITABILITY OF THE GOODS FOR ANY PURPOSE PARTICULAR TO BUYER IS FOR BUYER TO DETERMINE IN ITS SOLE JUDGMENT. SELLER UNDERTAKES NO RESPONSIBILITY FOR THE SELECTION OR FURNISHING OF GOODS SUITABLE TO THE INDIVIDUAL NEEDS AND PURPOSES OF BUYER, AND BUYER ASSUMES ALL RISKS AND LIABILITY WHATSOEVER RESULTING FROM THE USE OF THE GOODS AS COMPONENTS IN PRODUCTS MANUFACTURED BY OR FOR BUYER. Any statements of Seller regarding the goods are tendered merely as Seller's opinions. Seller shall not be liable for normal manufacturing defects or for customary variations from quantities or specifications.

9. EXCLUSIVE REMEDY. The **SOLE AND EXCLUSIVE REMEDY** of Buyer for breach of any warranty is the repair or replacement of defective or non conforming goods at no cost to Buyer for the indicated period or, at Seller's option, the refund of the purchase price. The remedy provided herein is expressly given in substitution of any and all remedies otherwise provided under the Uniform Commercial Code or otherwise. Anything herein to the contrary notwithstanding, if defective or nonconforming goods are not repaired or replaced, the limit of Seller's liability shall not exceed the contract price of the goods, and Buyer agrees that the foregoing remedies shall not be deemed to have failed of their essential purpose so long as Seller is able to refund the purchase price for such goods. If Seller elects to refund the purchase price of any goods, Seller, in its discretion, may condition the refund on Buyer's return, of the defective or nonconforming goods.

BUYER HEREBY ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES, AND IN NO EVENT, SHALL SELLER'S LIABILITY, IF ANY, EXCEED THE NET SALES PRICE OF THE DEFECTIVE PRODUCT(S); NO ADDITIONAL ALLOWANCE SHALL BE MADE FOR THE LABOR OR EXPENSE OF REPAIRING OR REPLACING DEFECTIVE PRODUCTS OR WORKMANSHIP OR DAMAGE RESULTING FROM THE SAME. SELLER HEREBY DISCLAIMS ALL EXPRESSED OR IMPLIED WARRANTIES, WHETHER IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS OR FITNESS FOR A PARTICULAR PURPOSE, UNDER NO CIRCUMSTANCES, AND IN NO EVENT, WILL SELLER BE LIABLE FOR ANY COST OF REPAIRS OR INCIDENTAL, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR LIQUIDATED DAMAGES OF ANY KIND, WHETHER BASED UPON WARRANTY, CONTRACT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER CAUSE OF ACTION ARISING IN CONNECTION WITH THE DESIGN, MANUFACTURE, SALE, TRANSPORTATION, INSTALLATION, USE OR REPAIR OF THE PRODUCTS SOLD BY SELLER.

In the event that any other term of this contract is found unconscionable or unenforceable for any reason, or any exclusive remedy fails of its essential purpose, the foregoing waiver by agreement of consequential and certain other damages nonetheless shall continue in full force and effect. Buyer acknowledges and agrees that the foregoing limitations on liability and the disclaimer of warranties set forth in Section 8 & 9 are an essential basis for Buyer's contract with Seller, that Seller would not have entered into this contract but for these provisions, and that the foregoing exclusion of special, incidental, consequential and certain other damages shall apply whether or not Seller is able to repair or replace any defective goods. This allocation of risks is reflected in the purchase price for the goods provided to Buyer.

10. SAMPLE CONTROLLING. If, prior to or after the date of this contract, Buyer has approved or approves in writing a sample of the goods that are to be delivered under this contract, the sample so approved by Buyer shall serve as the controlling pattern for the goods subject to this contract. In the event that specifications derived from the approved sample conflict with the technical specifications set forth elsewhere in this contract, the specifications derived from the sample shall control and shall serve as the exclusive standard for determining whether the goods conform to the contract in general and to any warranty in particular.

11. CLAIMS. No claims related to weight, quantity or damage in shipment shall be allowed unless exceptions are taken at the time of pick-up of the goods by Buyer or its agents from the dock or warehouse, as applicable. Any claims related to defects that a reasonable inspection would have revealed must be made within the thirty (30) day inspection period set forth in Section 3. Any other claims regarding the goods or the delivery (or non-delivery) thereof, including any claims based on breach of warranty, must be made within thirty (30) days of the discovery of any defect, nonconformity or other failure in performance by Seller. In default of such timely notice, Buyer shall be barred from the remedies set forth in Section 9 or any other remedies.

All claims must be in writing and shall set forth the details of the claim with full particulars. In the case of any claims relating to defective or nonconforming goods, Buyer must deliver to Seller a reasonable number of samples of the defective or nonconforming goods, and, before returning any such goods, Buyer shall obtain from Seller a return material authorization number. Buyer will allow reasonable time for the inspection of any claim, including, where applicable, by insurance surveyors, and, in the case of a dispute as to whether the goods meet contract specifications, Seller or Buyer may request a suitable impartial testing laboratory to make an examination. In determining whether goods meet contract specifications, practice in the trade or industry with regard to the acceptance of like goods shall be relevant to the determination.

12. TIME FOR COMMENCING ACTION. Any action for breach of contract under this contract (whether in arbitration or by a permitted court proceeding) must be commenced within one (1) year after the cause of action has accrued.
13. SOLVENCY. Buyer hereby formally represents that it is solvent, and Buyer understands that delivery of goods hereunder is to be made in reliance on this representation of solvency.
14. INSOLVENCY. In the event of the insolvency of Buyer (as defined by the Uniform Commercial Code), any act of bankruptcy by Buyer or the commencement of any insolvency proceeding by or against Buyer, Seller may refuse delivery of the goods covered by this or any other contract between Buyer and Seller except for cash, including payment for all goods theretofore delivered under this or any other contract between Buyer and Seller, and Seller may stop delivery of all goods in transit.
15. INSECURITY. In the event Seller deems itself insecure, Seller may refuse delivery of the goods covered by this or any other contract between Buyer and Seller except for cash, including payment for all goods theretofore delivered under this and any other contract between Buyer and Seller, and Seller may stop delivery of all goods in transit. "Insecure" is intended to mean a good faith belief that the prospect of payment is impaired.
16. CASH PAYMENT. If, for any reason, Seller deems it necessary to require payment in cash, notwithstanding the credit terms set forth on the face of this contract, Seller may do so at its option, provided that upon the exercise of such an option Buyer will be so informed at least ten (10) days prior to delivery.

17. CERTAIN DEFAULTS. In the event of (a) the failure of Buyer to make any payment due hereunder (including any payment due pursuant to the provisions of Sections 14, 15 or 16), or under any other contract between Buyer and Seller, within ten (10) days of a written demand by Seller, (b) any other breach or repudiation of Buyer of this or any other contract with Seller, or (c) the insolvency of Buyer (as defined by the Uniform Commercial Code), any act of bankruptcy by Buyer or the commencement of any insolvency proceeding by or against Buyer, Seller may cancel this and any other contract with Buyer (with Buyer remaining liable for damages), defer any shipments hereunder and under any other contract with Buyer, declare forthwith due and payable all outstanding amounts owed by Buyer to Seller under this and any other contract, and/or sell all or any part of the undelivered goods to Buyer for payment in cash or on such other terms as may be specified by Seller in its discretion. Approval of credit for one or more deliveries under this contract shall not be deemed a waiver of the provisions of this Section 17 or of Sections 14, 15 or 16. Any property of Buyer at any time in Seller's possession shall be deemed held as security for any obligations of Buyer to Seller, whether arising hereunder or under any other contract between Buyer and Seller, or may, at Seller's option, be set-off against any and all of Buyer's obligations to Seller. The remedies of Seller set forth in this Section 17 are not exclusive and are in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

18. FAILURE TO TAKE DELIVERY. If Buyer fails to take or accept due delivery of the goods subject to this contract, Seller shall have the right to store the goods at Buyer's sole expense and risk or, acting as Buyer's agent and at Buyer's expense, resell the goods for Buyer's account. Seller shall have the right to become the purchaser of the goods at any such resale. In the event of such resale, (a) Seller shall be entitled to ten percent (10%) of the sale price to cover Seller's cost of reselling, including additional overhead, (b) the amount of such resale, less the cost of reselling, shall be applied to the contract price, and (c) Buyer shall be responsible for the balance of the contract price. The remedies of Seller set forth in this Section 18 are not exclusive and are in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise.

19. AGREEMENT TO HOLD HARMLESS. The goods sold hereunder will be manufactured in accordance with designs and specifications provided by Buyer. Accordingly, Buyer shall indemnify, hold harmless and defend Seller from and against any and all loss, cost, liability or expense, including reasonable attorneys' fees, arising out of or in connection with any claim that the goods sold under this contract infringe any patent, copyright, trademark right, trade secret, mask work right or other proprietary right of any other person or entity. Buyer will defend against any such suits or claims at its own expense, with counsel reasonably acceptable to Seller. Buyer shall not compromise or settle any matter for which Seller is entitled to indemnification hereunder without the prior written consent of Seller, which consent shall not be unreasonably withheld.

20. EXCUSABLE DELAYS. Seller shall not be liable for failures or delays in performance due to causes beyond its reasonable control, including, but not limited to, acts of God or civil or military authority, embargos, government regulations, delays or failures of manufacturers or suppliers of Seller to deliver the goods ordered herein, fires, floods, earthquakes or other natural disasters, perils of the sea, epidemics, civil unrest, war and the consequences thereof, acts of terrorism and the consequences hereof or strikes or lock-outs or other labor stoppages (each a "force majeure event"). In the event of any such delay or failure, Seller shall notify Buyer of the occurrence of the force majeure event and, to the extent practicable, shall provide an estimate of the projected length of the event. If a force majeure event continues for more than ninety (90) days and Seller remains unable to perform its obligations in accordance with this contract, either party may terminate this contract as to any portion of the undelivered goods upon written notice to the other party, whereupon the parties shall have no further liability or obligation with respect thereto.

21. ARBITRATION. Any controversy or claim arising out of or relating to this contract or the goods sold by Seller to Buyer hereunder shall be resolved by arbitration before the American Arbitration Association (AAA) under its then-prevailing commercial arbitration rules. Arbitration under this Section 21 shall be initiated by a written demand for arbitration specifying the controversy or claim on which arbitration is sought, as well as the relief requested. The arbitration shall be held in Ventura County, California, unless the parties mutually select another venue. The arbitration shall be conducted before a single arbitrator who shall be an attorney with significant experience and expertise in matters related to transactions governed by Article II of the Uniform Commercial Code. The decision of the arbitrator shall be non-appealable and final and binding upon Seller and Buyer, and judgment upon the award rendered by the arbitrator may be entered into any court having jurisdiction. The arbitrator shall award the costs and expenses of arbitration, including attorneys' fees, to the prevailing party as part of his or her award, in addition to all other relief granted. This arbitration provision is intended by the parties to be self-executing.

22. JURISDICTION AND VENUE. All actions and proceedings arising out of or relating to this contract or the goods sold by Seller to Buyer hereunder that may be brought before a court rather than before an arbitrator shall be litigated only in courts within Ventura County, California, and each party hereby consents and submits to the exclusive jurisdiction of any state or federal court located within said county and state, hereby irrevocably waiving any objection which it may now or hereafter have to the laying of venue of any suit, action or proceeding relating to this Agreement in said county and state and further irrevocably waiving any claim that said county and state is not a convenient forum for any such suit, action or proceeding.

23. REPRESENTATIONS AND WARRANTIES. The full and final expression of all warranty liability of Seller is as set out in this contract. The entire agreement of the parties regarding representations and warranties is as contained herein, and no evidence of any prior or contemporaneous agreement, representation, understanding or the like may be used to add to, subtract from or modify the content of the representations and warranties set forth herein. **THERE ARE NO WARRANTIES THAT EXTEND BEYOND THE DESCRIPTION OF THE GOODS CONTAINED IN THIS CONTRACT AND THE LIMITED WARRANTY EXPRESSLY SET FORTH IN SECTION 8.**

24. ASSIGNMENT. This contract is not assignable by Buyer without Seller's consent. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their permitted successors and assigns. This Agreement does not create, and shall not be construed as creating, any rights enforceable by any third party.

25. NOTICES. All communications provided for hereunder shall be in writing, and if to Seller, mailed or delivered to Seller at the address stated on the face of this contract or such other address as Seller hereafter may designate, and if to Buyer, mailed or delivered to Buyer at its address stated on the face of this contract or such other address as Buyer hereafter may designate.

26. GENERAL PROVISIONS. This contract contains the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous understandings and agreements, whether oral or written, between them with respect to the subject matter hereof. This contract may not be modified or amended other than by a written amendment expressly referring to this contract that is signed by duly authorized representatives of Seller and Buyer, and no provision of this contract may be waived, in whole or in part, in any manner except by an instrument in writing signed by the party to be charged. If a court, agency or arbitrator having jurisdiction determines that any term is invalid or unenforceable under applicable law, that determination shall not affect the other terms of this contract, which other terms shall continue to be enforced as if the invalid or unenforceable provisions were omitted. In the event a dispute between the parties with respect to this contract must be resolved by arbitration, litigation or other proceeding, the prevailing party shall be entitled to recover from the other party all costs, expenses and reasonable attorney's fees incidental to the proceeding.