



SAMPLE

Terms and Conditions of Sale

The following Terms and Conditions (“Terms”) are applicable to Seller’s sale of products (“Products”), and are subject to change from time to time without notice.

Buyer accepts these Terms by signing and returning Seller’s quotation, sending a purchase order or otherwise ordering Products.

1. **Orders**

All orders placed by Buyer are subject to acceptance by Seller. Once placed, Buyer may not cancel or modify an order without Seller’s written consent, unless otherwise indicated in Seller’s published Return Policy.

Wherever Seller permits cancellation or modification, Buyer shall pay any expenses and damages incurred by Seller in connection therewith.

In its discretion, Seller may substitute equivalent items, meaning there are no material differences between the products ordered and delivered.

2. **Prices**

Unless Seller specifies otherwise, price quotations are valid for thirty (30) days and do not include taxes or shipping. Buyer is responsible for all applicable taxes and shipping. When applicable, taxes and shipping shall appear as separate items on Seller’s invoice.

In the event Seller’s costs increase prior to shipment, Seller may adjust its prices to reflect such increase upon notice to Buyer.

3. **Payment**

Application for credit is subject to Seller’s approval. The decision to extend credit, and the amount of credit extended, are within Seller’s sole discretion and subject to change.

In the event Seller extends credit, normal terms are Net 30 days from invoice, unless Seller states otherwise. Buyer may not withhold payment as a setoff against any claim or dispute with Seller.

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Seller reserves the right to require payment in advance or C.O.D. at any time. C.O.D. shipments are subject to surcharges.

Seller may charge all fees to Buyer for credit card, PayPal, wire transfer or similar payment. Returned checks shall be subject to a \$25.00 service fee.

If Buyer fails to make any payment when due, Seller may suspend or cancel performance on any open orders and/or declare all unpaid amounts immediately due and owing.

Past Due Accounts are subject to a 2% per month finance charge.

If Seller must place Buyer's account for collections, Buyer shall be liable for all collection costs, including but not limited to reasonable attorney fees. Buyer acknowledges that attorney fees equal to one-third (33.3%) of the amount due shall be deemed reasonable.

In addition to all other rights provided for herein, at law or at equity, Seller shall have a first priority security interest in all Products sold to Buyer, whether or not covered by the specific open charges, and shall have all rights available to it as a secured creditor under the Uniform Commercial Code.

All of Seller's rights and remedies shall be cumulative, and Seller may exercise them successively or concurrently in its discretion, without prejudice to any other rights and remedies.

4. Delivery and Title

All delivery dates are estimates only. Seller shall not be liable for any delays, loss, or damage in transit, and failure to deliver within the time estimated will not be a material breach on its part.

Title to the Products shall pass to Buyer upon its payment for them in full. Risk of loss or damage shall pass to Buyer upon delivery to the carrier.

5. Inspection

As used in this section, the terms "nonconformity" or "nonconforming" mean the Products received are mislabeled or are not the items identified in Buyer's order.

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Following delivery, Buyer shall have 10 days (the “Inspection Period”) to inspect the Products and notify Seller in writing that the quantity received is less than indicated in its order or Seller’s shipping records, or to reject the Products for nonconformity.

In order for the notice of rejection to be effective, Buyer must specify the exact nature of the nonconformity, and provide such evidence as Seller may reasonably require to verify Buyer’s claim.

If Buyer sends timely and proper notice, Seller in its sole discretion shall replace any nonconforming Products, or issue Buyer a credit or refund for them. Buyer shall have no other remedies. At Seller’s request, Buyer shall dispose of the nonconforming Products, or return them at Seller’s expense.

If Buyer fails to send timely and proper notice, the shipment shall be deemed accepted in all respects.

6. Returns, Refunds and Exchanges

Subject to the limitations herein, Buyer may return Products purchased from Seller for credit or refund.

Products which are custom-made or altered for Buyer, and Products identified as “non-cancellable,” “non-returnable,” “MTO” (made to order), etc., are only returnable for defects.

All returns must be in new and resalable condition, with the original tags and undamaged manufacturer packaging.

Seller may charge a restocking fee for all returns, other than for defects or Seller’s error. The restocking fee is generally 20% but may vary.

To return any Products, Buyer must contact Seller within 10 days of delivery to request a Return Authorization (“RA”), or 30 days in the case of defects. Seller must receive the Products within 10 days of issuing the RA.

For returns due to defects or Seller’s error, Seller shall be responsible for shipping costs. For all other returns, Buyer shall be responsible for the shipping costs.

7. Limited Warranty

Seller warrants that the Products will be free from manufacturing defects for a period of 30 days from delivery, assuming normal use and care.

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Seller makes no other warranties of any kind, express or implied, and disclaims all other warranties whatsoever, including but not limited to any warranties regarding merchantability, fitness for a particular purpose, non-infringement of third party rights and warranties against latent defects.

If Seller provides any advice or technical assistance, they are a free accommodation for Buyer's convenience only, and do not create any warranty of any kind.

8. Limitation of Liabilities

Buyer's remedies shall be limited to those provided herein.

If any Product is defective, Seller in its sole discretion shall replace it or issue Buyer a credit or refund. In no event shall Seller be liable for incidental, consequential, special, indirect, or punitive damages, and in no event shall its total liability, whether in contract, tort, warranty, or otherwise, exceed the price received for the Products in question.

Buyer shall not commence any action against Seller, whether in contract, tort, warranty, or otherwise, more than 1 year after the cause of action arose.

9. Force Majeure

Seller shall not be liable for any delay or nonperformance due to events beyond its control, including but not limited to supplier issues, labor disturbance, war, terrorism, epidemic, pandemic, fire, accident, weather, transportation, governmental act or regulation, etc.

10. Choice of Law; Venue

New Jersey law shall govern any disputes between Buyer and Seller with respect to the Products or these Terms, and the New Jersey courts shall have exclusive original jurisdiction over any such disputes; provided, however, that Seller may, in its sole discretion, bring suit in any jurisdiction in which Buyer is located and/or maintains assets.

11. General

Section headings in these Terms are for convenience only and do not affect the meaning or interpretation of any provision.

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These Terms constitute the entire agreement between Buyer and Seller with respect to the subject matter hereof, and supersede any and all prior communications or agreements, whether oral or written.

No change or addition to these Terms shall be effective unless Seller specifically references these Terms and modifies them in writing. Without limiting the foregoing, Seller hereby notifies Buyer that these Terms shall take precedence over any conflicting terms on Buyer's purchase order or website, or in any sales confirmation or other communications, unless Seller expressly agrees to amend the provisions hereof.

If a court of competent jurisdiction finds any provision herein unenforceable, such provision shall be interpreted to make it enforceable to the greatest extent possible, and the remaining provisions shall remain in full force and effect.

No failure or delay by Seller in exercising its rights hereunder shall operate as a waiver thereof, nor shall waiver of any breach constitute waiver of any subsequent breach. All waivers must be in writing.

These Terms are binding on Buyer, Seller and their respective successors and assigns; provided however, that Buyer may not assign any quotation, accepted order or rights hereunder without Seller's prior written consent, and any such assignment shall be void and ineffective.

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