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1. **Terms and Conditions.** Seller's offer, and its acceptance of an order for, Products, are expressly conditioned on Buyer's assent to these Terms and Conditions. Seller rejects any contrary or additional term or condition.
2. **Price Adjustments; Payments.** Prices stated on the reverse side or preceding pages of this document are valid for 30 days. After 30 days, Seller may change prices to reflect any increase in its costs resulting from state, federal or local legislation, price increases from its suppliers, or any change in the rate, charge, or classification of any carrier. The prices stated on the reverse or preceding pages of this document do not include any sales, use, or other taxes unless so stated specifically. Unless otherwise specified by Seller, all prices are ExWorks, Seller's facility, and payment is due 30 days from the date of invoice. After 30 days, Buyer shall pay interest on any unpaid invoices at the rate of 1.5% per month or the maximum allowable rate under applicable law, whichever is greater.
3. **Delivery Dates; Title and Risk; Shipment.** All delivery dates are approximate, and Seller shall not be responsible for any damages resulting from any delay. Unless otherwise mutually agreed in writing, Seller may deliver Product prior to a scheduled delivery date. Regardless of the manner of shipment, title to any products and risk of loss or damage shall pass to Buyer upon tender to the carrier at Seller's facility. Unless otherwise stated, Seller may choose the carrier and means of delivery. No deferral of shipment at Buyers' request beyond the respective dates indicated will be made except on terms that will indemnify, defend and hold Seller harmless against all loss and additional expense. Buyer shall be responsible for any additional shipping charges incurred by Seller due to Buyer's changes in shipping, product specifications or in accordance with Section 13, herein. Orders are considered complete upon shipment of + or - 10% of order quantity.
4. **Warranty.** Seller warrants that the Products sold hereunder shall be free from defects in material or workmanship for a period of 12 months from the date of delivery to Buyer or 2,000 hours of normal use, whichever occurs first. This warranty is made only to Buyer and does not extend to anyone to whom Products are sold after purchased from Seller. The prices charged for Seller's products are based upon the exclusive limited warranty stated above, and upon the following disclaimer: **DISCLAIMER OF WARRANTY: THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO PRODUCTS PROVIDED HEREUNDER. SELLER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**
5. **Claims; Commencement of Actions.** Buyer shall promptly inspect all Products upon delivery. No claims for shortages will be allowed unless reported to Seller within 10 days of delivery. No other claims against Seller will be allowed unless asserted in writing within 30 days after delivery or, in the case of an alleged breach of warranty, within 30 days after the date within the warranty period on which the defect is or should have been discovered by Buyer. Any action based upon breach of this agreement or upon any other claim arising out of this sale (other than an action by Seller for any amount due to Seller from Buyer) must be commenced within 13 months from the date of tender of delivery by Seller or, for a cause of action based upon an alleged breach of warranty, within 13 months from the date within the warranty period on which the defect is or should have been discovered by Buyer.
6. **LIMITATION OF LIABILITY.** UPON NOTIFICATION, SELLER WILL, AT ITS OPTION, REPAIR OR REPLACE A DEFECTIVE PRODUCT, OR REFUND THE PURCHASE PRICE. **IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE SALE, DELIVERY, NON-DELIVERY, SERVICING, USE OR LOSS OF USE OF THE PRODUCTS OR ANY PART THEREOF, OR FOR ANY CHARGES OR EXPENSES OF ANY NATURE INCURRED WITHOUT SELLER'S WRITTEN CONSENT, EVEN IF SELLER IS NEGLIGENT OR BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY. IN NO EVENT SHALL SELLER'S LIABILITY UNDER ANY CLAIM MADE BY BUYER EXCEED THE PURCHASE PRICE OF THE PRODUCTS.**
7. **Contingencies.** Seller shall not be liable for any default or delay in performance if caused by circumstances beyond the reasonable control of Seller.
8. **User Responsibility.** The user, through its own analysis and testing, is solely responsible for making the final selection of the system and Product and assuring that all performance, endurance, maintenance, safety and warning requirements of the application are met. The user must analyze all aspects of the application and follow applicable industry standards and Product information. If Seller provides Product or system options, the user is responsible for determining that such data and specifications are suitable and sufficient for all applications and reasonably foreseeable uses of the Products or systems.
9. **Loss to Buyer's Property.** Any designs, tools, patterns, materials, drawings, confidential information or equipment furnished by Buyer or any other items which become Buyer's property, may be considered obsolete and may be destroyed by Seller after two consecutive years have elapsed without Buyer placing an order for the items which are manufactured using such property. Seller shall not be responsible for any loss or damage to such property while it is in Seller's possession or control.
10. **Special Tooling.** A tooling charge may be imposed for any special tooling, dies, fixtures, molds and/or patterns acquired to manufacture Products. Such special tooling shall be and remain Seller's property notwithstanding payment of any charges by Buyer. In no event will Buyer acquire any interest in apparatus belonging to Seller which is utilized in the manufacture of the Products, even if such apparatus has been specially converted or adapted for such manufacture and notwithstanding any charges paid by Buyer. Unless otherwise agreed, Seller shall have the right to alter, discard or otherwise dispose of any special tooling or other property in its sole discretion at any time.
11. **Buyer's Obligation; Rights of Seller.** To secure payment of all sums due or otherwise, Seller shall retain a security interest in the goods delivered and this agreement shall be deemed a Security Agreement under the Uniform Commercial Code. Buyer authorizes Seller as its attorney to execute and file on Buyer's behalf all documents Seller deems necessary to perfect its security interest. Seller shall have a security interest in, and lien upon, any property of Buyer in Seller's possession as security for the payment of any amounts owed to Seller by Buyer.
12. **Improper use and Indemnity.** Buyer shall indemnify, defend, and hold Seller harmless from any claim, liability, damages, lawsuits, and costs (including attorney fees), whether for personal injury, property damage, patent, trademark or copyright infringement or any other claim, brought by or incurred by Buyer, Buyer's employees, or any other person, arising out of: (a) improper selection, improper application or other misuse of Products purchased by Buyer from Seller; (b) any act or omission, negligent or otherwise, of Buyer; (c) Seller's use of patterns, plans, drawings, or specifications furnished by Buyer to manufacture Product; or (d) Buyer's failure to comply with these terms and conditions. Except as otherwise agreed, Seller shall not indemnify Buyer under any circumstance.
13. **Cancellations and Changes.** Orders shall not be subject to cancellation or change by Buyer for any reason, except with Seller's written consent and upon terms that will indemnify, defend and hold Seller harmless against all direct, incidental and consequential loss or damage including, without limitation, all costs of raw materials, work-in-progress and finished goods, wherever located, at time of cancellation. Seller may change product features, specifications, designs and availability with notice to Buyer. Seller may use substitutes for materials which cannot be reasonably obtained by Seller.
14. **Entire Agreement; Assignment.** This agreement contains the entire agreement between Buyer and Seller and constitutes the final, complete and exclusive expression of the terms of this agreement. All prior or contemporaneous written or oral agreements or negotiations with respect to the subject matter are herein merged. Buyer may not assign its rights or obligations under this agreement without the prior written consent of Seller.
15. **Waiver and Severability.** Failure to enforce any provision of this agreement will not waive that provision nor will any such failure prejudice Seller's right to enforce that provision in the future. Invalidity of any provision of this agreement by legislation or other rule of law shall not invalidate any other provision herein. The remaining provisions of this agreement will remain in full force and effect.
16. **Termination.** This agreement may be terminated by Seller for any reason and at any time by giving Buyer 30 days written notice of termination. In addition, Seller may by written notice immediately terminate this agreement for the following: (a) Buyer commits a breach of any provision of this agreement (b) the appointment of a trustee, receiver or custodian for all or any part of Buyer's property (c) the filing of a petition for relief in bankruptcy of the other Party on its own behalf, or by a third party (d) an assignment for the benefit of creditors, or (e) the dissolution or liquidation of Buyer.
17. **Governing Law.** This agreement and the sale and delivery of all Products hereunder shall be deemed to have taken place in and shall be governed and construed in accordance with the laws of the Commonwealth of Pennsylvania, as applicable to contracts executed and wholly performed therein and without regard to conflicts of laws principles. Buyer irrevocably agrees and consents to the exclusive jurisdiction and venue of the courts of Elk County, Pennsylvania with respect to any dispute, controversy or claim arising out of or relating to this agreement. Disputes between the parties shall not be settled by arbitration unless, after a dispute has arisen, both parties expressly agree in writing to arbitrate the dispute.
18. **Intellectual Property and Other Rights.** Products designed by Seller are proprietary to Seller including, without limitation, all designs, tools, patterns, materials, and prototypes, all of which shall be kept strictly confidential.
19. **Indemnity for Infringement of Intellectual Property Rights.** Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this Section. Seller will defend and indemnify Buyer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, trade dress and trade secrets ("Intellectual Property Rights"). Seller will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Buyer based on an allegation that a Product sold pursuant to this agreement infringes the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within 10 days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If a Product is subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, at its sole expense and option, procure for Buyer the right to continue using the Product, replace or modify the Product so as to make it noninfringing, or offer to accept return of the Product and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer or directed to Products delivered hereunder for which the designs are specified in whole or part by Buyer, or infringements resulting from the modification, combination or use in a system of any Product sold hereunder. The foregoing provisions of this Section shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights.
20. **Taxes.** Unless otherwise indicated, all prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, sale or delivery of Products.
21. **Equal Opportunity Clause.** For the performance of government contracts and where dollar value of the Products exceeds \$10,000, the equal employment opportunity clauses in Executive Order 11246, VEVRAA, and 41 C.F.R. §§ 60-1.4(a), 60-741.5(a), and 60-250.4, are hereby incorporated.