

Terms and Conditions

1. **Conflicting Provisions-** Seller's terms and conditions stated in this Document ("Terms and Conditions") shall be deemed controlling notwithstanding any prior or subsequent purchase order or similar document from Purchaser. Purchaser by taking delivery of all or any portion of the items shall be conclusively deemed to have accepted and assented to Seller's Terms and Conditions.
2. **Purchase Price and Payment –** The purchase price for all items shown excludes sales, use, occupation, license, excise and other taxes and fees in respect of manufacture, sale, storage, consumption or delivery, all of which shall be paid by Purchaser. The purchase price for all items is payable in lawful money of the United States. Acceptance by Seller of drafts, checks or other media of payment will be provisional only and subject to immediate collection of the full face amount thereof. Seller reserves the right to charge a late fee and/or interest, if Purchaser fails to make any payments to Seller when same become due. All of Seller's products are sold FOB shipping point. Payment terms are calculated from invoice date. A service charge of 1.5% per month will be charged on all past due invoices; which is an annual percentage rate of 18%. If the Purchaser fails to abide by the Terms and Conditions, Seller reserves the right to discontinue and eliminate any price discounts or sales incentives offered to or in place with the Purchaser (if any), both retroactively and for future sales unless otherwise negotiated by the parties. Deductions from payments for any reason will not be allowed unless Seller has issued a credit memo. All incentive and credits issued by Seller are personal to Purchaser and are not transferable or assignable. Seller may refuse to ship any confirmed order in whole or in part for any reason it deems sufficient.
3. **Delay in Delivery –** Purchaser shall not be entitled to cancel or rescind this sale nor shall Seller be liable in damages or otherwise, for delay or impairment or failure of performance by reason of causes beyond Seller's control, including without limitation claims of force majeure by Seller's suppliers, strikes, labor difficulties, shortages of labor, fuel, power, materials or supplies, inability to obtain shipping space, transportation delays, fire, floods, accidents, riots, acts of God, war, governmental interference or embargo. In any such event, Seller reserves the right, in its sole discretion, to allocate its inventory between Purchaser and Seller's other customers, and Purchaser waives any right to assert claim against Seller therefor. Notwithstanding the foregoing, Purchaser's damages shall be limited as set forth in Section 6 below.
4. **Suspension of Credit or Shipment –** Seller may at any time, and within its sole discretion, alter or suspend credit to Purchaser, stop shipment to Purchaser in transit, or delay or refuse to ship to Purchaser, or cancel any or all unfilled orders when:
 - a. The financial condition of Purchaser is unsatisfactory to Seller;
 - b. Delivery is delayed by fault of Purchaser;
 - c. Purchaser is delinquent in payment of any obligations owed to Seller; or
 - d. Sale of products or materials to Purchaser may result in environmental, safety or health danger or hazard.
5. **Warranty –** Seller warrants that the products or materials delivered hereunder meet the standard specifications of the manufacturer(s) for the products or such other specifications as may have been expressly agreed to in writing by Purchaser and Seller. **SELLER MAKES NO WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR ANY OTHER EXPRESS OR IMPLIED WARRANTY.** Purchaser assumes all risk and liability resulting from the handling, use, or storage of the products delivered hereunder, whether used, handles or stored singly or in combination with other products, and Purchaser agrees to indemnify, defend, and hold Seller harmless against any and all demands, claims, losses, damages, liability, costs and expenses (including attorneys' fees), arising out of or related in any to the products.
6. **LIMITATIONS OF LIABILITY**
 - a. **PURCHASER HEREBY WAIVES ANY CLAIM AGAINST SELLER FOR CONSEQUENTIAL DAMAGES, LOSS OR DAMAGE TO GOODWILL OR ANY OTHER SPECIAL, DIRECT, INDIRECT OR INCIDENTAL DAMAGES, EVEN IF SELLER HAS BEEN ADVISED OF OR HAS NOTICE OF THE POSSIBILITY OF SUCH DAMAGES AND PURCHASER'S EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM, WHETHER IN CONTRACT, TORT OR STRICT LIABILITY OR OTHERWISE. IN RESPECT OF THE PRODCUTS SOLD HEREUNDER SHALL BE EXPRESSLY LIMITED TO THE AMOUNT OF THE PURCHASE PRICE OF SUCH PRODUCT OR THE REPLACEMENT OF SUCH PRODUCT.**
 - b. **FAILURE BY PURCHASER TO GIVE WRITTEN NOTICE OF SUCH CLAIM TO SELLER WITHIN 30 DAYS FROM THE DATE OF DELIVERY OF SUCH PRODUCT SHALL CONSTITUTE A WAIVER BY PURCHASER OF ALL CLAIMS IN RESPECT OF SUCH PRODUCT. NO PRODUCT SOLD HEREUNDER SHALL BE RETURNED TO SELLER WITHOUT SELLER'S PERMISSION. NO CLAIM SHALL BE ALLOWABLE AFTER ANY SUCH PRODUCTS HAS BEEN PROCESSED IN ANY MANNER.**
7. **Containers/Cylinders**
 - a. All returnable containers and cylinders remain the property of the Seller and must be returned to the Seller.
 - b. Container and cylinder deposits will be forfeited if containers are not returned within 90 days of shipment, unless otherwise agreed to in writing by Seller. In addition to the forfeiture of any such deposit, Purchaser shall remain liable for an amount equal to the difference between the deposit for the replacement cost of any returnable container or cylinder which is not returned to Seller.
 - c. Purchaser agrees to accept full responsibility and liability for the disposal of non-returnable containers and cylinders in strict compliance with all laws and regulations.

- d. Purchaser shall indemnify, defend, and hold Seller harmless against any demands, claims, losses, damages, liability, costs and expenses (including attorneys' fees), arising out of or related in any to Purchaser's handling, use, storage or disposal of any container or cylinder.
 - e. Seller reserves the right to charge Purchaser with demurrage for any returnable container or cylinder.
8. Returned Material – No credit will be issued for material returned unless Seller has given written consent to such return. All returned material is subject to a restocking charge, which Purchaser agrees and acknowledges that it will be liable for such charge.
9. Any credit issued by Seller to Purchaser, including without limitation credits for the return of a container or cylinder, may only be applied against the future purchase of products by Purchaser and will not be paid in cash. Any such credit will expire, and Seller will have no obligation with respect thereto, in the event that it is not applied against a purchase of product within twelve months after issuance of the credit.
10. General
- a. These Credit Application and these Terms and Conditions (collectively the "Document") shall not be assignable in whole or in part by Purchaser without the prior written consent of Seller.
 - b. Unless stated to the contrary elsewhere in this Document, no action, regardless of form or forum, arising out of or related in any to the sale or delivery of any product hereunder, may be commenced more than one year after the cause of action has accrued, except that an action for nonpayment or for failure to return containers and cylinders may be brought at any time and in accordance with the governing statute of limitations.
 - c. Any waiver by Seller of any breach of any of the terms of this Document must be in writing and signed by the Seller. Such waiver shall not be construed as a waiver of any other breach.
 - d. This Document shall be governed and controlled by the laws of the State of Minnesota as to interpretation, enforcement, and in all other respects with the venue being Hennepin County, Minnesota. Purchaser consents personal jurisdiction in the state of Minnesota and venue being Hennepin County, Minnesota.
 - e. The terms and conditions herein constitute the entire agreement between Seller and Purchaser and may not be modified or amended except by a writing executed by an authorized officer of Seller.
 - f. If any provision or provisions of this Document shall be held to be illegal or unenforceable the legality and enforceability of the remaining provisions shall not in any way be affected or impaired.
 - g. Products shall be delivered to Purchasers as indicated on the face hereof, and unless otherwise indicated, Purchaser shall be responsible for the payment of all freight and transportation charges from Seller's point of loading to the delivery address specified on the face hereof. Delivery dates are approximate and are predicated on the prompt receipt by Seller of all necessary information and documentation from Purchaser.
 - h. Unless Purchaser is authorized to distribute the products delivered hereunder pursuant to a written agreement with Seller. Seller agrees that the product is supplied to Purchaser for Purchaser's internal use only, and Purchaser may not repackage, resell or otherwise distribute the product to third parties without the express written consent of Seller
 - i. Seller assumes no obligation or liability for the technical advice given by Seller with reference to the use of the products or results obtained therefrom, and all such advice is given and accepted at Purchaser's risk.