

Acceptance and Cancellation of Orders.

Any contract for the sale of goods made between Buyer and Seller may be cancelled by Buyer only upon the advance written consent of Seller (which it may withhold in its sole discretion). As a condition to receiving Seller's written consent, Buyer shall pay all reasonable cancellation and restocking charges incurred by Seller due to Buyer's cancellation of the order. Special orders for items not normally stocked by Seller are non-cancelable and non-refundable.

Delivery

All prices quoted and goods shipped are F.O.B. Seller's place of shipment. Title to and risk of loss of all goods shall pass to Buyer when the goods are placed by Seller in possession of a common carrier selected by Seller for shipment to Buyer. Unless expressly provided otherwise on the front of this Contract, Buyer shall pay all freight, handling, delivery, and insurance costs for the shipment of goods. Seller may refuse or delay any shipment if Buyer fails to satisfy or fulfill any contractual obligations to Seller, whether pursuant to this Contract or any other contract between Seller and Buyer. Seller may deliver all goods covered by this Contract at one time or in portions, from time to time, within the time for delivery provided in the order.

Force Majeure

Seller is excused from performance of any obligations and shall not be liable for delays in delivery or for failure to perform if its failure or delay of performance is caused by events or conditions beyond Seller's reasonable control, including without limitation, acts of God, acts of the public enemy, quarantine restrictions, expropriation or confiscation of facilities, compliance with any order of any governmental authority, industrial disturbances, blockades, insurrections, arrest and restraint of people or rulers, civil disturbances, boycotts, acts or omissions of Buyer or civil or military authorities, fire, strike, landslide, lightning, tornadoes, hurricanes, wind-storms, explosions, epidemics, flood, storm, earthquake, riot, war, breakage or accident of machinery or equipment, delays in transportation, or inability to obtain necessary labor, materials, or supplies or any occurrence related in any way to Year 2000 computer issues in any way encompassing the failure of information technology to accurately process date/time data including, but not limited to, calculating, comparing, and sequencing from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations or the failure to accurately process date/time data if the other information technology exchanges date/time data with it. In the event of any delay, the contractual date of delivery, if any, shall be extended for a period equal to the time lost as a consequence of the delay without penalty to Seller.

Payment Terms

Buyer shall pay for the goods in full, without offset or deduction, within the time frame and in the manner set forth on the front of this Contract. For those sales that do not require payment in advance of or upon delivery, if payment is not received by Seller within the period set forth on the front of this Contract, Buyer shall pay to Seller, on demand, a late payment charge of 3.5% per month of the unpaid balance or the maximum rate of interest allowed by law, whichever is less. Time is of the essence with respect to Buyer's obligation to pay all invoices in full in a timely manner.

All checks are accepted subject to collection. Seller may offset against any payment hereunder any amount owed to Seller by Buyer, whether under this or any other contract between Buyer and Seller. Acceptance of any partial payment shall not constitute waiver of Seller's right to payment in full of all amounts owing from Buyer to Seller. Buyer hereby grants to Seller a security interest in the goods shipped pursuant to this Contract, including all accessions to and replacements of the goods and the proceeds thereof, to secure the due and punctual payment of the purchase price of the goods and all other amounts owing hereunder. Buyer shall execute and deliver to Seller any additional documents, instruments, financing statements, or amendments that Seller deems necessary or advisable to maintain, continue, and perfect the security interest created.

Limited Warranty

Subject to Section 6, Seller warrants that it has title to the goods and that the goods generally conform to the descriptions, if any, on the front page of this Contract. The term manufacturer (MFG) refers to the original manufacturer of the product when identified. The term condition (Cond) refers to the condition of the product. The foregoing warranties are seller's exclusive warranties, and the goods sold under this agreement are sold «as is» and «with all faults.» except as otherwise expressly provided herein, seller makes no representation or warranty of any kind, either express or implied, as to any matter whatsoever relating to the goods, including without limitation the design and condition of the goods or their quality, capacity, suitability, construction, performance, merchantability, or fitness for any particular purpose

Buyer acknowledges that Seller is acting solely as a third party distributor of the goods covered by this Invoice and that the licensor or the manufacturer of the goods shall be solely responsible to Seller and third parties for all liability, claims, damages, obligations, and costs and expenses related to the goods distributed by Seller. Buyer agrees to look solely to the manufacturer for compliance with the manufacturer's warranty and for any maintenance, support or repair of the goods. Seller assigns to Buyer any warranty delivered to Seller by a manufacturer or other vendor to the extent the assignment is permitted by the terms thereof. Seller makes no representation, covenant, or warranty with respect to the extent or enforceability of the manufacturer's warranty. No repair or replacement of goods by Seller or manufacturer shall extend the warranty period of the manufacturer. Seller neither assumes nor authorizes Buyer or any other person to assume on behalf of Seller any other liabilities in connection with the use, sale, or resale of the goods.

Limitation of Liability.

Within 30 days after receipt of each shipment of goods, Buyer shall have the right to examine and test the goods to determine if there is any damage, defect, or shortage. All claims for any damage, defect, or shortage, or for any cause whatsoever (whether the claim is based in contract, negligence, strict liability, other tort, or otherwise) shall be deemed waived unless made in writing and received by Seller within 30 days after Buyer's receipt of the goods, or, if the claim is for non delivery of goods, within 30 days after the date the goods were to be delivered. Provided, however, that any claim not reasonably discoverable within that 30-day period (including a claim discoverable only in processing, further manufacture, other use, or resale) must be made in writing and received by Seller within 30 days after Buyer's receipt of the goods, or within 30 days after Buyer learns of the facts giving rise to the claim, whichever occurs first. Failure of Seller to receive written notice of any such claim within the applicable time period shall be deemed an absolute and unconditional waiver by Buyer of the claim regardless of whether the facts giving rise to the claim shall have then been discovered or whether processing, further manufacture, other use, or resale of goods shall have then taken place.

Buyer's exclusive remedy shall be for damages and seller's total liability for any and all losses and damages arising out of any claim whatsoever (whether the claim is based on breach of warranty, breach of contract, negligence, strict liability, or any other legal theory) shall in no event exceed the purchase price of the goods in respect to which the claim arises or, at seller's option, the repair or replacement of the goods. In no event shall seller be liable for any direct, indirect, special, incidental, consequential, or punitive damages resulting from any claim (including, without limitation, loss of profits, business losses, damage to property, or any liability of buyer to its customers or third parties). In no event is Seller liable to Buyer or any third party for any liability, claims, obligations, damages, costs, or expenses, including without limitation, any direct, indirect, special, incidental, or consequential damages (including lost profits, business losses, personal property damage, personal injury, and death) arising out of or relating to the sale of goods by Seller to Buyer or any related services provided to Buyer. Seller is not liable for, and Buyer assumes full liability for, all personal injury and property damage connected with the handling, transportation, possession, processing, repackaging, further manufacture, or other use or resale of goods, whether the goods are used alone or in combination with any other material. Goods sold by Seller are not authorized to be used in life support equipment or for applications in which the failure or malfunction of the goods would create a situation in which personal injury or death could occur. Any such use or sale of goods sold by Seller is at the sole risk of Buyer, and Buyer agrees to indemnify and defend Seller against and hold Seller harmless from all damages and costs arising out of such use or sale.

Returns

Buyer may return to Seller any goods that are damaged or defective solely by obtaining a Return Material Authorization («RMA») from Seller within 14 days of receipt of the goods. Buyer must return to Seller the damaged or defective goods within the period set forth in the RMA. The RMA number must be listed on all packaging containing goods returned to Seller. If Buyer does not request from Seller an RMA within 14 days of receiving the goods to be returned, or requests an RMA for goods that are not damaged or defective, Seller may, at its sole discretion, refuse to issue an RMA for return of the goods or may require that Buyer pay to Seller a reasonable restocking fee as a condition of issuing to Buyer the RMA.

Seller's Right to Increase Prices

Seller reserves the right to increase the price of the goods covered by this Contract to reflect any increase in Seller's costs for those goods caused by an increase in the price charged by Seller's supplier, and Buyer agrees to pay to Seller any such increased price according to the terms of this Contract.

Taxes

Seller's prices do not include sales, use, excise, or other similar taxes. Accordingly, Buyer shall pay, in addition to prices specified by Seller, all local, state, and federal taxes, including all sales, use, excise, or other similar tax, payable with respect to the goods or the transactions contemplated herein, or, alternatively, provide Seller with tax exemption certificates acceptable to the applicable taxing authorities.

Intellectual Property

Seller disclaims any warranty against infringement with respect to the goods sold pursuant to this Contract and the packaging relating to such goods. Seller is not liable with respect to any actual or alleged infringement of any United States or foreign patent, trademark, copyright, mask work right, trade dress, trade secret, or similar proprietary rights.

Installation

Buyer is solely responsible for the installation and operation of the goods, including without limitation, obtaining all permits, licenses, or certificates required for the installation or use of the goods.

Technical Advice and Data

Any technical advice offered or given in connection with the use of any goods is an accommodation to Buyer without charge, and Seller is not liable or responsible whatsoever for the content or use of that advice. Without Seller's prior written consent, Buyer shall not use, duplicate, or disclose any technical data delivered or disclosed by Seller to Buyer for any purpose other than for installation, operation, or maintenance of the goods purchased by Buyer from Seller.

Breach

In the event of breach by Buyer, Seller shall have all the remedies provided under the Massachusetts Statutes, which shall be cumulative with one another and with any other remedies that Seller might have at law, in equity, under any agreement of any type or, without limitation, otherwise. The waiver by Seller of any breach hereof or default in any payment shall not constitute a waiver of any succeeding breach or default. The exercise or failure to exercise any remedy shall not preclude the exercise of that remedy at another time or any other remedy at any other time. No action, regardless of type, arising out of, or in any way connected with, the goods furnished or services rendered by Seller to Buyer, may be brought by Buyer more than one year after the cause of action has accrued. Buyer shall pay to Seller, on demand, all costs incurred by Seller in enforcing, prosecuting, or defending any provision of this Contract. For purposes of this Contract, «costs» means the fees, costs, and expenses of experts, attorneys, mediators, witnesses, arbitrators, collection agents, and supersedes bonds, whether incurred before or after demand or commencement of legal proceedings, and whether incurred pursuant to trial, appellate, mediation, bankruptcy, arbitration, administrative, or judgment execution proceedings.

Integration and Assignment

This Contract records the final, complete, and exclusive agreement between the parties with regard to the subjects addressed in it and supersedes any and all prior or contemporaneous oral or written agreements between them regarding the same. No course of prior dealings between the parties and no usage of the trade is relevant to supplement or explain any term used in this Contract. Acceptance or acquiescence in a course of performance rendered under this Contract is not relevant to determining the meaning of this Contract even though the accepting or acquiescing party had knowledge of the nature of performance and opportunity for objection. An amendment or modification of this Contract will be valid and effective only if it is in writing and signed by both Buyer and Seller. Any assignment by Buyer of this Contract or any rights in it, without Seller's advance written consent, shall be void.

Buyer's Terms and Conditions

Goods furnished and services rendered by Seller to Buyer are sold only on the terms and conditions stated herein. Notwithstanding any terms or conditions on any document of Buyer, the information and conditions on this document are controlling over Buyer and Seller. Any different or additional terms or conditions contained on Buyer's purchase order, invoice, confirmation, or any other Buyer generated document are specifically objected to by Seller. Seller's performance of any contract is expressly made conditional on Buyer's agreement to Seller's terms and conditions contained in this Contract. Commencement of performance or delivery shall be for Buyer's convenience only and shall not constitute acceptance by Seller of Buyer's terms and conditions. If a contract is not earlier formed by mutual agreement between Buyer and Seller, acceptance of any goods or services by Buyer shall constitute acceptance by Buyer of the terms and conditions stated herein.

Legal Proceedings

The validity, enforcement, construction, and interpretation of this Contract are governed by the laws of the State of Massachusetts (including the provisions of the Massachusetts Uniform Commercial Code) and the federal laws of the United States of America, excluding the laws of those jurisdictions pertaining to resolution of conflicts with laws of other jurisdictions. The parties expressly exclude the applicability of the United Nations Convention on Contracts for the International Sale of Goods. Seller and Buyer (a) consent to the personal jurisdiction of the state and federal courts Massachusetts, (b) stipulate that the proper, exclusive, and convenient venues for all legal proceedings arising out of this Contract are Massachusetts, for a federal court proceeding, and (c) waive any defense, whether asserted by motion or pleading, that Massachusetts, is an improper or inconvenient venue.

General

All agreements, covenants, conditions and provisions contained herein shall apply to and bind the assignees and successors in interest of Buyer. If any provision of this Contract is held to be invalid, illegal, unconscionable, or unenforceable, that provision will be considered separable from the remaining provisions of this Contract, will be reformed and enforced to the extent that it is valid and lawful, and will not affect the validity, legality, or enforceability of any other provision of this Contract. The captions used herein are for the convenience of the parties only and shall not affect the constructions or interpretation hereof. Nothing in this Contract, whether express or implied, is intended or should be construed to confer upon, or grant to, any person, except Buyer and Seller, any claim, right, or remedy under it.