

GENERAL TERMS AND CONDITIONS

1. Trade Definitions: Governing Law.

As used in this Contract and except as otherwise specifically provided herein, trade or shipping terms shall have the meanings contained in Incoterms®2010 (ICC rules for the use of domestic and international trade terms), as amended. Except as otherwise specifically provided in such Incoterms®2010 or in this Contract, the duties and obligations of seller and buyer shall be governed by the Uniform Commercial Code and other laws of the State of New York as effective and in force on the date of this Contract, without giving effect to conflicts of laws principles thereof. It is understood, however, that this is a general form of contract, designed for use wherever buyer may desire to buy goods, and that any provision herein, which in any way contravenes the laws of any appropriate state or jurisdiction, shall be deemed not to be a part of this Contract to the extent that it so contravenes. The United Nation Convention on Contracts for the International Sale of Goods shall not apply to this Contract.

2. Conditions When Certain Shipping Terms Are Used.

- (a) Notice of Shipment. When goods are purchased on CPT, CIP, CFR, CIF, DAT, DAP or DDP terms, (in case of shipment by ocean vessel only) seller shall give buyer notice by cable, telex or letter of the particulars of the shipment no later than 3 days after shipment.
- (b) Marine Insurance. When goods are purchased on CIF terms, seller shall obtain free from particular average marine insurance including S.R.C.C. (Strike, Riot and Civil Commotion) covering the amount of seller's invoice plus 10%. If purchased on DAT terms, (in case of shipment by ocean vessel only) seller shall obtain free from particular average marine and war risk insurance including S.R.C.C. covering the amount of seller's invoice plus 10%. However, if requested by buyer, seller shall obtain at buyer's expense additional coverage in excess of seller's invoice plus 10%, or insurance with particular average or for any special risk including war risk in case CIF terms are used.
- (c) Certain Cost. When goods are purchased on CFR or CIF terms, (i) the cost of any certificates of origin, consular invoices and/or other documents issued in, and any taxes, fees and other expenses imposed by, the country of origin or shipment, or both, which may be required for importation of the goods into the country of destination and, where necessary, for their passage through another country shall be provided by seller, be deemed a part of the selling price and not be invoiced separately to buyer, and (ii) the cost of any measuring, weighing, counting or checking of quality of the goods shall be borne by the party requesting the same.

3. Shipment.

The date of the bill of lading or airway bill shall be deemed the date of shipment in the absence of contrary evidence. In case seller arranges for the shipment, such means of transportation shall be well equipped, highpowered and of a type normally used for the transport of goods of the kind covered by this Contract.

4. Identification.

Identification of the goods under Section 2-501 of the Uniform Commercial Code shall occur upon the earlier of the time (i) when this Contract has been signed by both buyer and seller or (ii) when the goods first come to exist.

5. Payment.

Unless otherwise specifically provided in this Contract, (i) in the case of exports by seller, delivery of the goods shall be made by way of documents of title with payment made against tender of such documents, and (ii) in all other cases, delivery of the goods shall be accompanied by a delivery order, invoice, packing list or similar documents with payment due within 30 days after delivery for the amount delivered.

6. Price Adjustment for Change of Foreign Exchange Rate.

In the event that there is a decrease in the value of the U.S. dollar (or any other currency in which buyer intends to resell the goods as specified on the face of this Contract), in relation to this Contract's payment currency, from the exchange rate specified on the face of this Contract, which results in a loss to buyer, buyer shall have the option either to (i) terminate this Contract or (ii) pay to seller as the purchase price of the goods, in lieu of the price specified on the face of this Contract, an amount equal to such price adjusted to the extent of such decrease in value. The extent of such decrease shall be determined for the purposes of this paragraph 6 on the basis of changes in the average opening rate quoted on the date of payment by prime U.S. banks in New York City to be selected by buyer. If no such rate is available, the previous closing rate of such banks shall be used.

7. Patents, Trademarks, etc.

Without limiting buyer's remedies as provided by the Uniform Commercial Code, seller shall indemnify, protect, save and keep buyer harmless from obligations, damages, penalties, claims, actions, suits, costs, expenses and disbursements (including reasonable legal fees and disbursements) of whatsoever kind and nature which at any time may be suffered or incurred by, imposed on or asserted against buyer and in any way relating to or arising out of the infringement of any patents, trademarks, service marks, trade names or copyrights in the goods, or arising out of any actual or alleged death of or injury to any person, damage to any property, or any other damage or loss, by whomsoever suffered, resulting or claimed to result in whole or in part from any actual or alleged defect in such goods, whether latent or patent, including actual or alleged improper construction or design of said goods or the failure of said goods to comply with specifications or with any express or implied warranties of seller, or arising out of any actual or alleged violation by such goods, or its manufacture, possession, use or sale, of any applicable law, statute or ordinance or any governmental administrative order, rule or regulation. Seller agrees to obtain and maintain, at its expense, during the term of this Contract, a policy or policies of Products Liability Insurance, with Vendor's Endorsement naming buyer, and such other provisions which shall be satisfactory to buyer, covering purchases of goods covered hereby. All such policies shall not be terminated without at least 30 days prior written notice to buyer. In the event of any dispute with regard to any patent, trademark, service mark, trade name or copyright in the goods, buyer shall have the right (without limiting its rights under the preceding sentence of this paragraph 7) to terminate this Contract and shall have no further liability hereunder.

8. Supply Chain Security.

Seller shall aid the buyer in assuring that the goods are not tampered with, that no additional goods are inserted into the shipping container, and that the supply chain is secure. Seller shall endeavor to control access to warehouse, storage and shipping areas; monitor employees and visitors that may have access to goods and shipping containers; and establish a security program in accordance with the recommendations/guidelines of the U.S. Bureau of Customs and Border Protection.

9. Right to Assurance.

Whenever buyer in good faith has reason to question seller's ability or intent to perform, buyer may demand that seller give a written assurance of seller's ability and intent to perform. In the event that such a demand is made and no written assurance is given within 5 days of such demand, buyer may treat such failure as an anticipatory repudiation of this Contract.

10. Force Majeure.

- (a) Definition. Any Act of God, peril of the sea, act of restriction imposed by any government or instrumentality thereof or by the public enemy, fire, war, revolution, insurrection, riot or civil commotion, accident, epidemic, embargo, strike, lockout or other labor interruption, partial or total interruption, loss or shortage of transportation or loading facilities, power shortage, flood, drought shall be a Force Majeure Event under this Contract.
- (b) Affecting Buyer. In the event of a Force Majeure Event affecting buyer, any carrier of the goods or any other person, firm or corporation directly or indirectly connected with the receipt by buyer of delivery of the goods, buyer shall not be liable for any delay in such receipt, or for any other default in performance of this Contract arising therefrom, and buyer shall have the option (i) to extend the time of receipt of delivery during the continuance of such event or events or (ii) to terminate this Contract either wholly or partially. In the event of any such extension or termination by buyer, seller shall have no claims whatsoever against buyer.
- (c) Affecting Seller. In the event that shipment or delivery of the goods by seller shall have been prevented, hindered or delayed in whole or in part by a Force Majeure Event, buyers shall, upon written request of seller, extend the time of shipment or delivery until such event shall have ceased to exist, but such extension shall not exceed 30 days. If such Force Majeure Event continues to exist and the shipment or delivery is delayed beyond such 30-day period, then buyer shall have the option (i) to terminate, by sending a written notice to seller, the portion of this Contract the performance of which shall have been so prevented, hindered or delayed or (ii) to further extend the time of shipment or delivery. Notwithstanding that a failure of seller to deliver the goods may have been caused by a Force Majeure Event, if seller fails to deliver goods as provided on the face of this Contract, seller shall reimburse buyer for all actual expenses (including, without limitation, ocean freight) which buyer would not have otherwise incurred except for the nonconforming delivery.

11. Default.

- (a) Claims by Buyer. Except in the case of latent defects, any claim by buyer shall be made in writing as soon as practicable after arrival and inspection of the goods at the final destination. For the purpose of this paragraph 11(a), final destination shall be the destination to which buyer intends to deliver. A claim by buyer for latent defects of the goods shall likewise be in writing, but may be made at any time after delivery, inspection and acceptance of the goods. For the purposes of this paragraph 11(a), a latent defect is any defect in the goods which buyer is or would be unable to detect during an inspection which is customarily used for the goods covered by this Contract.
- (b) Buyer's Remedies. In the event that seller fails to perform any provision of this Contract, (except as otherwise provided in paragraph 10(c) hereof), or breaches any express or implied warranty hereunder, or becomes insolvent, or makes an assignment for the benefit of creditors, or is adjudicated a bankrupt or suffers a receiver to be appointed to its business, or makes a material liquidation of assets, or dies, without limiting buyer's remedies as provided by the Uniform Commercial Code, buyer may immediately upon the happening of any such event, at its option, by written notice to seller, either cancel this Contract or reject any further deliveries hereunder. No failure by buyer to give notice of any of the foregoing events shall constitute a waiver thereof. No delay by buyer in enforcing any of its rights hereunder or at law shall be deemed a waiver of such rights nor shall a waiver by buyer of any default of seller be deemed a waiver of any other or subsequent default. In the event of cancellation of this Contract in whole or in part, seller shall immediately return to buyer any amount of money paid in advance by buyer with respect to any undelivered portion of the goods together with interest thereon at the rate of 12% per annum, or the maximum permitted by applicable law, whichever is less, computed from the date on which such amount of money shall have actually been accepted by seller. In the event of a breach or repudiation of this Contract by seller, buyer shall be entitled to recover as consequential damages, in addition to all other rights granted by the Uniform Commercial Code, any profit lost on, or damages payable under a contract entered into by buyer to resell the goods if buyer is unable to cover.

12. Arbitration.

Any controversy or claim arising out of or relating to this Contract, or the breach thereof, shall be settled by arbitration in New York City in accordance with the Rules of the American Arbitration Association and judgment upon the award rendered by the arbitrator(s) may be entered in any Court having jurisdiction thereof, provided that the buyer shall in no event liable to seller on account of any such controversy, claim or breach unless arbitration proceedings shall have been commenced within one year after the cause of action accrued.

13. Entire Agreement; Modification.

This Contract constitutes the complete and exclusive agreement between the parties with respect to the goods covered hereby and to the extent of such goods supersedes any prior or contemporaneous communication, representation or agreement with regard to the subject matter hereof. This Contract may not be modified or terminated nor may any right be waived except by a writing signed by the duly authorized representative of the party against whom enforcement of such modification, termination or waiver is sought.

14. Successors and Assigns; Delegation.

This Contract shall be binding on the parties hereto and their respective successors and assigns. Seller shall not assign or delegate the performance of any of its obligations under this Contract without the written consent of buyer.

15. Counterparts.

This Contract may be executed in any number of counterparts and by either party hereto on separate counterparts, each of which, when so executed and delivered, shall be an original, but all such counterparts shall together constitute one and the same instrument. One or more counterparts of this Contract may be delivered by facsimile or electronic mail, with the intention that delivery by such means shall have the same effect as delivery of an original counterpart.