



## TERMS AND CONDITIONS

**ACCEPTANCE.** All orders become effective only when accepted by Seller's written acknowledgment at Brewster, New York.

**SCHEDULING.** The shipping date specified herein is approximate and is based upon prompt receipt of all necessary information. Seller shall not be liable for any delay in the performance of orders or contracts or in the delivery of shipment of merchandise or for any damages suffered by Purchaser by reason of such delay when such delay is, directly or indirectly, caused by, or in any manner, arising from fires, floods, accidents, riots, acts of God, war governmental interference or, embargoes, strikes, labor difficulties, shortage of labor, fuel, power, materials or supplies, transportation delays, or any other cause or causes (whether or not similar in nature to any of these herein before specified) beyond the control of Seller.

**CANCELLATIONS.** The Purchaser may cancel an order only upon written consent and upon payment to seller of cancellation charges, which shall take into account, among other things, expenses incurred and commitments already made by Seller.

**DELIVERY.** Once Seller has confirmed acceptance of an order from Purchaser, unless otherwise mutually agreed upon: (a) all goods to be supplied hereunder and delivered within the United States shall be shipped F.O.B. Seller's dock, freight collect (b) all goods to be supplied hereunder and delivered outside the United States shall be shipped in accordance with the applicable provisions of the Incoterms (2000); and (c) title and risk of loss shall pass to Purchaser upon Seller's delivery of the goods to the forwarder/carrier in the country of shipment. Seller shall not be bound by any delivery requirements unless and until mutually agreed upon by the parties in writing. In the event that shipment is deferred at the request of Purchaser, Purchaser agrees to pay a delayed delivery storage fee at the rate of 1 1/2% of the net invoice value of the shipment per month beyond the contracted shipping date.

**TAXES.** Any and all sales, manufacturer's taxes and or charges levied or imposed by governmental authority, foreign or domestic, upon any merchandise sold or contracted to be sold shall be paid by Purchaser and added to the purchase price unless appropriate tax exemption certificates are supplied to Seller in form satisfactory to Seller.

**PAYMENTS.** Terms of payment are net thirty (30) days from date of invoice, in United States Dollars, unless otherwise noted and agreed to in writing by Seller. Delinquent payments are subject to service charge on the unpaid balance equal to the lower of 1 1/2% per month or the maximum rate permitted by law until all amounts are paid in full. International Sales are subject to irrevocable confirmed letter of credit terms unless otherwise noted and agreed to in writing by Seller. If the financial responsibility of Purchase becomes unsatisfactory to Seller, or Purchaser is in default to Seller under any order, Seller may require payment in cash before shipment of goods.

**PATENT.** On merchandise manufactured to Purchaser's specifications, Purchaser shall indemnify and hold harmless Seller against any claims, damages, liabilities, costs and expenses (including attorney's fees) arising out of or resulting from actual or alleged infringement of patent, copyright, trademark or other proprietary rights, or claim of unfair trade or unfair competition arising from or occasioned by the use, possession, sale or delivery of any merchandise sold by Seller.

**REPRODUCTION RIGHTS.** Drawings, specifications, reports, photographs and other data relating to this contract and all proprietary right and interest therein and the subject matter thereof shall remain the property of Seller. Purchaser agrees that it will not use Seller's drawings, specifications and other materials covered by this contract or any similar article from any other source, or reproduce the same or otherwise appropriate them without the written authorization of Seller.

**WARRANTY.** Seller warrants to the original Purchaser of any new merchandise that the merchandise is free from defects in material and workmanship under normal use and service for a period of one (1) year from the date of delivery, or acceptance in the event of installation by Seller, but in no event longer than eighteen months from date of shipment. The obligation of Seller under this Warranty is limited, in its exclusive option, to repair, replace or issue credit for parts or materials which prove to be defective. Costs incurred by Purchaser for labor or other expenses option, to repair, replacement or issuance of credit for such parts and/or material shall be the sole responsibility of Purchaser. Seller shall not be responsible for any damage or lack of performance resulting from:

- (a) defects due to accident, negligence, alteration, modification, faulty installation, abuse or misuse by Purchaser or Purchaser's agents or employees.
- (b) attempted or actual dismantling, disassembling, service or repair by any person, firm or corporation not specifically authorized in writing by Seller.
- (c) defects caused by or due to handling by carrier, or incurred during shipment, transshipment or other move.

Any claim of defect must be reported promptly in writing to Seller.

THIS WARRANTY IS EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES EXPRESSED OR IMPLIED ON THE PART OF THE SELLER, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR USE, AND ANY DAMAGES, INCLUDING, BUT NOT LIMITED TO, CONSEQUENTIAL DAMAGES ARISING FROM ANY BREACH THEREOF. SELLER NEITHER ASSUMES NOR AUTHORIZES ANY OTHER PERSON, FIRM OR CORPORATION TO ASSUME ANY LIABILITY OR OBLIGATION IN CONNECTION WITH THIS SALE ON ITS BEHALF AND PURCHASER ACKNOWLEDGES THAT NO REPRESENTATIONS EXCEPT THOSE MADE HERIN HAVE BEEN MADE TO PURCHASER.

**RETURNS.** No product may be returned to Seller without Seller's prior written permission, which permission may be withheld by Seller in its sole discretion. All return shipments are to be via prepaid freight. If products are returned to Seller within 60 days from the date of original shipment for reasons other than an error by Seller in filling the Purchaser's order, Purchaser shall only be entitled to receive a credit in an amount equal to the payment received by Seller for the product minus handling charges determined solely by Seller which shall not exceed twenty five percent (25%) of the invoiced amount. If products are returned to Seller after sixty (60) days from the date of original shipment for reasons other than an error by Seller in filling the Purchaser's order, Purchaser shall only be entitled to receive a credit in the amount equal to the payment received by Seller for the product minus a handling fee in excess of twenty five (25%) which shall be subject to negotiation between Seller and Purchaser.

**SECURITY TITLE.** Security title and right of possession to the products sold hereunder shall remain with Seller until all payments hereunder (including deferred payments whether evidenced by notes or otherwise) shall have been made in cash, and the Purchaser agrees to do all acts necessary to perfect and maintain such security right and title to Seller.

**ARBITRATION.** All controversies or claims arising out of or relating to the sale contemplated hereby or the performance or breach thereof shall be settled by Arbitration in the City and County of New York in accordance with the rules and procedures then obtaining of the American Arbitration Association, unless otherwise specified in writing by the parties.

**LIMITATION OF LIABILITY.** SELLER WILL NOT UNDER ANY CIRCUMSTANCES WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF OR DAMAGE TO ANY ASSOCIATED EQUIPMENT, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF PURCHASER'S CUSTOMERS. IF FOR ANY REASON THE FOREGOING PROVISIONS SHALL BE INEFFECTIVE, SELLER'S LIABILITY FOR DAMAGES ARISING OUT OF ITS MANUFACTURE OR SALE OF MERCHANDISE, OR USE THEREOF, SHALL NOT IN ANY EVENT EXCEED THE FULL PURCHASE PRICE.

**GENERAL.** This order shall be governed by the laws of the State of New York. If any part hereof is contrary to, prohibited by, or deemed invalid under applicable laws or regulations, such provision shall be inapplicable and deemed omitted to the extend so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated and shall be given effect so far as possible. The waiver by either party of any breach of any of the terms and conditions contained herein shall not be construed as a waiver of any subsequent breach of the same or any other term or condition.

### Acceptance

Quote# \_\_\_\_\_ Company: \_\_\_\_\_

Customer Signature: \_\_\_\_\_ Date: \_\_\_\_\_

