

# STANDARD TERMS AND CONDITIONS OF INVOICE

**1. Definitions.** "Buyer" shall mean the Buyer specified on the Invoice (as defined herein). "Seller" shall mean the Seller specified on the Invoice. "Party" shall mean Buyer or Seller individually. "Parties" shall mean Buyer and Seller collectively. "Terms" shall mean these terms and conditions. "Order" shall mean Buyer's written instruction to supply the Goods or Services (each as defined herein), which instruction shall be deemed to incorporate these Terms, by means of a purchase order or functionally similar document. "Acknowledgement" shall mean Seller's order acknowledgement specifying the Goods or Services ordered by Buyer. "Contract" shall mean the Order and Seller's acceptance thereof. "Goods" shall mean any goods (including any part or parts thereof) agreed upon in the Contract to be purchased by Buyer from Seller, and shall include any services related thereto. "Services" shall mean any services agreed upon in the Contract to be furnished by Seller to Buyer. "Specifications" shall mean any specifications, prints, drawings, samples or similar documents or information describing the Goods produced by either Party. "Delivery Date" shall mean the date specified by Seller on the Invoice, on which date the Goods are to be delivered (if no delivery date is specified on the Invoice, then "Delivery Date" shall mean the delivery date specified on the Acknowledgement; if no delivery date is specified on the Invoice or the Acknowledgement, then "Delivery Date" shall mean the delivery date otherwise provided under the Contract). "Payment Due Date" shall mean the date on which payment for the Goods or Services is due from Buyer to Seller, which date shall be determined by the payment terms on the Invoice. "Price" shall mean the amount payable by Buyer to Seller in accordance with the terms of the Invoice, which amount shall exclude carriage, packing, insurance and taxes. "Invoice" shall mean Seller's invoice for payment for the Goods and/or Services, to which these Terms are attached. "Seller Parties" shall mean Seller, its successors, assigns and agents, its affiliated, associated, parent and subsidiary companies and its officers, directors, agents and employees. "FOB Point" shall mean the FOB point specified on the Invoice, at which point delivery shall take place and risk and title to all goods shall pass from Seller to Buyer (if no FOB point is specified on the Invoice, then "FOB Point" shall mean the FOB point specified on the Acknowledgement; if no FOB point is specified on the Invoice or the Acknowledgement, then "FOB Point" shall mean the FOB point otherwise provided under the Contract).

**2. Interpretation.** A reference to a particular law is a reference to said law as it is in force at the time the Contract is created, as such law may be enacted, amended, extended, applied or re-enacted from time to time, and includes any subordinate legislation made under said law as the same may be amended, extended, applied or re-enacted from time to time. Section headings do not affect the interpretation of these Terms. In these Terms, any reference to persons shall be deemed to include references to firms, corporations, companies or unincorporated associations; if Buyer consists of two or more persons, all agreements, warranties, representations, indemnities, covenants or undertakings shall be deemed to be given by Buyer jointly and severally. References to sections, clauses and sub-clauses are to the sections, clauses and sub-clauses of these Terms.

**3. Application of Terms.** These Terms shall apply to all Contracts to the exclusion of all other terms and conditions, including without limitation any terms or conditions which Buyer may purport to apply under any purchase order, confirmation of order or similar document.

**4. Offer and Acceptance.** Any Order from Buyer to Seller shall be deemed to be an offer by Buyer to purchase Goods and/or Services subject to these Terms. No Order shall be accepted until Seller either expressly, by giving notice of acceptance, or impliedly, by fulfilling the Order in whole or in part, accepts the offer. Any acceptance by Seller, and any Contracts made, are conditional on the approval of the relevant authorities in the country of manufacture, sale and/or shipment.

**5. Title and Risk.** Except as otherwise expressly provided herein, risk and title to all Goods sold by Seller to Buyer shall pass from Seller to Buyer when such Goods are delivered from Seller to Buyer at the FOB Point.

**6. Retention of Security Interest.** Buyer hereby grants to Seller a security interest in all Goods sold hereunder (the "Security Interest") until such time as payment is made in full for such Goods, which Security Interest shall apply not only to any Goods purchased but also to the products of, and the proceeds of sale of, such Goods. Buyer shall take all reasonable steps and cooperate with Seller to perfect the Security Interest.

**7. Price and Payment.** Buyer shall pay to Seller the Price set forth on the Invoice on or before the Payment Due Date. If no Price is set forth on the Invoice or otherwise agreed to by Buyer and Seller, the Price shall be the highest of (a) the price most recently quoted for goods of the same type; (b) the price at which goods of the same type were last shipped; or (c) the price at which goods of the same type are generally sold by others in the industry. Additionally, Buyer shall pay, or reimburse Seller for, any existing or future taxes imposed with respect to the Contract or the manufacture, sale, delivery, transportation, or storage of the Goods. If Seller incurs extra cost or suffers any loss in supplying the Goods and/or Services because of a lack of, or defects in, instructions given by Buyer or any other conduct by Buyer, Seller may increase the Price by the amount of the extra costs or loss without affecting any other remedy Seller may have. If Buyer fails to pay on or before the Payment Due Date, then (a) the Price shall immediately become due and payable, together with any tax due thereon and without affecting any other remedy of Seller; (b) in addition to any lien to which Seller may be entitled, Seller may (i) treat all Contracts made between the Parties as cancelled; (ii) suspend any further deliveries to Buyer; (iii) appropriate any payment made by Buyer as in any manner of Seller's choosing (notwithstanding any purported appropriation by Buyer); (c) Seller may charge Buyer interest, both before and after judgment, on all sums due and outstanding at the rate of 1.5% per month or at the maximum amount permitted by law; (d) Seller shall be entitled to a general lien on the Goods and all goods from Seller in Buyer's possession, regardless of whether payment may have been made for any and all of such goods, for the unpaid Price and any other amount(s) due and owing from Buyer to Seller. Buyer is not entitled by reason of any dispute relating to Goods to withhold payment of any amount due to Seller or to offset against any such amount or payment any counterclaim, whether liquidated or unliquidated, for any sum or sums for which Seller does not admit liability. Buyer warrants to Seller that it is able to pay its debts as and when they become due. Seller reserves the right, at its sole discretion, to refuse to execute, perform or proceed further with the execution or performance of any Order or Contract if Buyer's arrangements for payment or credit appear to be or become unsatisfactory and Buyer shall fail to provide Seller with any security or cash payment for Goods or Services demanded by Seller. Any discount shall only be effective if (a) such discount is specified on the Acknowledgement, (b) such discount is specified on this Invoice, and (c) Buyer satisfies any conditions stated on the Acknowledgement and/or Invoice in connection with such discount.

**8. Delivery.** Delivery of Goods shall be made to Buyer at the FOB Point. Seller may select and engage carriers, truckmen, lightermen, forwarders, customhouse brokers, agents, warehousemen and others (collectively, "Carriers") to transport, store, deal with and deliver the Goods, all of whom shall be deemed agents of the Buyer. Buyer acknowledges and agrees that if Seller engages a Carrier or Carriers to transport, store, deal with and/or deliver the Goods from Seller to Buyer, delivery from Buyer to Seller will be deemed to take place when the Goods are delivered to such Carrier or Carriers at the FOB Point. Any Delivery Date specified by Seller is intended to be an estimate and time for delivery shall not be made of the essence by notice. Goods not delivered on the Delivery Date shall not give Buyer the right to cancel the Contract, in whole or in part. Goods may be delivered in advance of the Delivery Date upon reasonable notice to Buyer. Buyer shall make all arrangements to take delivery of Goods when they are tendered for delivery. If Buyer fails to take delivery of Goods, fails to provide Seller with necessary access for Seller's furnishing of Services, or fails to give Seller adequate instructions at the time stated for delivery of Goods or furnishing of Services, (a) the Price shall become immediately due and payable and risk in the Goods shall pass to Buyer; (b) Seller shall be entitled to treat such failure as a repudiation of every contract made between the Parties; and (c) Buyer shall be liable to Seller for all loss and damage caused by such failure; additionally, without affecting such rights, Seller may choose to store Goods until actual delivery and charge to Buyer the reasonable costs (including insurance) of storage. An overrun or underrun of up to 10 percent of Goods specified in a Contract will constitute fulfillment of such Contract, unless otherwise agreed by the Parties in writing. Buyer agrees to accept delivery and pay for the Goods described in the Acknowledgement unless Buyer gives Seller written notice of any corrections which it wishes to make to the Acknowledgement within ten (10) days of Buyer's receipt of the Acknowledgement or prior to the date of manufacture of the Goods, whichever is earlier. Buyer acknowledges that the Goods are not carried in inventory by Seller and must be specifically manufactured. Buyer shall not cancel the Contract or change the Acknowledgement without Seller's prior written consent.

**9. Quality.** Seller warrants that the Goods and/or Services shall conform to the Specifications, if any, listed on the face of or attached to the Acknowledgement, or which have been or shall be supplied or agreed to by Seller, subject to reasonable variations within applicable industry standards, and that any Goods shall be substantially equivalent in quality to comparable goods supplied by Seller from the producing location. SELLER MAKES NO OTHER WARRANTY AS TO THE GOODS OR SERVICES DESCRIBED HEREIN AND EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Buyer shall satisfy itself that the Goods are suitable for any special purpose and it is not a term of the Contract that the Goods are fit for that purpose. Buyer is deemed to have waived its claim for shortages or defects in quality and Seller shall have no liability with respect to the same unless Seller has been given written notice of such shortage or defect within fifteen (15) days of the date of receipt of the Goods by Buyer or furnishing of the Services by Seller. If any of the Goods or Services fail to comply with the provisions set forth in this Section 9, Seller shall have the opportunity to remedy the situation through replacement of the Goods, refurbishing of the Services, or other means satisfactory to both Buyer and Seller. Seller shall, at its option, repair, replace or refund the Price of any Goods or Services which Seller is satisfied were defective in material or workmanship at the time of delivery or furnishing provided that: (a) written notice has been given to Seller within fifteen (15) days of the date of receipt of the Goods by Buyer or furnishing of the Services by Seller; (b) Goods have not been used, processed, sold, transferred or otherwise disposed of by Buyer; (c) no defect has arisen from Buyer's failure to follow Seller's instructions as to storage of Goods; and (d) the defective Goods are held by Buyer and/or evidence of performance of the Services not in compliance with the provisions set forth in this Section 9 is preserved by Buyer, at Buyer's expense, for Seller's inspection. Buyer shall not be entitled to cancel the Contract as a result of delivery of defective Goods or performance of Services not in compliance with the provisions set forth in this Section 9. If the Contract is for paper products supplied by Seller in rolls, Buyer agrees that no claim may be made for any damage to the 10 outer plies of each roll, which Buyer agrees constitute the packaging of the Goods. It shall be Buyer's responsibility to pursue claims against the carrier for Goods which have been lost or damaged in transit.

**10. Seller's Liability.** Without prejudice to the effect or operation of any other of these Terms, Seller's aggregate liability to Buyer for any loss or damage of any nature arising out of Seller's breach of Contract, negligence, breach of statutory duty or otherwise shall be limited to and shall not exceed a sum equal to the Price. Seller shall not be liable to Buyer in contract, tort or otherwise, for the cost of any labor or machine time or for any loss of profit, loss of business or depletion of goodwill, and in each case, whether direct, indirect or consequential, whatsoever and howsoever caused, which arise out of or in connection with the Contract. Seller shall not be responsible for any actions taken or fines or penalties assessed by any governmental agency against shipment of the Goods because of the failure of Buyer to comply with any laws or regulations or with a

notification issued to Buyer by any such governmental agency. Nothing in this clause shall operate to restrict or exclude Seller's liability for any matter which it would be illegal to restrict or exclude or attempt to restrict or exclude.

**11. Indemnity.** Buyer shall save, defend, indemnify and hold harmless the Seller Parties from and against any and all liabilities, losses, damages, claims, injury, actions, proceedings, costs and expenses ("Claims"), including without limitation loss of profit, loss of business, depletion of goodwill, legal fees and other professional fees and expenses, awarded against or incurred or paid by any of the Seller Parties as a result of or in connection with Buyer's breach of contract, negligence, breach of statutory duty or other misconduct. Seller shall save, defend, indemnify and hold harmless Buyer from Claims awarded against or incurred or paid by Buyer arising solely from Seller's gross negligence or willful misconduct, provided Buyer shall (a) promptly furnish Seller with all notices and documents served upon Buyer with regard to litigation subject to this Section 11; (b) promptly inform Seller of any situation that is suspected to become a Claim; (c) provide Seller with such reasonable assistance and cooperation in their response and prosecution of a defense as Seller may request; and (d) give complete control of all such litigation to Seller.

**12. Insurance.** Buyer shall maintain insurance to protect Seller on a primary and non-contributory basis from all insurable Claims arising from the acts or omissions of Buyer from at least AM Best rated A-VIII insurance companies. Buyer's insurance policies shall name all of the Seller Parties as additional insureds to the broadest extent available. Buyer's obligations under this provision shall not extend to property damage or personal injury caused solely by the gross negligence or willful misconduct of the Seller Parties. In addition to and not in substitution for the foregoing provisions, Buyer waives all rights of recovery against the Seller Parties and their insurance carriers for all Claims which are insured against by Buyer or covered by any insurance benefiting Buyer or which was required to be so insured or covered by Buyer as herein provided. Seller's examination of, or failure to request or demand any evidence of, insurance hereunder shall not constitute a waiver of any requirement and the existence of any insurance shall not limit Buyer's obligation under any provision hereof.

**13. Confidentiality.** Buyer shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes, initiatives or similar documents, products or information which are of a confidential nature and have been disclosed to Buyer by Seller or its agents and any other confidential information concerning Seller's business or its products which Buyer may obtain, and Buyer shall restrict disclosure of such confidential material to such of its employees, agents, or sub-contractors as need to know the same for the purpose of discharging Buyer's obligations to Seller and shall ensure that such employees, agents, or sub-contractors are subject to the same obligations of confidentiality as bind Buyer. Buyer shall not use any of Seller's proprietary names, logos, trade names, trademarks or service marks, or advertise or publish in any manner through any medium of marketing or advertising that Seller has contracted to or has been supplying Goods or Services to Buyer without the prior written consent of Seller.

**14. Seller's Property.** Materials, equipment, tools, dies, moulds, copyright, design rights, or any other forms of intellectual property rights in all Specifications and data supplied by Seller to Buyer, or not so supplied but used by Buyer specifically in the manufacturing of the Goods or furnishing of the Services, shall, at all times, be and remain the exclusive property of Seller but shall be held by Buyer in safe custody at Buyer's risk and maintained and kept in good condition by Buyer until returned to Seller. Seller's property shall not be disposed of other than in accordance with Seller's written instructions, nor shall such items be used otherwise than as authorized by Seller in writing.

**15. Buyers Default.** Buyer's rights hereunder shall terminate immediately upon the occurrence of any of the following (each an "Event of Buyer's Default"): (a) Buyer commits a material breach of any of the terms and conditions of the Contract; (b) any distress, execution, or other process is levied upon any of the assets of Buyer; (c) Buyer has a bankruptcy order made against it, makes an arrangement or composition with its creditors, takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, convenes a formal or informal meeting of creditors, enters into voluntary or compulsory liquidation other than a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, has a receiver and/or manager, administrator, or administrative receiver appointed for the undertaking of such a liquidation or any part thereof; (d) documents are filed with any court for the appointment of an administrator of Buyer, notice of intention to appoint an administrator is given by Buyer or its directors, a resolution is passed or a petition presented to any court for the winding-up of Buyer or for the granting of an administration order with respect to Buyer or any proceedings are commenced relating to the insolvency or possible insolvency of Buyer; (e) Buyer ceases or threatens to cease to carry on its business; (f) Buyer suffers or allows any execution, whether legal or equitable, to be levied on its property or obtained against it, fails to observe or perform any of its obligations under the Contract or any other contract between Seller and Buyer, is unable to pay its debts or ceases to trade; (g) Buyer encumbers or in any way charges any of the Goods; (h) the financial position of Buyer deteriorates to such an extent that in the opinion of Seller, the capability of Buyer to adequately fulfill its obligations under the Contract has been placed in jeopardy; or (i) any representation made by Buyer is deemed by Seller, in Seller's sole discretion, to be false or misleading. In the event of any Event of Buyer's Default, Seller shall be entitled to recover the Price regardless of whether title in the Goods has passed from Seller to Buyer or whether Seller has furnished the Services to completion. Buyer grants Seller and its agents and employees an irrevocable license at any time to enter any premises where the Goods or Seller's property are or may be stored in order to inspect them, or, where Buyer's rights hereunder have terminated, to recover them. Buyer shall not pledge the Goods and will keep the Goods free from and will indemnify Seller against any charge, lien, or other encumbrance thereon.

**16. Termination.** Seller may, at any time and for any reason, terminate the Contract in whole or in part by giving Buyer written notice whereupon all work on the Contract shall be discontinued and Buyer shall pay to Seller fair and reasonable compensation for work-in-progress at the time of termination. Seller may, at any time by giving written notice to Buyer, terminate the Contract forthwith upon the occurrence of any Event of Buyer's Default. The termination of the Contract, however arising, shall be without prejudice to the rights and duties of Seller accrued prior to termination. The Terms which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

**17. Remedies.** If Buyer breaches any of these Terms, Seller shall have, in addition to other rights specified herein, all of the rights provided for under the Uniform Commercial Code as applied in Massachusetts and other applicable law. Each right or remedy of Seller, whether under the Contract or not, shall be cumulative, non-exclusive and without prejudice to any other right or remedy of Seller to the extent permitted by law.

**18. Assignment.** Seller may assign or sub-contract the Contract or any part thereof to any person or company. Buyer may not assign the Contract or any part thereof without Seller's prior, express written consent.

**19. Force Majeure.** If Seller is prevented, hindered or delayed from manufacturing or delivering the Goods or furnishing the Services by reason of any Act of God, fire, flood, war, hostilities, civil disturbance, governmental restriction or regulation of any kind, strikes or industrial disputes, subcontractor's default, equipment failure or shortage, inability to obtain materials, fuel, equipment, labor or transportation or any other cause of any nature beyond Seller's control, Seller may give notice in writing to Buyer either (a) canceling Seller's outstanding obligations under the Contract or (b) extending the time for delivery of Goods or furnishing of Services by such period as Seller may reasonably require. Seller will not be liable to Buyer for any damage or loss of any nature, whether direct or indirect, as a result of giving notice under clause (a) of the preceding sentence and will not be liable to Buyer for any late delivery of Goods or furnishing of Services as a result of giving notice under clause (b) of the preceding sentence. The aforementioned rights are without prejudice to Seller's right to recover the price of any Goods or Services that have already been delivered or furnished to Buyer. If Seller fails to make due delivery of Goods or furnish due Services, or makes late or short delivery of Goods or any part thereof or furnishes late or partial Services, for any cause not set out in this Section 18, Seller's liability to Buyer for damages with respect to any loss or expense of any nature thereby occasioned shall be limited to, and shall not exceed, a sum which equals the price of that part of the Goods or Services with respect to which default has been made.

**20. Notice.** Any notice required or permitted to be given by either Party under these Terms shall be in writing and shall be delivered or sent by pre-paid post sent first class addressed to the Party to be served at the address of that Party as indicated on the Invoice, or such other address as may be notified by that Party, pursuant to these Terms, for this purpose. Any notice which is delivered shall be deemed to be served when handed to the addressee and any notice sent by pre-paid post first class shall be deemed to be served two business days after posting.

**21. Governing Law; Severability.** These Terms, the formation, existence, construction, performance, validity and all aspects of the Contract, and all transactions contemplated hereby shall be governed and construed in all respects in accordance with the laws of the Commonwealth of Massachusetts without regard to its conflicts of law rules. Any provision or provisions of the Contract which are found to be invalid shall be deemed inoperative without invalidating or otherwise affecting any other provisions of the Contract. Any action brought by either Party shall be brought in the state or federal courts located in the Commonwealth of Massachusetts, which courts shall have exclusive jurisdiction for all matters arising in connection with the Contract and all transactions contemplated hereby. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to the Contract or any purchase or sale made hereunder.

**22. Modification and Waiver.** No amendment, variation, waiver, alteration, or modification to these Terms shall have effect unless expressly agreed upon in writing and signed by Seller. Failure or delay by Seller in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of Seller's rights under the Contract. Any waiver by Seller of any breach of, or any default under, any provision of the Contract by Buyer shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

**23. Entire Agreement.** This Invoice, these Terms and the Acknowledgement constitute the entire agreement between the Parties and Buyer acknowledges that in agreeing to enter into the Contract it has not relied on any representations relating to the Goods, the Services or the Contract made by any of Seller's directors, employees or agents. Any course of prior dealings, promise or condition in connection herewith, or usage of trade not incorporated herein, shall not be binding upon either Party.