

TERMS AND CONDITIONS OF SALE

GENERAL. SCHENCK USA CORP., a Unit of Schenck Corp. hereinafter referred to as the Seller. Subject to the terms and conditions specified herein, Seller agrees to sell and Buyer agrees to purchase the products described on the face hereof (the "Products"). No commitments shall be binding on Seller unless accepted in writing by Seller at its HOME OFFICE in Deer Park, NY. Any terms and conditions in addition to or inconsistent with those specified herein shall not be binding upon Seller unless expressly accepted in writing by Seller, and failure of Seller to object to any such additional or inconsistent terms and conditions shall not be construed as acceptance of any such provisions, nor as a waiver of any of Seller's terms and conditions.

VALIDITY. Seller's written price quotations become void unless accepted by the Buyer within thirty (30) days of their date. PRIOR TO SUCH ACCEPTANCE, PRICES ARE SUBJECT TO CHANGE WITHOUT NOTICE. Prices may also change under circumstances described in subsequent paragraphs.

WARRANTY. Seller warrants, to the Buyer only, that the Products furnished to the Buyer hereunder will be free from defects in material and workmanship under normal and proper usage for a period of one (1) year from date of delivery, and THIS EXPRESS WARRANTY IS IN LIEU OF AND EXCLUDES ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR PURPOSE. Seller's obligation under this Agreement is limited to replacing or repairing, at Seller's option, products or parts thereof determined by Seller to be defective. All dismantling and assembly at Buyer's plant and necessary packaging and transportation shall be at Buyer's sole cost and expense. Warranty of replacement parts is limited to ninety (90) days, or the unexpired portion of the warranty period of the product on which the parts are being used, whichever is longer. Replacement Products shall be shipped subject to all the same terms, conditions and charges (except for the purchase price) as an original shipment. Seller shall be under no obligation to repair any Product, which has been subjected to improper operation, maintenance or storage, accident alteration, abuse or failure to follow normal operating procedures. Alteration or repair by any other than authorized Seller personnel shall invalidate this Warranty. Seller does not authorize any person to assume for it any other obligation or liability not specified in this Warranty.

LIMITATION OF LIABILITY. Seller's liability for breach or default specifically excludes the legal remedy of "specific performance" and Seller's liability for normal damage for breach of or default under this Agreement shall be limited to pecuniary damage, which shall not, in the aggregate, exceed 10% of the purchase price of the Products under this Agreement. Seller shall not be liable for delays, deprivation of use, or for other loss or damage directly arising from the use, operation or failure of the Products or any other cause, or for special, incidental or CONSEQUENTIAL DAMAGES of any type whatever. Seller shall not be responsible for checking or verifying Buyer's drawings prior to estimating the price of the Products, and Buyer shall reimburse Seller for any loss or increased expense resulting from errors in Buyer's drawings or bills of material. Seller reserves the right to change its technical specifications as long as overall performance of the Product is not degraded.

INDEMNIFICATION. Buyer shall defend, indemnify, and hold Seller harmless against any and all claims, damages, and expenses (including reasonable attorney's fees) of any nature whatsoever which may be made against Seller or which Seller may sustain by reason of injury to or death of any person or persons or damage to or loss of property, arising out of the use of the Products.

PATENTS. In the event of a claim against Buyer for infringement of any United States patent arising out of the sale or use in the form supplied by Seller of Products designed and/or manufactured by Seller, Seller, at its option, will modify the Product so that it will not infringe, furnish Buyer with a license to use the Product, or defend & hold harmless Buyer against the infringement claim. Seller will assume no liability with respect to Products specified by either Seller or Buyer, but not designed and/or manufactured by Seller. Buyer will hold Seller harmless against any liability for infringement of any United States patent involving Products furnished to Buyer hereunder by Seller in accordance with drawings and/or specifications furnished by Buyer. The party assuming liability, as above stated, shall be notified immediately of any assertion of infringement, and shall have the absolute control of the defense thereto, including the right to settle, defend against legal action, or make changes in the Products to avoid infringement.

DELAY IN DELIVERY. Delivery dates are based on normal expectancy and are approximate. Delay in delivery of any installment of Products shall not relieve Buyer of his obligations to accept subsequent deliveries. Seller shall not be liable for damages as a result of any delay whether or not due to any cause beyond Seller's control, including without limitation, act of God, act of the Buyer or his representative, embargo or other governmental act, regulation or request, fire, accident, strike, slow down, war, riot, delay in transportation or inability to obtain necessary labor, materials, fuel, or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost by reason of delay, and if such delay is caused by act of the Buyer or his representatives, Seller shall be reimbursed for any additional costs arising from such delay.

PAYMENT. Unless otherwise specified, the terms of payment shall be: For goods with delivery time of 30 days or less: net thirty (30) days from date of invoice; For goods with delivery time of between one (1) month & four (4) months: 30% with Purchase Order, 30% prior to shipment, 40% net 30 days after shipment from FOB point; For goods with delivery time greater than four (4) months: 30% with Purchase Order, 30% at mid-point of the scheduled delivery period, 40% net 30 days after shipment from FOB point. All terms are subject to approved credit rating. Where shipment is delayed at the request or through the fault of Buyer, Seller may issue its invoice as of the date the Products are ready for shipment. Amounts past due are subject to a service charge equal to one twelfth of the prevailing prime rate as quoted by Chase Manhattan Bank in New York City for each month such amounts are past due. All quoted prices & payments shall be in U.S. Dollars, unless specifically stated otherwise by Seller. Each shipment shall be considered a separate and independent transaction and payment therefore shall be made accordingly. If the work covered by this Agreement is delayed by Buyer's request or through the fault of the Buyer, upon demand by Seller payments shall be made on the purchase price based upon percentage of completion. Such delayed Products held for the Buyer shall be at the risk & expense of the Buyer unless otherwise agreed to in writing by the Seller. Seller reserves the right to make collection of all or part of any payment by sight draft, C.O.D., or any other terms.

WITHDRAWAL OF CREDIT. Seller may at any time limit or withdraw Buyer's credit and may require full or partial payment prior to shipping without affecting the obligations of the Buyer under this Agreement. In the event of bankruptcy or insolvency of the Buyer or if Buyer fails to pay Seller any sum when due, or any prepayment on demand as provided above, then upon seven (7) calendar days' written notice, Seller may cancel any order then outstanding under this Agreement, sell all or any undelivered Product without notice at public or private sale, and hold Buyer responsible for all expenses and losses.

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SECURITY INTEREST. Seller retains Title to and a security interest in all Products sold to Buyer hereunder and/or the proceeds thereof until the purchase price and other charges, if any, are paid in full. This Agreement constitutes a security agreement within the meaning of the Uniform Commercial Code and Seller shall have all rights & remedies of a secured party thereunder. Buyer authorizes Seller to file continuing financing statements covering Seller's security interest in the Products & all after acquired Products. Seller *may* retake possession of the Products with or without legal process if the terms & conditions as provided herein or otherwise agreed to by the Buyer are not met by Buyer.

RISK OF LOSS. Risk of loss for damage to, or destruction of the Products shall pass to Buyer on delivery at EX works (EXW) Seller's factory. Loss for damage to, or destruction of, the Products shall not in any manner release the Buyer from the obligation to make payment on any amount owed to Seller.

TAXES. In addition to the price indicated on the face hereof Buyer agrees to bear all taxes, fees and other impositions or charges which may be demanded or assessed by any country, state, or municipality and not specifically imposed by law upon the Seller with respect to Products sold by the Seller under this Agreement. All such additional charges shall be for Buyer's account and shall be invoiced to Buyer unless Buyer furnishes valid exemption documentation on or before shipment. Buyer shall reimburse the Seller promptly upon demand for all such charges paid by Seller.

FREIGHT ALLOWANCE. All prices quoted are EX works (EXW) point of shipment. All transportation and storage costs and any special packing costs will be charged to Buyer. Seller may prepay such charges and add these to the invoice for the Products. Absent timely instructions from Buyer, Seller will select method of transportation and routing of shipment.

CANCELLATION. In any instance where Buyer is legally entitled to cancel this Agreement, such cancellation shall be by written notice to Seller and subject to the following conditions:

- A. Any part of this Agreement which can be completed by Seller within thirty (30) days after receipt of such notice may, at Seller's option, be shipped and shall be paid for in full; and
- B. All work in process, and all materials and supplies ordered by Seller to fill all or any part of this Agreement, as of the date of receipt of such notice by Seller shall, at Seller's option, become the property of Buyer and be paid for in full by Buyer on the basis of Seller's cost plus ten percent (10%) thereof, which cost shall include, without limitation, general administrative, selling and manufacturing expenses.

PRICE ESCALATOR. Prices are firm for Products quoted for delivery within one (1) year from date of Buyer's order. Prices for Products quoted for delivery beyond one (1) year from date of Buyer's order are subject to adjustment to Seller's prices applying as of the dates of delivery. Prices and terms of payment shall not be subject to any offset or counterclaim of the Buyer unless agreed to in writing by Seller. In the event that Buyer delivers a check to Seller in payment for the Products in an amount less than the prices quoted on the face hereof and all other additional charges, Seller expressly reserves the right to demand the balance due and Seller's negotiation of said check will not affect an accord and satisfaction notwithstanding the fact that the words "Final Payment" or any similar words are inscribed thereon. Buyer agrees to hold Seller harmless from any damage, loss or expense as a result of its use of such restrictive endorsement on a negotiable instrument.

GOVERNMENT CONTRACTS. In the event this order is for products to be furnished by Buyer under any government contract or purchase order, Seller shall have all rights of Buyer that are available to Buyer under such government contract or purchase order, whether or not Buyer is a prime contractor or supplier to the government or is a subcontractor at any tier.

REGULATORY LAWS AND/OR STANDARDS. Seller does not warrant or represent that Its Products will conform to any federal, state or local laws, ordinance, regulations, codes or standards, except as particularly specified and agreed upon for compliance in writing as part of this Agreement between Buyer and Seller. Seller's prices do not include the cost of any related inspections or permits.

MODIFICATION OF AGREEMENT. This Agreement contains the entire agreements of the parties, and no prior or contemporaneous negotiations, correspondence, conversations, prior course of dealing or usage of trade shall in any way affect the specific terms and conditions hereof. No subsequent modification of, or addition to, this Agreement shall be effective unless in writing, signed by both parties.

ASSIGNMENT. This Agreement may not be transferred or assigned by the Buyer without prior written consent of Seller.

JURISDICTION. The laws of the State of New York shall govern this Agreement and Its performance. The parties hereto agree to waive trial by jury in any action or other such proceedings arising out of or relating to the Products or this Agreement.

NO WAIVER OF CONDITIONS. Failure of Seller to insist upon strict performance of any of the terms and conditions of this Agreement shall not constitute a waiver of such terms and conditions or a waiver of any default.

The export of any product must be made in accordance with all relevant Laws of the United States, including and without limitation, the U.S. Export Administration Regulations. This may require that you obtain a formal export license or make certain declarations to the United States Government regarding product(s) to be exported, their destination or their end-use.

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