

Applied Companies Terms and Conditions of Sale

- 1. Terms of Sales:** Sale of goods by Applied Companies (Seller) to Customer (Buyer) is made solely on the terms and conditions hereof notwithstanding any additional or conflicting terms or conditions, oral or written, that may be contained in any purchase order or other form of purchase, all of which additional or conflicting terms and conditions are hereby expressly objected to and rejected by Seller. No representations or warranties other than those contained herein shall be binding upon Seller unless made in writing and signed by an officer of Seller. In any event, acceptance of a shipment by Buyer constitutes unconditional acceptance of these terms and conditions.
- 2. Price:** All quotations, unless otherwise specified, are subject to acceptance by Buyer within sixty (60) days from date of quotation. Prices quoted by Seller on products manufactured by Seller are subject to change without notice. Prices quoted by Seller on products not manufactured by Seller are subject to adjustment by the same percentage of price changes as made effective by Seller's suppliers prior to the date of shipment.
- 3. Terms of Payment:** Terms of payment are by credit card unless otherwise authorized in writing by Seller. All past due accounts will be subject to a service charge of up to one and one-half percent (1.5%) per month (or, if less, the maximum rate permitted by applicable law). All shipments at all times are subject to the approval of Seller's Credit Department. Seller may require full or partial payment in advance of production or shipment if in the judgment of Seller the financial condition of Buyer does not justify other terms. If shipments are delayed by Buyer for any reason, payments shall become due from the date on which Seller notifies Buyer that Seller is prepared to make shipment and storage thereafter shall be at Buyer's risk and expense.
- 4. Delivery and Delays.** Delivery dates are approximate and not guaranteed. Seller will use commercially reasonable efforts to deliver the goods on or before the estimated delivery date and will notify Buyer if the estimated delivery dates cannot be honored and will deliver the goods and services as soon as practicable thereafter. In no event will Seller be liable for any damages or expenses caused by delays in delivery times. Any claims for damage or shortages are waived by Buyer unless made in writing to Seller within ten (10) days after receipt of goods and accompanied by reference to Seller's bill of lading and factory order numbers.
- 5. Taxes:** Unless otherwise provided by law, Seller may require Buyer to pay or to reimburse Seller for any tax (except Seller's income tax) which now or hereafter may be imposed by any taxing authority with respect to the products or the sale, purchase, manufacture, delivery or use thereof.
- 6. Cancellations:** Accepted orders are not subject to cancellation unless Seller consents and Seller is immediately reimbursed for any and all costs incurred by Seller in connection with such orders. In addition, Buyer shall promptly pay to Seller as fixed, agreed and liquidated damages, and not as a penalty, a sum equal to ten percent (10%) of total order value to compensate for administrative costs.
- 7. Warranty:** Seller warrants that all delivered spare parts will be free from defects in material and workmanship, and in conformance with the applicable drawings, designs and specifications referenced in this order for sixty (60) days from the date of delivery. Under this warranty, Seller will furnish without charge, F.O.B. Valencia, California, a replacement for any defective part required. Any transportation, related service labor, diagnosis calls, filters and refrigerant are not included. Furthermore, within the warranty period, if the product is returned freight prepaid to our factory, Seller will furnish all material and labor necessary for warranty repair at no cost. This warranty does not cover damage caused by improper installation, misuse of equipment, negligent servicing, improper applications, unauthorized modifications, improper electrical supply, failure to follow manufacturer's instructions and rating plate information, accidents or other events beyond Seller's control, natural disasters, damage in transportation, or lack of any normal preventative maintenance. Cost of repair or replacement of consumable parts is not covered under the terms of this warranty. This warranty constitutes the exclusive remedy of any purchaser of Seller's products and in lieu of all other warranties, expressed or implied, including, without limitation, any implied warranty of merchantability or fitness for use, to the fullest extent permitted by law. In no event shall any implied warranty of merchantability or fitness for use exceed the terms of the applicable warranty stated above and Seller shall have no other obligation or liability. In no event shall Seller be liable for incidental or consequential damages.
- 8. Returned Goods:** Goods may not be returned except by permission of an authorized official of Seller at Valencia, California. Material returned without prior authorization by Seller shall be at Buyer's risk and expense with no liability to or obligation of Seller.
- 9. Product Changes:** Seller reserves the right to change specifications and/or designs without incurring any obligation to Buyer.
- 10. Patents:** If any goods shall be manufactured or sold by Seller to meet Buyer's specifications or requirements and are not a part of Seller's standard product offering, Buyer agrees to indemnify and save harmless Seller from any and all damages, claims and demands for actual or alleged infringement of any United States or foreign patents because of manufacture or sale of such goods.

11. **Indemnity:** Seller and Buyer shall indemnify, defend and hold harmless each other from any and all claims, actions, costs, expenses, damages and liabilities, including reasonable attorneys' fees, resulting from death or bodily injury or damage to real or personal property, to the extent caused by the negligence or misconduct of their respective employees or other authorized agents in connection with their activities within the scope of this Agreement. The duty to indemnify will continue in full force and effect, notwithstanding the expiration or early termination hereof, with respect to any claims based on facts or conditions that occurred prior to expiration or termination.
12. **Limitation of Liability. NOT WITHSTANDING ANYTHING TO THE CONTRARY, IN NO EVENT SHALL SELLER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING PRODUCT LOSS, LOST REVENUE OR PROFITS), OR PUNITIVE DAMAGES WHETHER CLAIMED UNDER CONTRACT, WARRANTY, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER LEGAL THEORY OF FACTS.** In no event will Seller's liability in connection with the provision of products or services or otherwise under this agreement exceed the entire amount paid to Seller by Buyer under this Agreement.
13. **Governing Law, etc.:** This agreement and sale of goods by Seller shall be governed in all respects by the laws of the State of California. Seller shall be entitled to recover from Buyer Seller's reasonable cost of enforcing these terms and conditions, including without limitation, any collection costs or attorney's fees and expenses incurred by Seller in the event of a default by Buyer in making any payment due to Seller. These terms constitute the entire agreement between Seller and Buyer.
14. **Export Laws.** The obligation of Seller to supply product under this Agreement is subject to the ability of Seller to supply such items consistent with applicable laws and regulations of the United States and other governments. Seller reserves the right to refuse to enter into or perform any order, and to cancel any order under this Agreement if Seller in its sole discretion determines that performance of the transaction to which such order relates would violate any such applicable law or regulation. Buyer will pay all handling and other similar costs from Seller's factories including the costs of freight, insurance, export clearances, import duties and taxes. Buyer will be "exporter of record" with respect to any export from the United States of America and will perform all compliance and logistics functions in connection therewith and will also comply with all applicable laws, rules and regulations. Buyer understands that Seller and/or the goods are subject to laws and regulations of the United States of America which may require licensing or authorization for and/or prohibit export, re-export or diversion of Seller's goods to certain countries, and agrees it will not knowingly assist or participate in any such diversion or other violation of applicable United States of America laws and regulations. Buyer agrees to hold harmless and indemnify Seller for any damages resulting to Buyer or Seller from a breach of this paragraph by Buyer.
15. **U.S. Government Work.** The following provision applies only to direct sales by Seller to the US Government. The Parties acknowledge that goods ordered and delivered under this Agreement are Commercial Items as defined under Part 12 of the Federal Acquisition Regulation (FAR). In particular, Seller agrees to be bound only by those Federal contracting clauses that apply to "commercial" suppliers and that are contained in FAR 52.212.5(e)(1). This provision applies only to indirect sales by Company to the US Government. As a Commercial item Subcontractor, Seller accepts only the following mandatory flow down provisions: 52.203-13; 52.219-8; 52.222-26; 52.222-35; 52.222-36; 52.222-41; 52.222-50; 52.222-51; 52.222-53; 52.222-54; 52.247-64. If the sale of the goods are in connection with a U.S. Government contract, and is required by the FAR's, Buyer certifies that it has provided and will provide current, accurate, and complete information, representations and certifications to all government officials, including but not limited to the contracting officer and officials of the Small Business Administration, on all matters related to the prime contract, including but not limited to all aspects of its ownership, eligibility, and performance. Anything herein notwithstanding, Seller will have no obligations to Buyer unless and until Buyer provides Seller with a true, correct and complete executed copy of the prime contract. Upon request, Buyer will provide copies to Seller of all requested written communications with any government official related to the prime contract prior to or concurrent with the execution thereof including but not limited to any communications related to Buyer's ownership, eligibility or performance of the prime contract. Buyer will obtain written authorization and approval from Seller prior to providing any government official any information about Seller's performance of the work that is the subject of the Proposal or this Agreement, other than the Proposal or this Agreement.