

All sales or supply of products and/or services (collectively "Goods") by U.S. Merchants, its parent or its affiliates (collectively, "Seller") are expressly subject to and conditioned on the terms and conditions set forth herein and on the front side of Seller's invoice (collectively "Terms"), and on no other terms and conditions unless expressly agreed to in writing and signed by an officer of Seller. The purchaser(s) of the Goods from Seller are referred to as "Buyer." Buyer's orders for Goods, including all of Buyer's purchase orders and any other form for placing orders, are referred to as "Order." All Orders are subject to these Terms. Seller objects to and rejects any terms or conditions in any Order that are in addition to or different from these Terms. If an Order is expressly conditioned upon Seller's acceptance of Buyer's terms and conditions, and the terms of quantity and price of the Goods set forth in Buyer's Order are the same as set forth in Seller's quotation, acknowledgement or invoice for the Goods, then all additional or different terms in Buyer's Order are expressly rejected, and Seller's acceptance creates an agreement between Buyer and Seller on these Terms. Buyer's agreement to these Terms shall also occur upon (i) Buyer's execution of a credit application or other document containing these Terms; or (ii) delivery (including tender of delivery) of any Goods to Buyer or Buyer's carrier.

1. All prices are F.O.B. Seller's shipping point (Buyer pays shipping and handling charges). Seller has the right to correct any obvious or clerical errors. Seller may raise shipping and handling charges to conform to then current rates. Prices do not include taxes. All taxes which, under any existing or future law, Seller may be required to pay or collect on the sale, purchase, use, or transportation of Goods shall be paid by Buyer to Seller.

2. Delivery dates are approximate, not binding on Seller, and not material to performance. Shipping dates may be changed at Seller's sole option based on conditions at the time. Delivery occurs on tender of Goods to Buyer or to the shipping carrier. Seller reserves title to the Goods until full payment by Buyer. Seller may complete performance by shipping plus or minus 10% of the quantity ordered. Seller may ship in installments. The Goods are subject to tolerances and variations consistent with Seller's practices. Seller reserves its right at any time to make changes in packaging materials, designs and/or processes. If Seller warehouses Goods, Buyer is liable for Seller's then current storage fees.

3. Buyer assumes all risk of loss and damage to Goods at all times. Buyer is liable for the full purchase price whether or not the Goods are lost, stolen, damaged, delayed or destroyed for any reason. Buyer shall arrange for insurance to cover and protect the Goods at all times. Seller is not liable for any delay or failure to deliver for any reason, including but not limited to, production schedules of suppliers, unavailability of materials or power at current prices, acts of God, war, fire, weather, theft or transportation difficulties.

4. Buyer has seven (7) calendar days from the date of delivery to inspect the Goods, determine whether they conform to an Order and/or bill of lading and determine whether they are damaged, defective, short in quantity, or otherwise nonconforming. Buyer must assert any such claims of nonconformance by notifying Seller in writing within such seven day period. If such notice is not made within the seven day period, Buyer irrevocably accepts the Goods and admits that they conform. There can be no returns nor cancellations without Seller's prior, written, specific authorization. All returns and cancellations are subject to: (i) inspection and acceptance by Seller; (ii) Seller's handling charge; and (iii) Seller's specific shipping/return instructions. Custom or specially processed Goods are non-cancelable and non-returnable.

5. Seller's invoices are due and payable in full within ten (10) calendar days from the invoice date, unless otherwise notified by Seller in writing. Within this ten day period, Buyer must notify Seller in writing of any claim of error in the invoice. If Buyer fails to so notify Seller, then the invoice shall conclusively be deemed to be correct and accepted by Buyer. Credit terms may be changed or withdrawn at any time. Buyer shall pay interest at 1 1/2% per month, or the highest rate permitted by law, whichever is lesser, on any amount past due until Seller is fully paid.

6. If Buyer provides products to Seller for packaging or distributing, Buyer represents that the products are: (a) free from all defects in design, manufacture, workmanship, and materials; (b) merchantable and fit for a particular purpose; (c) in compliance with all court orders, judgments, agreements, laws and regulations; (d) not infringing or misappropriating any rights, including without limitation, patents, trademarks, trade dress, trade names, copyrights, rights of privacy, trade secrets; and (e) salable to anyone, even outside designated and authorized channels of distribution.

7. GOODS ARE SOLD "AS IS." TO THE FULLEST EXTENT ALLOWED BY LAW, SELLER MAKES NO WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES AS TO ACCURACY OR PERFORMANCE. SELLER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND WARRANTIES FROM TRADE USAGE, COURSE OF DEALING OR COURSE OF PERFORMANCE. SELLER'S SPECIFICATIONS ARE ONLY ESTIMATES AND NOT WARRANTIES. SELLER'S SAMPLES ARE NOT WARRANTIES AS TO SUBSTANCE, PERFORMANCE, QUALITY, WEIGHT OR DIMENSION, AND ANY NONCONFORMITY THEREOF SHALL NOT CONSTITUTE A BREACH. IF ANY PART OF THIS SECTION IS UNENFORCEABLE, THEN THIS SECTION WILL BE VALID TO THE FULLEST EXTENT ALLOWABLE BY LAW.

8. SELLER'S SOLE LIABILITY, AND BUYER'S EXCLUSIVE REMEDY, WITH RESPECT TO ANY NONCONFORMING GOODS IS LIMITED TO, IN SELLER'S SOLE DISCRETION, ONE OF THE FOLLOWING: (A) REPLACEMENT AND DELIVERY WITHOUT ADDITIONAL CHARGE; (B) REPAIR AND DELIVERY WITHOUT ADDITIONAL CHARGE; OR (C) REFUND OF THE PURCHASE PRICE PAID, IF ANY, WITHOUT INTEREST. IF SELLER REQUESTS, BUYER SHALL RETURN ALL NONCONFORMING GOODS. BUYER WAIVES ALL OTHER REMEDIES. IN NO EVENT SHALL SELLER BE LIABLE FOR ANY PUNITIVE, CONSEQUENTIAL, OR BUSINESS INTERRUPTION DAMAGES, REGARDLESS OF CAUSE OR FORM OF ACTION. IF ANY PART OF THIS SECTION IS UNENFORCEABLE, THEN SELLER'S TOTAL LIABILITY AS TO ANY ORDER SHALL NOT EXCEED THE PURCHASE PRICE OF THE GOODS. ONLY IF THE ABOVE TERMS IN THIS SECTION ARE OTHERWISE UNENFORCEABLE, THEN THIS SECTION SHALL NOT RELIEVE SELLER FROM LIABILITY FOR ANY DAMAGES FOR GROSS NEGLIGENCE OR WILLFUL ACTS.

9. Buyer represents that it is solvent and has the unrestricted ability to pay its debts. In issuing an Order, Buyer reaffirms this solvency representation as if fully set forth in writing in its Order, it being the express intent to grant to Seller the maximum right of reclamation available. To induce Seller to sell to Buyer on an open account basis, Buyer authorizes Seller to check Buyer's assets and credit background. Buyer authorizes the continuing release of all financial and credit data for as long as Seller has not been paid in full. If, in Seller's sole discretion, any doubt ever exists as to Buyer's financial capability, then Seller reserves the right, without liability and without prejudice to other remedies, to decline or suspend performance.

10. Buyer shall defend (counsel selected by Seller and paid for by Buyer), indemnify and hold harmless Seller and the officers, directors, employees and agents of Seller, from all claims, losses, demands, liabilities, actions, damages, settlements, costs and expenses in any way arising out of or related to any actual or alleged: (a) defect in the design, material or workmanship of any products or merchandise provided to Seller by Buyer; (b) breach by Buyer of any of these Terms; (c) personal injury, death or property damage in connection with the Goods; (d) infringement or misappropriation of any patent, copyright, trade name, trade dress or trade secret of any third party regarding the Goods; (e) acts or omissions of Buyer; and (f) price discrimination or price fixing regarding the Goods. Seller may control any defense and has the authority to settle any claim or lawsuit.

11. Buyer shall not disclose any nonpublic, confidential, proprietary, and trade secret information obtained from Seller. Seller has the exclusive right, title and interest in and to all artwork, inventions, processes, designs, molds, tooling and other properties made by Seller. If any Goods contain a trademark, patent, character, design, name or other proprietary material owned, copyrighted or licensed by Seller ("Licensed Material"), Buyer agrees that Licensed Material is in no way Buyer's property. Buyer shall not use designs, trademarks, patents, trade names or copyrighted works of Seller. Buyer and Seller acknowledge that they are not agents of each other.

12. The agreement between Seller and Buyer has been made in Los Angeles, California, requires performance in Los Angeles, California, and all rights and duties arising out of or relating in any way to any Order or transaction(s) between the parties, including but not limited to any and all disputes as to the legality, interpretation, enforcement and performance of the Terms, shall be governed by, construed and enforced in accordance with the laws of the State of California without regard to any conflict of law rules. Buyer agrees that service of process can be effected on it by service on the Secretary of the State of California. BUYER FURTHER AGREES THAT VENUE AND JURISDICTION FOR ANY AND ALL DISPUTES WITH SELLER SHALL EXCLUSIVELY LIE WITH A COURT OF COMPETENT JURISDICTION LOCATED IN THE COUNTY OF LOS ANGELES, CALIFORNIA.

13. If Seller is the prevailing party in any dispute between the parties in connection with the interpretation, construction or enforcement of these Terms or in connection with the enforcement of any of Seller's rights or Buyer's duties, whether based in tort, contract or any other theory, then Buyer shall promptly pay Seller all costs, expenses and fees, including without limitation, attorneys' fees, incurred by Seller in connection with that dispute.

14. If any provision of these Terms is invalid, illegal or unenforceable, then the validity, legality and enforceability of the remaining provisions will not in any way be affected or impaired.

15. Buyer's rights and duties may only be assigned upon Seller's prior written consent. The rights and duties hereunder are binding upon and inure to the benefit of the parties, their respective successors, Seller's assigns and Buyer's permitted assigns. The rights and duties hereunder shall survive the termination of the parties' agreement and shall not be deemed waived, terminated or merged by payment. Seller's failure to strictly enforce any Terms, or to exercise any of its rights, shall not constitute a waiver of Seller's rights to strictly enforce such Terms or to exercise such rights thereafter. The waiver by Seller of any default or breach must be specifically and expressly agreed to in writing and signed by an officer of Seller, and any such waiver shall not operate as a waiver of any other default or breach, even of the same kind. To the extent Seller has waived any rights or Terms, such waiver shall not be deemed or construed as a further or continuing waiver. Seller's rights and remedies are cumulative and in addition to any rights and remedies at law or in equity.

16. These Terms constitute the entire agreement between the parties. Buyer represents it has approved the Terms after review by its legal counsel or voluntarily waived its right to such a review.