



## TERMS AND CONDITION OF SALE HOFFMAN ENGINEERING LLC

**CONTROLLING PROVISIONS:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Seller unless accepted by it in writing signed by the Seller. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which is different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document. All prior proposals, negotiations and representations, if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods and/or services described herein are shipped or an invoice is presented in connection with the said goods and/or services.

**TERMS:** Buyer agrees to pay for the products according to the Seller's payment terms as stated on Seller's invoice. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to service **charges** at the rate agreed upon by the parties, otherwise at the maximum contract rate permitted by law.

**PORTAL FEES:** Buyer agrees to accept fees of \$350.00 per month for Portal Inquiry Logistics and \$500.00 per month for Customer Inventory Level Management. Buyer agrees to represent the appropriate fee as a line item on each purchase order which would be billed on a monthly basis by Seller. Fees are subject to change without prior notice by Seller.

**REMEDIES OF SELLER:** Upon default by Buyer, Buyer agrees to reimburse Seller all attorney fees and court costs incurred by Seller in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of a receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (f) If Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

**GOVERNING LAW:** This transaction shall be governed in all respects by the laws of the State of Connecticut. All actions, regardless of form, arising out of or related to this transaction or the products sold hereunder must be brought against Seller within the applicable statutory period, but in no event more than ONE (1) YEAR after the date of invoice and such litigation must be brought in either the State or Federal Courts in the state of Connecticut.

**DELIVERY:** Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect, or liquidated



damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

**WARRANTY:** *The Buyer's sole and exclusive warranty, if any, is that provided by the product's manufacturer. Seller makes no expressed or implied warranties. Seller hereby disclaims all expressed or implied warranties, whether implied by operation of law or otherwise, including, without limitation, all implied warranties or merchantability and fitness or fitness for a particular purpose.* Under no circumstances and in no event, will Seller be liable for personal injury or property damage or any other loss, damage, cost of repairs or incidental, punitive, special, consequential, or liquidated damages of any kind, whether based upon warranty, contract, strict liability, negligence or any other cause of action arising in connection with the design, manufacture, sale, transportation, installation, use or repair of the products sold by Seller. Buyer hereby acknowledges and agrees that under no circumstances, and in no event, shall Seller's liability, if any, exceed the net sales price of the defective product(s); no additional allowance shall be made for the labor or expense of repairing or replacing defective products or workmanship or damage resulting from the same. Buyer shall indemnify and defend any claim or litigation and reimburse Seller for any judgment, cost or expense incurred in connection with any claim or litigation based on Buyer's use or application of Seller's products.

**INDMENIFICATION:** Buyer hereby agrees to indemnify and hold harmless Seller and its officers, directors, employees, agents and Affiliates for, from and against any Losses based upon, arising out of, asserted against, resulting from, imposed on, or otherwise in respect of (i) the breach of any representation or warranty of Buyer contained in or made pursuant to this Agreement or any Ancillary Agreement (ii) the breach by Buyer of, or failure by Buyer to perform, any of its covenants or other agreements contained in this Agreement or any Ancillary Agreement, (iii) the Assumed Liabilities, and (iv) any Third Party Indemnification Claim which could give rise to indemnification by Buyer hereunder.

**INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within five (5) days following delivery to Buyer. Buyer shall have ten (10) days from the date Buyer receives any products to inspect such products and services for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such ten (10) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such ten (10) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product or service, previously ordered by Buyer or its representatives, or to cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the merchandise subject to the manufacturer's inspection and warranty.

**SHIPMENTS:** All products are shipped F.O.B., point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Seller ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier.



**EXPORT:** Buyer acknowledges that if the products purchased are to be exported, they are subject to the U. S. Commerce and/or State Department Export Regulations. Buyer accepts full responsibility for and agrees to comply fully with such regulations, including obtaining export licenses and re-export permission unless otherwise agreed by Seller.

**TAXES:** The amount of any sales, excise or other taxes or duties, if any, applicable to the products shall be added to the purchase price and shall be paid by Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. Any taxes which Seller may be required to pay or collect under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.

**SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof.

The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance here from.

**NON-WAIVER:** Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Seller.

**INSURANCE:** Buyer shall maintain its usual and customary insurance coverage, including for third party liability claims during performance of this order and, if requested by Seller, shall name Seller as an insured under its third party liability coverage.

**COMPLIANCE WITH LAW:** Buyer shall comply with all applicable Federal, State and local laws pertaining to Buyer's transactions with Seller.

**ENTIRE AGREEMENT:** This document constitutes the entire, complete, and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Seller. All transactions shall be governed solely by the terms and conditions contained herein.

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