

# Terms & Conditions of Sale

The following terms and conditions apply to all products ("Products") sold by The Mueller Group, Inc. [or its affiliates] ("Seller"). By ordering or purchasing such Products, you ("Customer") acknowledge and agree to the following terms and conditions. Any Seller quotation or order acknowledgment is an offer subject to and expressly conditioned upon Customer's assent to these terms and conditions and any terms included on Seller's quotation or order acknowledgment, whether assent is in writing or by conduct.

Acceptance of or payment for Products shall constitute such assent. Seller rejects all additional or different terms, including but not limited to any standard terms and conditions of purchase contained in any purchase order or other communication heretofore or hereafter received from Customer.

**1. Credit Application:** If Customer is purchasing on credit, Customer certifies that Customer is the business type stated on the credit application and represents and warrants that all information stated on the credit application is true, correct and complete. Customer agrees to immediately notify Seller of any changes or updates to Customer's information set forth in such credit application. Seller reserves the right, in its sole discretion, to approve, disapprove, or change Customer's credit limit or to impose credit terms, including without limitation the requirement that Customer make full or partial advance payment. In the event (i) of a complete or partial failure to pay by Customer, or (ii) that Seller determines, at any time in its sole discretion, that the credit of Customer or of any person or entity providing credit support for Customer's obligations is or becomes impaired, or there is any reason to doubt the enforceability or sufficiency of any agreement, instrument or document supporting Customer's obligations under this agreement, then in either case, Seller may, at its option, revoke any credit extended to Customer, suspend all subsequent shipments under open purchase orders until Customer's account is current, or offset such amount against any payments due or that become due from Seller or its affiliates to Customer.

**2. Invoice Terms:** The terms of all sales are cash (payable in US dollars), net of any applicable cash discount as indicated on each invoice, if paid no later than the date indicated on the invoice. If no due date is stated on the invoice, such invoice shall be due and payable thirty (30) days from the date of the invoice. Seller shall have the right to include taxes which may be applicable to the quoted prices in the event that Customer does not supply to Seller, prior to sale, appropriate sales, use and Federal excise exemption certificates.

**3. Late Fees:** If invoiced amounts are not paid by Customer by the net due date as indicated on the invoice, the Seller shall levy a "service charge" to cover the additional cost of handling the account, in an amount equal to (1.5%) one and a half percent per month until paid. Customer fully understands and agrees that this charge is a "service charge" levied by the Seller to reimburse the Seller for the additional cost of carrying the Customer's delinquent account; and further, that such charge is not an interest charge as such.

**4. Collections:** If it becomes necessary for Seller to retain legal or professional assistance to collect any amounts due from Customer, Customer shall be liable for, and agrees to pay or reimburse Seller for, the cost of all such legal or professional services, including attorneys' fees and any expenses connected therewith.

**5. Final Sale:** Customer agrees that any purchase is final and that no Product purchased from Seller shall be returned for credit without the prior approval and acceptance of Seller. Any items that are returned are subject to restocking charges.

**6. Delivery:** All shipments are F.O.B. point of origin and Customer is responsible for all claims with carriers, freight costs and shipping fees. Risk of loss and damage to Products shall pass to Customer at the place of delivery. Delivery dates are best estimates only. Seller reserves the right to make deliveries in installments and the contract shall be severable as to such installments. Delivery delay or default of any installment shall not relieve Customer of its obligation to accept and pay for remaining deliveries. In the event Seller is unable to wholly or partially perform because of any cause beyond its control, Seller may terminate any order without any liability to Customer. Over- and under-shipping may occur at accepted industry standards of +/- 10%.



**7. Warranty Disclaimer:** Customer acknowledges that Seller is a reseller or distributor of the Products and is not a manufacturer of Products. All warranties on the Products are the manufacturers' warranties, and Products furnished by Seller but manufactured by other manufacturers shall carry whatever warranty, if any, such manufacturers have conveyed to Seller and which can be passed on to Customer. Customer shall revert to the manufacturer for remedies to any warranty problem associated with such Products. **ALL PRODUCTS ARE SOLD BY SELLER "AS IS". THE SELLER DOES NOT MAKE, AND HEREBY EXPRESSLY DISCLAIMS, ANY AND ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF OR AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

**8. Limitation of Liability:** TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL SELLER'S TOTAL CUMULATIVE LIABILITY TO CUSTOMER ARISING FROM OR RELATING TO THE PRODUCTS OR THIS AGREEMENT EXCEED THE PURCHASE PRICE PAID BY CUSTOMER FOR THE SPECIFIC PRODUCT GIVING RISE TO THE CLAIM OR CAUSE OF ACTION, REGARDLESS OF THE FORM OF THE CLAIM OR CAUSE OF ACTION (WHETHER BASED IN CONTRACT, NEGLIGENCE, STRICT LIABILITY, OTHER TORT OR OTHERWISE). CUSTOMER AGREES THAT SELLER SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE, AND COST OF CAPITAL), WHETHER OR NOT SELLER WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.

**9. Importation and Exportation:** Customer shall comply with all applicable export control laws and shall not, directly or indirectly, export, re export, resell, ship, or divert any Product, service, technical data, or software furnished hereunder to any person, entity, project, use, or country in violation of the laws or licensing requirements of the United States or any other appropriate national authority. Customer shall indemnify and hold Seller harmless for any and all claims, demands, cost, fines, penalties, fees, expenses, or losses arising from Customer's failure, intentional or unintentional, to comply with the foregoing sentence.

**10. Governing Law; Consent to Jurisdiction and Venue:** This agreement shall be governed by the laws of the State of Illinois, USA, without reference to the choice of law, conflicts of law, or principles of any other state or country which might otherwise be applied, and the courts of DuPage County, Illinois shall have exclusive jurisdiction. CUSTOMER HEREBY CONSENTS TO JURISDICTION, PERSONAL AND OTHERWISE, OF SUCH COURTS, AND HEREBY WAIVES ANY OBJECTIONS OF ANY NATURE TO VENUE IN SUCH COURTS.

**11. Miscellaneous:** This agreement shall be binding on and inure to the benefit of Customer, Seller and the respective successors and permitted assigns of each; provided, however, that Customer shall not assign its rights or obligations under this agreement without Seller's prior written consent. Customer agrees that these Terms and Conditions of Sale and any terms included on Seller's quotation or order acknowledgment are the exclusive statement of the terms and conditions of the agreement between the parties and that they supersede all proposals and other communications between the parties, oral or written, relating to the subject matter hereof. The provisions of this agreement cannot be amended, modified or varied except by a written instrument signed by Seller and Customer. No waiver of any provisions of this agreement by Seller will be valid unless the same is in writing and signed by Seller. A waiver or consent given by Seller on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion. The captions and section headings set forth herein are for convenience only and shall not be used in defining or construction of any of the terms and conditions of the agreement. No course of dealing, course of performance, or usage of trade shall be considered in the interpretation or enforcement of this agreement. Any term or provision of this agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions of this agreement or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. As used in these terms and conditions, "affiliate" of any party means any person or entity of any nature controlling, controlled by, or under common control with such party.

