



**UPSCO MFG & DIST CO INC. – Terms & Conditions – 08/01/2017**

The terms and conditions (the "Terms") upon which UPSCO MFG & DIST CO INC., (hereinafter referred to as "SELLER") agrees to sell products (hereinafter referred to as "Goods") to the buyer listed on the invoice or quotation ("Buyer") are as follows:

**1. WARRANTY.** Descriptions contained in any of SELLER's promotional literature distributed or provided by SELLER are intended to present merely a general description of Goods and shall not form a part of this contract. SELLER makes no warranties that Buyer holds or will hold the Goods free of the claim of any third party that may arise from an alleged patent or trademark infringement (a) For SELLER-branded Goods, Goods are warranted to be free from defects in material and workmanship at the time of shipment. Seller warrants to Buyer for a period of fourteen (14) days from the date of shipment or seven (7) days from date of receipt, that the goods at the time of shipment will be free from defects of materials and workmanship and will be in accordance with the applicable specifications, if any, which are expressly made a specific part of the sales contract. Unless otherwise agreed to in writing and signed by an officer of SELLER, SELLER makes NO OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE). (b) For all other Goods, Buyer shall have the benefits of the warranty provided by the applicable manufacturer. SELLER makes NO OTHER EXPRESS OR IMPLIED WARRANTIES (INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE).

**2. PRICING QUOTATIONS.** Unless otherwise noted in writing by SELLER, any written quotation by SELLER shall automatically expire 30 days from the date of such quotation and shall be subject to termination by written notice from SELLER within that period. SELLER shall have no liability in respect of any oral quotation or under any oral agreement. Upon receipt of a purchase order from Buyer, such purchase order shall be deemed an acceptance of SELLER's quotation or an independent offer to purchase Goods, as applicable, and shall be subject to these terms and conditions.

**3. REMEDIES; LIMITATION OF LIABILITY.** In the event that Buyer has any claim against SELLER arising out of, or relating to goods delivered by SELLER to Buyer, whether such claim is based upon SELLER's negligence, nonperformance, non-delivery of goods or breach hereunder, SELLER'S EXCLUSIVE AND SOLE LIABILITY SHALL BE LIMITED, AT SELLER'S OPTION, TO EITHER THE REPLACEMENT OF GOODS OR THE RETURN OF THE SALES PRICE OF GOODS WITH RESPECT TO WHICH THE CLAIM IS MADE. SELLER shall in no event be liable for the cost of any work done by Buyer on goods or for any special, direct, indirect, incidental or consequential damages to anyone or for any loss of production or profits or goodwill resulting from any cause whatsoever, including, but not limited to, defective material or workmanship or any delay, act, error or omission. IN NO EVENT SHALL SELLER'S LIABILITY FOR DAMAGES WITH RESPECT TO ANY GOODS UNDER THIS AGREEMENT EXCEED THE CHARGES PREVIOUSLY PAID BY BUYER TO SELLER FOR SUCH GOODS.

**4. PRICES.** Unless otherwise specifically agreed to in writing by SELLER, all prices are in U.S. Dollars and are subject to change without notice at any time prior to shipment of the Goods. SELLER reserves the right to correct errors in specifications or prices due to typographical, clerical or engineering errors or because of incomplete or inaccurate information from Buyer.

**5. TERMS.** Payments are due 30 days from the date of invoice unless otherwise agreed to in writing. Buyer agrees to pay a 2% service charge for all unpaid invoices 30 days past their due date.

**6. LIMITATION OF LIABILITY.** SELLER excludes all liability except such liability that is directly attributable to the willful or gross negligence of SELLER's employees. Should SELLER be held liable, its liability shall in no event exceed the total purchase price. SELLER SHALL IN NO EVENT BE RESPONSIBLE FOR ANY LOSS OF BUSINESS OR PROFITS, DOWNTIME OR DELAY, LABOR, REPAIR OR MATERIAL COSTS OR ANY OTHER CONSEQUENTIAL LOSS OR DAMAGE INCURRED BY BUYER.

**7. SHIPPING, LOSS AND DAMAGE.** Freight terms for all shipments shall be FOB point of origin from SELLER's facilities unless otherwise agreed to in writing in advance of shipment date. Buyer acknowledges that delivery dates provided by SELLER are estimates only and that SELLER is not liable for failure to deliver on such dates. SELLER reserves the right to make deliveries in installments. If deliveries are made in installments, SELLER's payment conditions apply to each part delivered separately. Delay in delivery of one installment shall not entitle Buyer to cancel other installments. Risk of loss or damage to products shall pass to Buyer upon delivery to the first carrier of SELLER's choice. Apparent shortage, visual damage to shipping containers or possible concealed damage conditions must be noted on carrier's delivery receipt of record. SELLER shall not be responsible for any such conditions unless it and the carrier's local office are notified of such conditions within 7 days after the date of delivery.

**8. RETURNS.** Upon approval to Buyer for return of materials, a Return Material Authorization ("RMA") will be issued by Seller with applicable charges and terms and conditions of return. Approved items must be returned with copy of RMA within a period of 30 days after the issuance of RMA to be considered for credit. Returned materials must meet the following criteria:

- a. Materials must be of current design or workmanship
- b. Returned materials not in 100% resalable condition may be denied or additional rework/repackage charges applied. On all orders that are placed with/or in error by Buyer, a restocking fee of up to 25% of total amount of order will be assessed plus any applicable freight charges.
- c. Materials/Products that are special fabricated or produced to special order will require prior agreement for return.
- d. Returned materials should be packaged securely and organized, if not materials will be returned at Buyer's expense.

SELLER reserves the right to decline any return material request.

**9. CANCELLATION.** SELLER shall have the absolute right without any liability whatsoever, to cancel any sale to Buyer, and retain all remedies for breach it may have against Buyer, if at any time (a) all Terms are not strictly complied with by Buyer; or (b) Buyer becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, goes out of business, or any preceding, voluntary or involuntary, involving Buyer is instituted under the bankruptcy or insolvency laws; or (c) in SELLER's reasonable judgment, Buyer's ability to comply with all of the Terms is impaired. The foregoing shall not be construed as limiting in any manner, any of the rights or remedies available to SELLER arising from any default of Buyer at law or in equity. (d) SELLER does not have the ability to cancel orders for components that have been received to In Stock or are In Transit. Finished product will be invoiced. (e) SELLER will warehouse finished product for 30 days at no additional cost to the customer. Warehousing of product beyond 30 days may include carrying costs.

**10. TOLERANCES.** Unless otherwise agreed upon in writing, all product dimensions are approximate. Consequently, Buyer shall take into account reasonable product tolerances and the standards customarily employed by SELLER.

**11. REPLACEMENT PARTS AND DISCONTINUED GOODS.** SELLER shall have no duty to stock or provide spare or replacement parts or products. SELLER may modify or discontinue any product or line of products at any time without liability except to refund any amounts already paid for any such products that have been ordered but not yet delivered.

**12. TAXES.** Except for taxes on SELLER's income, Buyer shall be liable for and pay all sales, excise, and other taxes relating to any and all sales hereunder. All duties, sales, use, excise or similar taxes or charges applicable to the sale or use of any Goods or the furnishing of any service shall be Buyer's responsibility, and Buyer shall indemnify SELLER against any liability thereunder. Unless the Buyer furnishes SELLER with exemption certificates acceptable to taxing authorities.

**13. DELAY IN DELIVERY, FORCE MAJEURE.** Delay in delivery or non-delivery of Goods, in whole or part, or other delay in performance of SELLER's obligations with respect to a sale shall not be a breach of SELLER's obligations if (a) SELLER's performance has been made impracticable by acts of God or the public enemy, war, insurrections or riots, government priorities, fires, floods, quarantine restrictions, transportation, power or communications failures, strikes or other labor disputes causing cessation, slowdown or interruption of work involving SELLER or any material supplier or "job shop", shortages of materials necessary to perform SELLER's obligations, or any other occurrence beyond the control of SELLER; or (b) such delay or non-delivery results from SELLER's good faith compliance with any applicable foreign or domestic governmental law, rule, regulation, or directive. Notwithstanding the foregoing, Buyer shall not be relieved from accepting delivery at the price then in effect when the cause interfering with delivery has ceased.

**14. CUSTOMER/BUYER SPECIFICATION CHANGE REQUEST.** Must be received by SELLER within 30 days of promised date and be clearly communicated in one of the following ways. (a) On Customer/Buyer Letter Head. (b) Using a Standard change request form. (c) Email to your salesperson. Request shall include the following information: Item numbers, projected change date, detailed change information including component manufacturer and associated part numbers, SELLER will communicate impact of change request regarding lead time, obsolete inventory, and delivery date.

**15. DELIVERY DATE CHANGE REQUEST.**

**A. Request received by SELLER within 30 days of promise date.** Buyer requested date change is subject to SELLER's current schedule and capacity for production. Buyer shall provide SELLER with new request date within 72 hours of hold/push notification. Delay after 72 hours may result in loss of scheduling position. Any customer order previously released to production will be completed and moved to Finished Goods Inventory for a period of 30 days at no additional cost. Buyer Finished Goods Inventory is subject to 2% carrying cost per month after 30 days.

**B. Request received by SELLER greater than 30 days of promise date.** Buyer requested date change is subject to SELLER's current schedule and capacity for production.

**C. Request to ship sooner than promise date.** Buyer requested date change is subject to Seller's current schedule and capacity for production. Parts not in inventory may be expedited at additional cost to the Buyer.

**16. MISCELLANEOUS.** All sales and the Terms thereof between SELLER and Buyer shall be governed in all respects by the laws of the New York without regard to conflicts of law principles. No sale shall be assignable or transferable by Buyer without the prior written consent of SELLER. No course of dealing between SELLER and Buyer or delay on the part of SELLER in exercising any rights hereunder shall operate as a waiver of any SELLER's rights hereunder. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the rest of the Terms. For each and every sale, the Terms supersede all prior agreements and understandings between the parties regarding each such sale and is the final and complete expression of their agreements. No course of dealings between the parties and no usage of trade shall be relevant to supplement or explain any term herein.