

SALES CONTRACT

- 1. Acceptance.** This Sales Contract (the "Contract") shall become a binding contract when the first of the following events occurs: Buyer signs and returns it; or, BUYER RETAINS IT WITHOUT GIVING SELLER WRITTEN NOTICE OF ANY OBJECTIONS TO IT WITHIN TEN DAYS AFTER BUYER RECEIVES IT; or, Buyer issues any instructions to Seller, or, Buyer accepts delivery of any merchandise covered by it.
- 2. Rate Increases.** The Contract is based on existing freight rates, tariffs, import and export duties, border taxes, sales taxes, use taxes, excise taxes, and similar imports, surcharges and taxes imposed upon or applicable to the subject transaction by any federal, state, or local authority. Buyer assumes and agrees to hold Seller harmless from any such rates, taxes or charges. If any such rates, taxes or charges are increased before delivery, Buyer shall pay such increased rates, taxes or charges, and shall hold Seller harmless therefrom.
- 3. Price Increases.** Seller may increase the selling price of the goods stipulated in this Contract by giving Buyer thirty days written notice of any such increase; and, unless Buyer shall within such period notify Seller in writing that it does not consent, the increased price shall be paid on all goods shipped after such thirty day period. If Buyer shall notify Seller in writing of its dissent, Seller shall have the right to terminate this Contract by giving Buyer written notice within ten days after receipt by Seller of Buyer's notice.
- 4. Delivery and Risk of Loss.** Delivery dates on the face hereof are approximations only, and Seller shall incur no liability for failure to deliver on such dates. Seller reserves the right to deliver the goods sold hereunder in installments or separate lots. Risk of loss on all goods sold under this Contract and any damage thereto, whether or not said goods conform to this Contract, shall pass to and be borne by Buyer when said goods are shipped from Seller's f.o.b. point.
- 5. Events of Default.** Buyer shall be in default of this Contract upon the occurrence of one or more of the following events (each an "Event of Default"): (a) failure to make any payment required hereunder as and when due, time being of the essence of this Contract; (b) failure to perform any act required hereunder as and when due; (c) Buyer's death; (d) suspension, discontinuance, dissolution or liquidation of Buyer's business; (e) Buyer's insolvency; (f) bulk sale of Buyer's assets; (g) issuance of any injunction, writ of attachment, garnishment, levy or execution on the assets of Buyer; (h) convocation of any creditors' committee, assignment for the benefit of creditors, composition, compromise, extension or modification of Buyer's obligations; (i) filing of any petition by, against or on behalf of Buyer seeking adjudication or reorganization under any law for the relief of debtors; (j) misrepresentation to Seller of any material fact; and (k) the occurrence of any event of default in connection with any other agreement between Buyer and Seller.
- 6. Seller's Remedies.** Upon the occurrence of any Event of Default, Seller may, at its sole discretion, pursue one or more of the following remedies: (a) terminate this Contract and/or any other agreement with Buyer, whether or not then in default; (b) declare immediately due and payable all sums then outstanding from Buyer under any agreement with Seller whether or not Buyer's obligation to pay has then accrued; (c) set off the value of any property of Buyer then in the possession or control of Seller against all obligations of Buyer to Seller; (d) reclaim any merchandise sold by Seller in the possession of Buyer not then paid for by Buyer; (e) bring suit to enforce its rights under this Contract; (f) exercise any other right provided by law; and (g) pursue any foregoing remedy without prior demand or notice to Buyer.
- 7. Buyer's Rejection.** Buyer may reject or revoke its acceptance of the goods sold under this Contract only if the nonconformity in such goods is substantial. No nonconformity or defect in any lot, installment or commercial unit shall constitute grounds for claiming breach of the whole Contract and any lots, installments or commercial units not in dispute shall be paid for separately regardless of dispute as to other deliveries or undelivered goods.
- 8. Buyer's Remedy.** Subject to the next sentence hereof, it is expressly agreed and understood that Seller's sole obligation and Buyer's exclusive remedy under this Contract for nonconforming or defective goods is Seller's replacing such goods at Seller's f.o.b point, or, at Seller's sole election, repairing defective goods without charge. In the event that, for whatever reason, Seller cannot effect repair or replacement, Seller's sole obligation and Buyer's exclusive remedy shall be Seller's returning the purchase price of such goods, to the extent the same has been paid to Seller by Buyer, upon the return of such goods by Buyer. Seller's total liability for any claim, whether in contract, tort (including negligence) or otherwise, arising out of, connected with, or resulting from the manufacture, sale, delivery, resale, repair, replacement or use of any of the goods sold under this Contract shall not exceed the price allocable to the individual good giving rise to the claim. Seller shall in no event be liable for Buyer's loss of actual or anticipated profits, or for any incidental or consequential damages, whether foreseeable or not, and whether before or after repair or replacement, caused by nonconformity or defects in the goods sold under this Contract. Buyer's claims that Seller remedy an alleged nonconformity or defect under this paragraph must be made in writing thirty days after the nonconformity or defect is discovered, which period of time is expressly agreed to be reasonable, and all such claims are subject to verification or rejection upon Seller's inspection of the goods. Seller may require the return of alleged nonconforming or defective goods, transportation prepaid, to establish a claim under this paragraph. Seller shall in no event be responsible for repairs made other than by Seller without Seller's prior written consent. All alleged nonconforming or defective goods must be held by Buyer pending instructions from Seller as to their disposition. Seller will not accept goods returned to it without its prior consent, and any returned goods must be accompanied by packing slips showing Seller's invoice numbers. The period of limitations for any cause of action arising out of, based upon or relating to this paragraph is hereby reduced to and shall be a period of one year after such cause of action has accrued.
- 9. Collection Charge.** Buyer shall pay a collection charge on the unpaid balance of all bills after the due date thereof at a rate of 1% a month; provided, however, that if such rate shall be higher than that permitted by law, Buyer shall pay interest at the highest rate permitted by law.
- 10. Force Majeure.** This Contract and Seller's performance under it are subject to all contingencies beyond Seller's control and beyond the control of Seller's suppliers and manufacturers, whether or not now in the contemplation of either of the parties, including but not limited to force majeure, strikes, labor disputes, floods, civil commotion, war, riot, act of God, rules, laws, orders, restrictions, embargoes, quotas or actions of any government, foreign or domestic or any agency or subdivision thereof, casualties, fires, accidents, shortages of transportation facilities, unavailability of materials, delays in delivery of materials by suppliers, detention of goods by customs authorities, loss of goods in public or private warehouses, or other casualty or contingency beyond Seller's control or the control of Seller's suppliers or manufacturers or otherwise unavoidable. In any such event Seller shall have the right, at its election and without any liability to Buyer, (a) to cancel all or any portion of this Contract; (b) to perform the Contract as so restricted or modified to an extent determined by Seller in its sole and absolute discretion; or (c) to perform the Contract within a reasonable time after the cause for nonperformance or delay has terminated.
- 11. Exclusion of Warranties.** SELLER HEREBY EXCLUDES ALL WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR ANY PURPOSE, AND ALL OTHER WARRANTIES, CONDITIONS OR LIABILITIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF TITLE, ON SELLER'S GOODS.
- 12. Indemnification.** Buyer shall indemnify Seller and its directors, officers, employees, affiliates, agents, successors and assigns, from and against any and all actions, claims, suits, proceedings, losses, liabilities and related costs and expenses (including reasonable attorneys' fees) incurred by or asserted against Seller or any such party arising out of or in any manner related to (a) this Contract; (b) Buyer's performance or failure to perform any of its obligations hereunder; (c) any of the goods sold under this Contract, including but not limited to any defects in such goods; and (d) any accident, injury or loss to or of any person or property caused by the goods sold under this Contract or the items or end products into which the goods are incorporated.
- 13. Buyer's Warranties.** If Buyer makes any warranty or representation, Buyer shall, at its own expense, defend and hold Seller harmless from any claim thereon of any nature.
- 14. Buyer's Assignment Prohibited.** This Contract may not be assigned, delegated or otherwise transferred by Buyer without the prior written consent of Seller, and any such assignment, delegation or transfer without such prior written consent shall be null and void and of no force or effect whatsoever.
- 15. Seller's Attorney Fees.** If Seller is required to engage the services of an attorney to enforce its rights or realize benefits under this Contract, whether or not a lawsuit is filed, Buyer shall be liable for all such fees and related expenses actually incurred by reason of such engagement, and shall make payment therefor within ten days after demand from Seller.
- 16. Severability.** The invalidity, in whole or in part, of any provision of this Contract shall not affect the validity or enforceability of any other of its provisions.
- 17. Notices.** Any notice or other communication required or permitted under this Contract shall be sufficiently given if sent in writing by United States mail, first class postage prepaid, and addressed to the other party hereto at its respective address shown on the face hereof. Any such notice, if so mailed, shall be deemed to have been received on the second business day following such mailing, regardless of when or whether received. Either party hereto may change its address for notice purposes by written notice to the other party.
- 18. Nonwaiver.** Seller's failure to insist, in one or more instances, upon the performance of any term or terms of this Contract shall not be construed as a waiver or relinquishment of Seller's right to such performance or the future performance of such term or terms, and Buyer's obligation with respect thereto shall continue in full force and effect.
- 19. Entire Agreement.** This Contract embodies the entire agreement and understanding between the parties, is intended as a complete and exclusive statement of the terms of the agreement between the parties, and supersedes any prior orders, agreements or understandings between the parties relating to the subject matter hereof. No change in, modification of, or addition to the terms and conditions contained herein shall be binding on Seller unless set forth in a writing which is signed by an authorized representative of Seller.
- 20. Governing Law.** This Contract has been made in, and its interpretation and performance shall be governed by, the laws of the State of California. The parties consent to the jurisdiction over each of them of the courts of the State of California. Either party may file any legal action brought under this Contract in the County of Los Angeles.