

## TERMS AND CONDITIONS OF SALE

1. "Seller" shall mean American Products. By accepting the offer and purchasing products from Seller, Buyer confirms that the following terms and conditions apply to Buyer's purchase of Seller's products. Even if Buyer sends Seller another form of agreement, or modifies this agreement and Seller does not respond, these terms will be the terms of Seller's agreement. If Buyer does not agree with these terms, please call Seller to discuss modifications. Any modifications must be in writing and signed by Seller.

2. **TERMS AND CONDITIONS OF SALES.** Any products or services ("Products") Buyer purchases from Seller by electronic, phone, paper, or any other form of transmission are sold subject to the following: a. If Buyer already has a fully signed sales agreement currently in effect with Seller, then any term in that agreement that conflicts with these terms will be applied to Buyer's purchase; the rest of these terms and conditions will otherwise apply; b. If Buyer does not have a fully signed sales agreement with Seller, then the following is Seller's complete contract, which is governed by the substantive law of the state of Missouri, without giving effect to its conflicts of laws principles. The United Nations Convention on the International Sale of Goods will not apply.

3. **PRICE.** Product prices are determined by the confirmation Buyer receives from Seller, or, in the absence of such confirmation, by Seller's list prices in effect at the time of shipment. However, if Seller implements a general or industry specific price adjustment for any Product, all orders for such Product that are confirmed but not shipped as of the effective date of such adjustment may be re-priced accordingly. Unless otherwise agreed to, payment will be due in U.S. Dollars within thirty (30) days of the invoice date. All Credit Card purchases will assess a 3% Convenience Fee. Buyer also agrees to reimburse Seller for Seller's costs of collection, including reasonable attorney's fees, should Buyer fail to pay Seller in a timely manner, including interest at the annual rate of LIBOR plus 5%.

4. **DELIVERY.** Any delivery dates Seller quotes are estimates. Seller cannot guarantee delivery on a specific date. If shipment freight terms are prepaid/add, Shipper accepts title, damage or loss during shipment. Buyer will accept title, upon signature from a Buyer representative, at the time of delivery at the shipping destination site. If shipment freight terms are collect, title, damage or loss during shipment transfers to commercial transportation carrier and Buyer at time of shipment from Seller. Buyer grants Seller a purchase money security interest in goods Seller sells to Buyer and Buyer agrees that Seller may take actions in Buyer's name to perfect that interest as Buyer's attorney in fact; if Buyer is located in one of those places which recognizes reservation of title, Buyer agrees that Seller retain title to the goods to secure Buyer's payment for title, and Buyer assigns to Seller all proceeds from their sale or pledge.

5. **WARRANTY / LIMITS OF LIABILITY.** Products designed and manufactured by American Products LLC shall be warrantied to be free of material defects in materials or workmanship under normal use and service, normal wear and tear excepted, for a period of 5 years (U.S. & Canada) and 3 years (International deployments) from the date of shipment. Should the product be proven to be defective and the defect is covered by this warranty, American Products LLC will have the option to repair or replace the product. Products designed by entities other than American Products LLC and produced by American Products LLC, shall be warrantied to be free of material defects in materials or workmanship under normal use and service, normal wear and tear excepted, for a period of 1 year from the date of shipment. Should the product be proven to be defective and the defect is covered by this warranty, American Products LLC will have the option to repair or replace the product. Products not designed by American Products LLC and not manufactured by American Products LLC, will carry only the original manufacturer's warranty and are not warranted by American Products LLC or covered by this Limited Warranty. To the extent it is permitted to do so, American Products LLC assigns to the buyer the warranty (if any) from the original manufacturer. American Products shall have no obligation under this warranty or otherwise (i) if the product is improperly installed or maintained, or is not operated in conformance with American Products LLC's product manuals or specifications; is installed outside of stated design and operating parameters or is exposed to such conditions; is used for applications other than the approved applications; or has been altered, modified, or serviced or repaired by anyone other than American Products LLC; (ii) if damage or malfunction is caused by or results from external occurrences, such as lightning, fire, water damage, floods, temperature extremes, acts of nature, power surges, or the like; (iii) if the defect is caused by or results from misuse, abuse, vandalism, theft, or improper storage; (iv) if the defect results from or was caused by failures related to batteries of any type or by use of the product with other products; (v) if there have been any alterations of serial numbers; or (vi) if the product has been exposed to any level of radioactive or toxic material, corrosive chemicals, or other environmental condition outside of its operating parameters. It is the responsibility of the buyer to communicate any special environmental concerns in which the enclosures will be utilized to American Products prior to purchasing the product. Special materials may be required to allow for proper corrosion resistance for harsh environments. Warranty does not cover abuse, modifications by others or reimbursement for unauthorized rework. At no time will American Products reimburse purchaser for unauthorized rework on any product. American Products LLC does not represent or warrant that its products may not be compromised, circumvented, or will prevent unauthorized access to the contents thereof; that the products will prevent any personal injury or property loss by theft, fire, lightning, electrical surge, water, or otherwise; or that the products will in all cases provide adequate protection to their contents. American Products LLC shall have no obligation or liability for any damage to any equipment or other property placed inside an enclosure even if such damage is due to a defect in the product. Any descriptions of the goods or services, whether in writing or made orally by American Products or its agents, in any specifications, samples, models, bulletin, drawings, diagrams, engineering sheets, or similar materials used in connection with client's order are for the sole purpose of identifying the goods and shall not be construed or treated as

(WARRANTY / LIMITS OF LIABILITY CONTINUED) a warranty of any kind, whether expressed or implied. Any suggestions by American Products LLC or its agents regarding use, applications, or suitability of the goods shall not be construed as a warranty of any kind. EXCEPT AS EXPRESSLY STATED IN THIS WARRANTY, NEITHER AMERICAN PRODUCTS LLC, NOR ANY PERSON ACTING ON BEHALF OF IT, HAS MADE, IS MAKING, OR SHALL BE DEEMED TO HAVE MADE ANY ORAL OR WRITTEN REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESSED OR IMPLIED, BY OPERATION OF LAW OR OTHERWISE (INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE), WITH RESPECT TO THE GOODS. IF AMERICAN PRODUCTS LLC CANNOT LAWFULLY DISCLAIM STATUTORY OR IMPLIED WARRANTIES, THEN TO THE EXTENT PERMITTED BY LAW, ALL SUCH WARRANTIES SHALL BE LIMITED IN DURATION TO THE WARRANTY PERIOD. UNDER NO CIRCUMSTANCES SHALL AMERICAN PRODUCTS LLC BE LIABLE TO ANYONE FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR EXEMPLARY DAMAGES, LIQUIDATED DAMAGES, LOSS IN PROFITS OR REVENUES, COSTS OF CAPITAL, DOWNTIME COSTS OR DAMAGES RELATED TO OUR PRODUCT PERFORMANCE FOR BREACH OF THIS OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, OR UPON ANY OTHER BASIS OF LIABILITY WHATSOEVER, EVEN IF THE LOSS OR DAMAGE IS CAUSED BY AMERICAN PRODUCT LLC'S OWN NEGLIGENCE OR FAULT AND EVEN IF AMERICAN PRODUCTS LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. If American Products is held liable whether directly or indirectly for any loss or damage with respect to the products it sells, regardless of cause or origin, its maximum liability shall not, under any circumstances, exceed the purchase price of the product, which shall be fixed as liquidated damages and not as a penalty and shall be the complete and exclusive remedy against American Products.

6. **LIMITATION OF CLAIMS.** Seller will not be responsible for any harm arising out of Buyer's purchase, possession or use of any products supplied by Seller or any technical advice Seller may offer, except as agreed in the Limited Warranty set out above. SELLER WILL NOT BE LIABLE FOR CONSEQUENTIAL, SPECIAL, INCIDENTAL OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, COST OF ANY SUBSTITUTE FOR THE PRODUCTS BUYER BOUGHT, CLAIMS OF THIRD PARTIES OR INJURY TO PERSONS OR PROPERTY.

7. **TECHNICAL ADVICE AND OTHER SERVICES.** Buyer is responsible for the design, processing, testing and labeling of any product that Buyer makes using Products Buyer buys from Seller and Buyer will not rely on anything on Seller's web site or any statement by Seller about the suitability of products or services Seller provides. Buyer has tested and investigated Products sold by Seller enough to form an independent judgment concerning their suitability for the use, conversion or processing intended by Buyer and will not make any claim against Seller based on Seller's advice, statements, information, services or recommendations.

8. **PATENTS.** Any suggestions Seller makes about possible articles, designs or use of products do not give Buyer a license under any patent covering such articles, designs or uses, nor are they a recommendation for use of such products, articles or designs which may infringe any patent. Seller will defend Buyer if there is a claim that Seller's products, as Seller delivers them to Buyer, infringe another person's patents, and if necessary will either refund the purchase price or obtain for buyer a license under those patents.

9. **EVENTS BEYOND SELLER'S CONTROL.** Seller will not be responsible if Seller cannot perform under this agreement if events beyond Seller's control occur which make it impossible or commercially unreasonable for Seller to perform, including so-called "Acts of God" or "force majeure" events and raw material shortages.

10. **TERMINATION; SUSPENSION.** Seller may terminate this agreement or adjust Buyer's payment terms effective immediately upon written notice to Buyer in the event (a) Buyer fails to pay any Seller invoice, within the time provided in this agreement on two or more occasions, (b) Buyer generally fails to pay its debts as they become due, (c) Seller reasonably believes Buyer's creditworthiness has deteriorated or Buyer is insolvent (whether based on the reasonable belief by Seller that Buyer's liabilities exceed its assets; the existence of a bankruptcy, assignment for the benefit of creditors or other similar proceeding involving Buyer; a liquidation of a significant portion of the assets of Buyer; or otherwise) and (d) of a sale of a majority of the assets, or a change of control of the ownership, of Buyer. If Buyer is in default hereunder, including by failure to pay invoices, Seller may suspend shipments of Product, require cash in advance of deliveries and/or reduce payment terms until all invoices are current and Seller receives adequate assurance of future performance.

11. **GENERAL.** Cancellation of any order, or return of any conforming Product purchased hereunder, will be subject to acceptance by Seller and to a restocking charge in accordance with Seller's policy then in effect. **ORDERS FOR CUSTOM PRODUCT MAY NOT BE CANCELLED OR TERMINATED.** Neither course of performance or dealing, nor usage of trade, nor prior writings or agreements shall be used to qualify, explain or supplement any of these terms and conditions. Failure by either party, at any time or from time to time, to require the performance by the other of any term hereof shall not constitute a waiver of such term or provision. The invalidity, in whole or in part, of any term herein, shall not affect any other term, each of which shall be enforced to the full extent permitted by law. Buyer may not assign or transfer any rights or obligations under any Sales Agreement or other agreement governed by these terms without the prior written consent of Seller. Notice shall be deemed properly given if sent by facsimile, confirmed by registered mail with return receipt, overnight courier mail, hand-delivered, or registered mail with return receipt, to the addresses set forth on the first page of this Agreement. Seller shall be entitled to reference Buyer as a customer of Seller and utilize photographs of Buyer's applications utilizing Seller's products in Seller's marketing materials.

**Call a Sales Representative for Assistance.**

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