

# CONDITIONS OF SALE - MAUER USA

## (a member of Kutterer Mauer Group)

1. (a) In these Conditions:
  - (I) "The Seller" means Mauer USA, LLC.
  - (II) "Product" means the product(s) and/or material(s) specified overleaf.
  - (III) "The Buyer" means the person buying the Product (or where such person acts as agent for another, that person and the principal jointly and severally):
    - (b) Nothing in these Conditions shall effect the statutory rights of a Buyer who deals as a consumer that are not subject to abrogation or waiver by contract.
    - (c) THIS CONFIRMATION IS EXPRESSLY CONDITIONAL ON ACCEPTANCE OF ALL TERMS SET FORTH HEREIN, REGARDLESS OF ANY PRIOR OFFER MADE TO SELLER BY BUYER. THE TERMS OF THE CONTRACT SHALL BE AS HEREIN SET FORTH UNLESS BUYER WITHIN TEN (10) DAYS OF RECEIPT SHALL OBJECT TO A PROVISION OR PROVISIONS HEREIN IN A WRITING WHICH EXPRESSLY REFERS TO THE PROVISION OR PROVISIONS OBJECTED TO ANY ADDITIONAL OR DIFFERENT TERMS PROPOSED BY BUYER ARE REJECTED UNLESS EXPRESSLY ASSENTED TO IN WRITING SIGNED BY AN AUTHORIZED REPRESENTATIVE OF THE SELLER.
    - (d) Any notices to be served hereunder shall be sent by ordinary prepaid letter post or by cable or telex by either party to its last known address. Notice by mail shall only be deemed served seven days after posting, while notice by telex is deemed served when the telex is received.
2. (a) If the seller's cost (including but not limited to materials, labor and energy costs) incurred in respect of the Product increase owing to circumstances beyond reasonable control above those existing when the Buyer's order was accepted, the Seller may at its option at any time before the delivery give written notice to the Buyer of an increase in the contract price under the Condition not greater than the amount of such increase in costs and an increase in profit proportionate thereto, and the increased price so notified shall thereby be substituted for the contract price.

Where delivery is by installments the Seller shall be entitled to increase the price as aforesaid in respect to any undelivered Product.
3. The Buyer undertakes:
  - (a) Not to use in relation to the Product or goods made therefrom any trademark (whether or not registered) of the Seller or its Holding Company or a subsidiary of either if the Product has been processed, treated or used in any manner of which the Seller or such other company (as appropriate) has not approved in writing or if the product is sold by the Seller unbranded, and
  - (b) To ensure that the stipulation contained in Subparagraph (a) of the Condition is specifically advised to the Buyer's trade customers for the Product and to obtain corresponding undertakings from each such customer.
4. (a) The Seller will be responsible for obtaining any necessary export licenses or exchange control consents for the contract.
  - (b) The Buyer will be responsible for obtaining all necessary licenses which it may require to enable it to import and use the Product and for all necessary exchange control consents to enable the Buyer to make payment for the Product and the Buyer shall not be discharged from its obligation hereunder by any total or partial prohibition of imports or by the refusal or nonavailability of any import license or by the imposition of any conditions or restrictions upon the grant of any such license.
5. (a) Any delivery date specified overleaf is a genuine forecast in the light of current conditions but shall not be legally binding on the Seller.
  - (b) Time of delivery shall not be of the essence of the contract.
  - (c) When it is necessary for the Buyer to supply any labels or identifications or supply particulars in respect of the Product or do any other act to enable the Seller to effect deliveries, such labels, identifications and particulars must be furnished or act performed within a reasonable time to enable the Seller to deliver by the delivery date(s) and specified overleaf.
  - (d) The quantities of any consignment of Product under the contract as ascertained by the Seller upon dispatch from the Seller's place of business shall be prima facie evidence of the quantity received by the Buyer on delivery.
  - (e) The Buyer will take all deliveries on the delivery date(s) specified overleaf or on the date when the Product is delivered at the place specified for delivery (or, if it is the Buyer's obligation to collect the Product on the date when the Buyer is notified that the Product is ready for collection), whichever shall be the later. If no delivery date is specified overleaf then, subject to Condition 9 hereof, deliveries shall be taken and the purchase under this contract completed with six (6) months of the first day of the month in which the Buyer's order was received.
  - (f) The Seller shall have the right to cancel this contract as regards any part of the Product not accepted by the Buyer by the appropriate time specified under Paragraph (e) above or as regards any balance which the Seller cannot deliver by reason of the Buyer's default hereunder, and in either case without prejudice to any claim for damages which the Seller may have.
  - (g) The Seller's liability, if any, in respect of failure to deliver the Product in time or at all shall not in any event exceed the amount of any fall in the value of the Product between the date when it should have been delivered and the date on which it was in fact delivered or when the contract was terminated, as the case may be. In no circumstances shall the Seller be liable for any loss of profit or consequential or other loss of whatever nature arising from such failure.
6. Unless otherwise agreed in writing, all quantities of Product supplied shall be subject to a tolerance either of 10% thereof and the Buyer will pay for the actual quantities of Product delivered.

7. (a) Unless otherwise specifically stated, the Seller's prices are quoted F.O.B. place of shipment specified overleaf.
- (b) Unless otherwise specifically agreed in writing, the Seller may effect delivery of the Product by whatever means the Seller deems most appropriate.
- (c) Where packaging is described as "returnable", it will be charged to and paid from by the Buyer but credit will be given if it is returned to the Seller's Dispatching Works within a reasonable time cost of shipment paid and in good condition.
- (d) If the Buyer shall require special packaging, any additional cost will be charged to him and separately from the contract price.
- (e) Unless otherwise specifically agreed in writing, the Seller gives no Warranty when the Product is supplied in containers of whatsoever description that such containers are fit to withstand transport to any place or by any method other than as may be specified in this contract/.
- (f) No claim will be allowed in respect of damaged goods or short weight or in respect of errors in price or terms of sale unless made in writing to the Seller within five (5) days after delivery to the Buyer of the goods in respect of which such claim is made or of the related invoice, as the case may be. No claim will be allowed for any other reason in respect of goods delivered hereunder unless made in writing to the Seller with two (2) months after the date of delivery. Any action for breach of this contract must be commenced within one (1) year after the cause of the action has occurred. No claim in respect of goods delivered hereunder shall be a ground for withholding payment therefore, nor shall it give any right of set-off against other payments due from Buyer to Seller.
8. (a) If events beyond the Seller's reasonable control prevent the Seller from delivering all or part of the Product by the appropriate delivery date, such date shall without liability be postponed for a period equal to the delay caused by such events.
- (b) If such events prevent the Seller from delivering all or part of the Product for longer than six (6) months either party may at any time after expiration of such a period of six (6) months by notice in writing and without liability (save for refunding any payments made by the Buyer by way of deposit or otherwise in respect thereof and subject to the Seller's right under (c) below) cancel the contract as regards such undelivered Product.
- (c) Where the Buyer cancels the contract in accordance with Subparagraph (c) above the Seller may by counter notice in writing given with twenty-eight (28) days of such cancellation require the Buyer to take and pay for at the proper proportion of the contract price any Product manufactured or adapted to the Buyer's design or specification under the contract or purchased for the purpose of the contract and for which there is no other market readily available to the Seller.
- (d) If, by reason of events beyond the Seller's reasonable control, the Seller is prevented from delivering to the Buyer all or part of the Product by the appropriate delivery date while at the same time performing in full its contractual obligations to others, then the Seller may without liability reduce or suspend deliveries to the Buyer to such an extent and for such time as in the reasonable opinion of the Seller is reasonable and fair under all the circumstances (including the Seller's other contractual obligations).
- (e) The Seller will give as much advance notice as is reasonably practicable of any proposed action by it under Subparagraphs (a) and (d) above, but any failure to do so shall not prejudice its rights under these subparagraphs or constitute a breach of this contract.
9. THE SELLER MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT THAT THE GOODS DELIVERED HEREUNDER SHALL BE OF MERCHANTABLE QUALITY, PROVIDED THAT THE SELLER MAKES NO WARRANTY WHATSOEVER IN RESPECT OF ANY GOODS DESCRIBED HEREIN AS BEING EXPERIMENTAL PRODUCTION OR INFERIOR QUALITY, SUCH GOODS BEING SOLD "AS IS". BUYER ASSUMES ALL RISK AND LIABILITY FOR THE USE OF THE GOODS DELIVERED HEREUNDER, AND SHALL INDEMNIFY, DEFEND AND HOLD SELLER HARMLESS FROM AND ALL CLAIMS OF THIRD PARTIES PERTAINING THERETO.
10. Any liability of Seller hereunder shall be limited to the purchase price of the goods in respect of which such liability is asserted and Seller shall not in any event be liable for an damage or injury (including consequential damages) arising out of the purchase or use of the goods sold hereunder.
11. (a) The Seller shall be entitled to charge interest at a rate of 24% per annum on -
- (I) All overdue payments.
- (II) The price of any Product of which the Buyer shall have failed to take delivery until the date it is actually delivered to the Buyer or otherwise deposited of.
- (b) Time of payment shall be the essence of the contract.
- (c) The Buyer shall not be entitled for any reason whatsoever to withhold or set-off payment for Product delivered.
12. (a) The risk in the Product shall pass to the Buyer when the Seller delivers to Product to the carrier for shipment to the Buyer.
- (b) However, the ownership of the Product shall remain with the Seller, and the Seller reserves the right to dispose of the Product, until it has received payment in full of all sums which are or may hereafter be due from the Buyer to the Seller in respect of any Product or goods supplied under this or any contract now or in the future subsisting them. The Buyer shall, nevertheless, have authority until then, or until earlier notice of suspension or termination under Condition 15 below to sell the Product to its customers as principal vis-avis such customers by way of bonafide sale at full market value, but as between the Seller and the Buyer any such sale shall be for the Seller's account and the Buyer shall account to the Seller for the proceeds thereof. The Buyer shall also be entitled to use the Product in any manufacturing or other process in the course of its business, but this license shall be without prejudice on the Seller's retention of title to the Product and its rights in law consequent thereon. If payment in respect of the Product is overdue in whole or in part or immediately upon the commencement of any act or proceeding in which the Buyer's solvency is involved the Seller may without prejudice to any of its other rights recover and/or resell the Product or any of it and may enter upon the Buyer's premises by its servants or agents for that purpose.

13. All designs and sketches are submitted by the Seller in confidence and, unless otherwise agreed in writing, they and the copyright in them and the right to reproduce any such design or sketch remain Seller's property.
14. Each delivery of a quantity of Product under this contract shall be deemed to constitute a separate contract to which the terms and conditions hereof shall apply, provide that the Condition shall be subject to and shall in no way affect the Seller's rights under Condition 2, 8, or 11 above or 15 below to vary, suspend or terminate the whole contract in the circumstances there mentioned.
15. (a) Without prejudiced to the Seller's rights to accept any repudiation of the contract of the Buyer:
- (I) if the Buyer is overdue with any payment, or
  - (II) if the Buyer shall wrongfully have failed to take delivery of the Product, or
  - (III) if the Buyer exceeds its credit limit with the Seller or any of its associate companies whether or not such credit limit has been advised to the Buyer, or
  - (IV) if the Buyer makes default in or commits any breach of its obligations to the Seller hereunder, then in such case the Seller shall immediately become entitled (without prejudice to its other claims and rights under this contract) to terminate the contract or to suspend its further performance of the contract.
- (b) The Seller shall, further, be entitled to suspend its performance of the contract (whether or not notice of such suspension shall have been given) to treat the contract as wrongfully repudiated by the Buyer and forthwith terminate the contract.
- (I) if the Buyer is involved in any legal proceedings in which the solvency is involved or is deemed to be unable to pay its debts, or
  - (II) if the Buyer is a company and any resolution is passed or petition is presented (otherwise than for reconstruction or amalgamation) to wind it up or a receiver is appointed, or
  - (III) if the Buyer ceases or threatens to cease to trade and Seller reasonably doubts Buyer's solvency.
- (c) The Seller will notify the Buyer of the exercise of its option to suspend its performance of or terminate the Contract and/or the Buyer's authority to see and the Product under Condition 12(b) above within a reasonable time of its becoming aware of the event giving rise to the Seller's rights under this Contract.
16. Color-Neither adherence to a particular shade or color nor perfect consistency of color can be guaranteed by the Seller, therefore, reasonable variation is to be permissible.
17. Parts supplied by the Buyer - when parts are to be provided by the Buyer the following will apply:
- (a) The Buyer will deliver the parts free of charge to the Seller's works in the quantities and at the time the Seller requires.
  - (b) To cover manufacturing losses the Buyer will deliver an excess of parts (percentage to be agreed).
  - (c) All parts are to be of suitable quality to comply strictly with agreed dimensions and tolerances, and to be delivered in a condition suitable for incorporating in the product.
  - (d) Any defect whatsoever in the product which shall be attributable to unsuitable or faulty parts shall not entitle the Buyer to rescind the contract, reject and goods, make any deductions from the agreed price or to claim damages in respect of such defect.
18. Tool, Dies and Printing Plates-unless otherwise specifically agreed tools made by the Seller for use in the manufacture of Product will remain the Seller' property, even when the Buyer has been debited with part cost. Except for damage by fire or arising from other causes beyond the Seller's reasonable control, the Seller will keep such tools in repair and not use them otherwise than for the Buyer's orders without the Buyer's consent, but if three (3) years elapse without any particular tool being used in the execution of any order placed by the Buyer, this obligation will thereupon terminate and the Seller may destroy the tool.
19. This contract shall be governed by the laws of the State of Kentucky and the Buyer hereby accepts the jurisdiction of such courts, whether the State of Kentucky or elsewhere, as the Seller may nominate for the purpose of trying any action arising out of this contract.