



IRCTC-02 SELLER'S DOMESTIC TERMS AND CONDITIONS (03/16)

1. **ORDERS:** All orders are subject to acceptance by SELLER. These terms and conditions are applicable and are an integral part of purchase orders resulting from SELLER'S quotations. These terms and conditions shall govern and supersede any terms and conditions integrated and/or supplied by the BUYER, unless separately agreed in writing by SELLER. BUYER'S failure to object to the terms contained herein will constitute a full acceptance.
2. **BEST PRICING STATEMENT:** SELLER'S policy is to implement a single-tiered price structure whereby all customers receive the same and best pricing. SELLER'S government contracts contain a most favored pricing clause whereby SELLER is required to guarantee not to sell the same product in identical quantities at lower prices to anyone other than the U.S. Government. Providing a lower price to a commercial customer would result in being liable to lower the pricing on future government sales, and to reimburse the difference in price on current government contracts.
3. **PRODUCT AVAILABILITY:** The availability, specific configuration and performance characteristics of SELLER'S product offerings are subject to change without notice. In the event of any discontinued product offerings SELLER will make every attempt to offer a viable form, fit, function and cost alternative.
4. **CUSTOMER FURNISHED MATERIAL (CFM):** CFM provided to SELLER should be packaged in a manner to reduce the amount of handling by SELLER personnel. Any damage to CFM, either in transit or while in SELLER'S possession, will be the financial responsibility of the customer. Any costs incurred to rework or modify the CFM or SELLER'S products due to poor or unacceptable performance of the CFM is the responsibility of the customer. Any design decisions will be based on data supplied by the customer regarding the CFM, and SELLER is not responsible for costs for design changes or rework resulting from changes necessary if information concerning the CFM is deemed to be inaccurate.
5. **REPAIRS-RETURN MERCHANDISE AUTHORIZATION (RMA):** An RMA number is required to process returned products. Return deliveries may be delayed or refused if an RMA number has not been obtained prior to the equipment being returned.
6. **PACKAGING:** Standard commercial packaging is included in the quoted price. Special packaging can be provided at BUYER'S expense when specified. Reasonable care is exercised in packaging goods for shipment. SELLER will not be responsible for any delay, breakage, or damage from the carrier. BUYER will file all claims directly with the carrier. SELLER will render reasonable assistance of such claims.
7. **TITLE AND DELIVERY:** All sales are F.O.B. origin unless otherwise agreed in writing by the BUYER and SELLER. Title and risk of loss pass to BUYER upon delivery to the carrier at shipping point. When 'Ship in Place' terms have been agreed by BUYER and SELLER, transfer of Title will occur when equipment is complete and ready for delivery, and is invoiced by SELLER.
8. **INSPECTION & ACCEPTANCE:** BUYER must inspect the goods upon receipt and give written notice to SELLER of any rejected products rejected within ten (10) days after receipt, BUYER must provide details as to each reason the product is being rejected if applicable. BUYER will have irrevocably accepted any and all products if BUYER has failed to give SELLER written notice of rejection within the 10-day period. SELLER may charge to BUYER any costs resulting from the testing, handling, and disposition of any products returned by BUYER which are not found by SELLER to be nonconforming. Returned product will be processed under the clause 11: SELLER'S Warranty and clause 5: Returns contained herein.
9. **PAYMENT:** Upon credit approval, terms of payment shall be net thirty (30) days from date of the invoice. Credit may be changed or withdrawn by SELLER at any time. If credit is not extended, payment will be required in full prior to shipment. In the event BUYER becomes the subject of a bankruptcy or other insolvency proceeding, or fails to pay SELLER'S invoices as they become due, SELLER may cancel any order outstanding and receive reimbursement for cancellation damages. Each shipment shall be considered a separate independent transaction, and payment thereof shall be made accordingly. All invoices shall be paid within the term stated, even if product has been returned under the SELLER'S Warranty provision. BUYER is not authorized to make reductions on the invoice without prior written approval of SELLER. BUYER will pay a delinquency charge in the amount of 1½ % per month (18% per annum) on overdue amounts, in addition to all amounts otherwise due SELLER available by law.
10. **TAXES:** BUYER agrees to pay all applicable federal, state, and local taxes, duties and other fees on product and services ordered.
11. **SELLER'S WARRANTY: LIMITED WARRANTY: IT IS EXPRESSLY AGREED THAT NO WARRANTY, OF MERCHANTABILITY, WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NOR ANY OTHER WARRANTY (EXPRESS, IMPLIED OR STATUTORY) IS MADE BY SELLER, EXCEPT THAT SELLER WARRANTS THE GOODS TO BE FREE FROM DEFECTS IN MATERIALS AND WORKMANSHIP.** SELLER will replace, repair, or issue credit, at their option, any product returned under warranty by the BUYER. If the defect cannot be duplicated at SELLER'S facility, SELLER may exercise the option of returning the product to the BUYER. All transportation charges will be the obligation of the BUYER. The warranty period will be one (1) year from the date of shipment for all Standard products unless otherwise indicated. SELLER will not be liable for loss of profit, loss of use, incidental damages, consequential damages or any loss, cost, or damages of any kind based upon a claim for defective products or breach of warranty.
12. **ASSIGNMENT:** BUYER shall not assign its order or any interest therein or any right thereunder without the prior written consent of SELLER.
13. **GOVERNING LAWS:** Irrespective of the place of performance, this contract will be construed, and interpreted according to the laws of the State of California.
14. **TERMINATION:** BUYER will be liable for SELLER'S costs incurred, plus a reasonable profit, for the portion of the work terminated, in accordance with generally accepted accounting principles. Some orders may be subject to a minimum cancellation fee. SELLER reserves the right to cancel all or part of any order accepted if inaccurate or incorrect information is supplied by BUYER, which in SELLER'S judgment, affects the order, or otherwise materially changes the rights or responsibilities of BUYER and/or SELLER.
15. **RESTOCKING FEE:** suitability and/or acceptance of a product for restocking will be at SELLER'S sole discretion. A 20% restocking fee will be charged for returned new products.
16. **OWNERSHIP DATA RIGHTS / PATENTS:** BUYER shall indemnify, defend and hold SELLER harmless against any expenses, damages, cost or losses including attorneys' fees, resulting from any suit or proceeding instituted or claim asserted, for infringement of patents, copyrights, trademarks or other intellectual property rights or for unfair competition arising from compliance with BUYER'S designs or specifications or arising from use of products furnished hereunder in any manufacturing or other process or the combination of such products with items not supplied by SELLER. The sale of products or any parts thereof hereunder confers upon BUYER no license, express or implied, under any patent rights of SELLER. Any invention, discovery, proprietary information, software, system, data, or report resulting from the work performed under this quotation or resulting order, will be the sole property of the SELLER. All patents, copyrights, trade secrets, trademarks, or other intellectual property resulting from work under this quotation or resulting order shall be the sole property of the SELLER. SELLER shall have the full right to use such property in any manner without any claim on the part of the BUYER and without any duty to account to the BUYER for such use. BUYER agrees to assign to SELLER any patent or patent application resulting from work performed under this quotation or resulting order.
17. **LIMITATION OF LIABILITY:** LIABILITY OF SELLER TO BUYER FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ANY ACTION INCLUDING, BUT NOT LIMITED TO NEGLIGENCE, SHALL BE LIMITED TO THE PRICE SPECIFIED IN THE SALE CONTRACT FOR THE SPECIFIC PRODUCT OR PRODUCTS THAT HAVE CAUSED THE DAMAGES, OR ARE DIRECTLY OR INDIRECTLY RELATED TO THE CAUSE OF ACTION. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER OR OTHERS FOR LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF USE OR OTHER SPECIAL COLLATERAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, REGARDLESS OF THE FORM OF ACTION THEREOF, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, EVEN IF SELLER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR FOR ANY CLAIM AGAINST BUYER BY ANY THIRD PARTY. BUYER ASSUMES ALL LIABILITY FOR ANY AND ALL DAMAGES ARISING FROM OR IN CONNECTION WITH, THE USE OR MISUSE OF THE PRODUCTS BY BUYER, ITS EMPLOYEES, OR OTHERS. NO OBLIGATION OR LIABILITY OF SELLER WILL ARISE OUT OF SELLER RENDERING OF TECHNICAL ADVICE IN CONNECTION WITH BUYER'S ORDER OR THE PRODUCTS FURNISHED HEREUNDER.
18. **FORCE MAJEURE:** SELLER will not be responsible or liable for any delay or failure in performance arising as a result of fire, accident, acts of God, acts of public enemy, war, labor disputes, failure or delays, transportation, inability to secure product, raw materials or machinery for the manufacturing process, requirements or acts of any government or agency thereof, judicial action or other causes beyond SELLER'S control.
19. **CONFIDENTIAL INFORMATION:** All drawings, diagrams, specifications, technical information, and other material and information furnished by SELLER and identified as confidential (hereinafter collectively called "Confidential Information") is proprietary to SELLER and contains trade secrets. BUYER shall not use, reproduce, distribute or disclose such Confidential Information, except that Confidential Information may be disclosed, with appropriate safeguards against re-dissemination, to employees of BUYER with respect to whom such information is necessary to the performance of their duties hereunder. BUYER recognizes that such proprietary information is unique and consents to the remedy of injunction in addition to damages for a violation of this provision.
20. **PROHIBITED USES:** BUYER may not in any way; modify the product (except as permitted in the normal use of the product), reverse engineer, disassemble, or make any attempt to copy the product or transfer the product to any person or entity.
21. **TRADE CONTROL:** BUYER will comply with all relevant United States and foreign laws, rules and regulations governing its activities, including but not limited to, the Foreign Corrupt Practices Act, Arms Export Control Act, Export Administration Act, Anti-Boycott Law of the United States, ITAR, and their implementing regulations.