

# M. Vincent & Associates, Inc. Terms & Conditions of Sale

## 1. General

This acknowledgment includes the following terms and conditions and unless written notice of objections to any of such terms and conditions (including inconsistencies between Buyer's purchase order and this acceptance) is given by Buyer to Seller promptly on receipt of the acknowledgment, Buyer agrees that they shall govern the contract between Buyer and Seller. This acknowledgment shall operate as Seller's acceptance of Buyer's purchase order, but such acceptance is made expressly conditional on assent by Buyer to the terms and conditions included in this acknowledgment. Buyer and Seller agree that this acknowledgment, including the following terms and conditions, shall constitute the complete and final agreement between Buyer and Seller in respect of this order and that such terms and conditions and the rights and duties of Buyer and Seller shall be governed by the laws of the State of Minnesota. None of the terms and conditions contained in this acknowledgment may be added to, modified, superseded or otherwise altered except by a written instrument signed by an authorized representative of Seller and delivered by Seller to Buyer, and the products received by Buyer from Seller shall be deemed to be delivered only upon the terms and conditions contained in this acknowledgment, except as they may be so added to, modified, superseded or otherwise altered as provided in this acknowledgment. No prior course of dealings or usage of trade shall be relevant to supplement or explain any terms herein unless otherwise expressly stated herein.

## 2. Offers, Orders, Acknowledgment of Orders

1. An offer made in writing by Seller is valid if accepted by Buyer within 14 days from the date of the offer.
2. If Buyer has provided an order without any offer having previously been made by Seller, any contract shall be deemed to have been entered into only when Seller has dispatched a written acknowledgment of the order.

## 3. Description of Goods

1. Seller agrees to sell and Buyer agrees to purchase, the goods as agreed to by purchase order (collectively, the "Goods").
2. Seller may substitute items of comparable quality for the Goods, if Seller determines that such item or items will not be available on a timely basis to support the delivery scheduled by the parties. Any such substitution shall not affect the contract price.
3. Statements made in printed materials are binding only if the contract explicitly refers to them. Samples provided to Buyer are to be regarded as type samples: conformity of delivered Goods with samples is not guaranteed.
4. Material which has been cut or otherwise processed by Seller to Buyer's order is not subject to cancel.

# M. Vincent & Associates, Inc. Terms & Conditions of Sale

## 4. Prices

1. Prices are subject to change without notice. All orders are accepted subject to Seller's price in effect at time of shipment.
2. All changes in freight rates or transportation charges used by Seller in computing prices and charges shown on this acknowledgment occurring after the date of this acknowledgment will be paid by Buyer. Seller shall not be liable for any transportation charges incurred at destination such as spotting, switching, drayage, demurrage, pier unloading charges, etc.
3. Seller reserves the right to charge Buyer with the amount of any taxes which Seller may be required to pay or collect under any existing or future law upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption, servicing, or transportation of any of the Goods sold, excepting only those based on Seller's net income.

## 5. Drawings and Technical Documents

All drawing and technical documents delivered by either of the parties to the other party remain the property of the delivering party, and the receiving party may not improperly use, reproduce, or otherwise disclose such materials to third parties.

## 6. Delivery: Risk of Loss

1. Terms of shipment shall be FOB Seller's manufacturing facility – USA. If a delivery time is stated as a certain period, the period will be calculated from the date when the contract is made.
2. Risk of loss shall pass to Buyer when Goods are delivered to a designated carrier at Seller's manufacturing facility. Seller shall not be responsible for any damage, loss or expense resulting from any action or omission occurring during, or attributable to, transportation.

## 7. Buyer's Delay in Acceptance

1. If Buyer determines that it cannot observe an agreed time for the delivery or receipt of the Goods (in whole or in part), or if delay appears probable, Buyer shall promptly give notice to Seller.
2. In such event, Seller shall, at its option, have the right to (i) deliver the Goods at the time agreed upon in the contract, or (ii) extend the date for delivery for a reasonable period, or (iii) cancel the contract. If Seller extends the period for delivery, Buyer shall remain liable to make all payments as if the Goods in question had been delivered, and Seller shall, as necessary, arrange for storage of the Goods and insure the Goods at Buyer's risk and expense.

## 8. Seller's Delay in Delivery

1. Any delivery schedule indicated is based on our present estimate of the time required to ship after receipt of your order. In the event of any delay in our performance due in whole or in part to any cause beyond our reasonable control, we shall have such additional time for our performance as may be reasonably necessary under the circumstances. Acceptance by you of any goods shall constitute a waiver by you of any claim for damages on account of any delay in delivery of such goods
2. A reasonable delay by Seller shall not be grounds for Buyer to terminate the contract, unless otherwise agreed to by parties.

## M. Vincent & Associates, Inc. Terms & Conditions of Sale

3. Delay by Seller due to Buyer's account standing shall not be grounds for Buyer to terminate the contract, unless otherwise agreed to by parties.

# M. Vincent & Associates, Inc. Terms & Conditions of Sale

## 9. Inspection; Complaints

1. Buyer shall inspect the Goods upon delivery. Failure of Buyer to inspect the Goods and notify Seller of faults or shortages within 3 (three) days after the Goods have been delivered shall act as a complete waiver of Buyer's rights with respect to any claims against Seller.
2. Complaints regarding any faults in the Goods shall be made in writing, specifying the nature and extent of the fault in reasonable detail. This may be submitted via fax or email.

## 10. Return Shipments

Return shipments must be authorized by M. Vincent and Associates in advance and a Returned Goods Authorization number must accompany all returns. Material which has been cut or otherwise processed by the buyer or to his order is not returnable or subject to cancel. Any returns not following these requirements will be refused acceptance on delivery.

## 11. Seller's Liability for Faulty Goods Upon Notification By Buyer; Limitation on Remedies; Exclusion of Certain Damages

1. If the Goods shipped by Seller to Buyer are defective or not in conformity with the specifications for such Goods, Seller shall reasonably and promptly, at its own expense and after consultation with Buyer, either (i) remedy the fault (e.g., by repair or reprocessing), or (ii) after Buyer's return of the faulty Goods to Seller, promptly deliver new and conforming Goods to Buyer, or (iii) in the event that repair or replacement is not practicable, credit Buyer amounts paid by Buyer for Goods.
2. If Seller repairs or replaces the Goods, Seller shall pay the costs of transportation for return and reshipment, but shall not be required to pay for any expenditure incurred for dismantling and reinstallation.
3. **UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS) ARISING FROM ANY CLAIM WHATSOEVER, WHETHER BASED ON TORT, WARRANTY, CONTRACT OR ANY OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SELLER'S AGGREGATE LIABILITY TO BUYER SHALL NOT UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNT PAID BY BUYER TO SELLER UNDER THE CONTRACT FOR THE PURCHASE OF GOODS.**

## 12. Warranty Disclaimer

THERE ARE NO EXPRESS OR IMPLIED WARRANTIES WITH RESPECT TO THE GOODS, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

## 13. Indemnification.

Buyer agrees to indemnify and hold harmless Seller, its officers, agents, employees and authorized representatives from and against any and all costs or damages arising out of or related to any claim or lawsuit alleging personal injury or death to any person which may result from or arise in connection with its use of Goods.

### 14. Force Majeure

1. Seller shall not be responsible for delays, failures or omissions under this contract due to any cause beyond its control, including labor disturbances, war, mobilization, political disturbances, governmental intervention of various kinds, riots, fires, earthquakes, floods, storms, lightning, epidemics, shortage of power, interference with transport, extensive operational breakdowns, or by deficient performance on the part of suppliers owing to any circumstance such as is referred to in this section (a "Force Majeure" event).
2. Where a Force Majeure event occurs, Seller shall give Buyer notice as reasonably practicable.
3. If any Force Majeure event will delay the contract for a period exceeding ninety (90) days, either party may cancel the contract by written notification to the other. Where Buyer cancels contract, Seller shall be entitled to receive compensation for the expenditures it has incurred until the time of cancellation, but excluding any consequential damages.

### 15. Infringement of Rights of Third Parties

If Goods are manufactured in accordance with drawings, models, or other prototypes or patterns supplied by Buyer, or in accordance with any other form of documentation supplied by Buyer, Buyer shall indemnify Seller for any infringement of rights of third parties arising from the use and manufacture of such materials, including, without limitation, infringement of patents, copyrights, or trademarks of such third party.

### 16. Overdue Payment

1. In case Buyer shall fail to make payments in accordance with the terms set forth in this acknowledgment, Seller in addition to its other rights and remedies may at its option defer further shipments until such payments are made or may terminate this contract, and Buyer shall not have any cause of action or be entitled to any setoff, counterclaim or recoupment against Seller by reason of such action.
2. Amounts overdue for payment may be charged interest at the rate of the then Prime Rate as published in the Wall Street Journal plus six (6) percent, but in no event more than the maximum permitted by applicable law. Seller may, at its election, retain a security interest in the Goods until paid for in full.

If in our judgment, reasonable doubt exists as to your financial responsibility, or if you are past due in payment of any amount owing to us, we reserve the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, to stop any material in transit, until we receive payment of all amounts owing to us, or adequate assurance of such payment whether or not due.

### 17. Assignment

This contract may not be assigned, in whole or in part, by either party except with the prior written consent of the other party, except that (i) Seller may assign any of its rights to receive any payment from Buyer hereunder, and (ii) Seller may subcontract the performance of any of its obligations under the contract.

## M. Vincent & Associates, Inc. Terms & Conditions of Sale

### **18. Entire Agreement**

This acknowledgment represents the entire agreement between the parties with respect to the Goods and supersedes all prior discussions or understandings between them.

### **19. Amendment Waiver**

1. This contract may not be changed orally, and no amendment or modification of any of the terms and conditions herein, nor any waiver of said terms and conditions, shall be valid or binding unless such amendment, modification or waiver is contained in a written agreement or instrument signed by both parties.
2. The failure of Seller to insist on strict compliance with these terms and conditions, or to delay in exercising its rights hereunder, shall not constitute an amendment or waiver of such rights.

### **20. Applicable Law**

The contract shall be governed by the laws of the State of Minnesota.

### **21. Disputes**

Any disputes between the parties shall be settled by a court of competent jurisdiction in Hennepin County, Minnesota.