

# SONDERHOFF USA LLC

## Terms and Conditions of Sale

**1. SCOPE** 1.1 All products ("Products") and services associated with them are sold strictly pursuant to these general conditions of sale ("Agreement"). References by Buyer to its conditions of purchase shall be null and void and are hereby expressly rejected. Any modification to the Agreement requires the express written approval of Sonderhoff USA LLC ("Seller"). 1.2 Acceptance by Buyer of Product(s) or services or payment for same shall constitute unequivocal acceptance of the terms and conditions found herein. None of any past practice, industry standards, course of dealing or usage of trade shall constitute a modification of any term or condition contained herein, nor shall same add any term not contained herein.

**2. OFFER AND ACCEPTANCE** 2.1 Offers to sell Products and/or services by Seller are non-binding with respect to price, quantity, delivery time and possibility. 2.2 Purchase orders from Buyer shall only become binding for Seller through a written confirmation from Seller to Buyer and may take the form of an invoice or a delivery note.

**3. SAMPLES AND CATALOGUES** Any figures, measurements, statements, descriptions, illustrations, photographs, drawings, or any other matters contained in Seller's brochures, catalogs, price lists, or advertising literature, or any samples provided to Buyer by Seller are not guaranteed to be accurate and are intended merely to represent a general description or depiction of the Products and shall not form part of any contract or agreement between Seller and Buyer, unless expressly specified and incorporated into any contract or agreement between the Parties in writing.

**4. PRICES** 4.1 Seller's prices valid at the time of the written confirmation shall be the invoiced price. Invoiced price of the Products does not include duty, tariffs, taxes, freight costs or similar charges, which shall be borne by Buyer, unless otherwise agreed in writing. 4.2 Should there be a general increase in Seller's prices in the period between the effective date of the written confirmation and delivery, then the prices valid on the day of delivery shall be applied. In the case of such a general increase in prices, Buyer may cancel the Agreement without further obligation within fifteen (15) days after the announcement of such general price increase. 4.3 If applicable, the final determination of weight in connection with the calculation of the purchase price shall be performed by Seller.

**5. PAYMENT** 5.1 Seller's invoices are due and payable in accordance with the terms of each such invoice without any deductions or offset. Unless otherwise specified, payment of Seller's invoices is due within 30 calendar days from the invoice date, and payments shall be made in U.S. dollars. All prices shown are exclusive of any applicable tax and any tax that Seller is required to collect in connection with a sale shall be in addition to the quoted price and solely for Buyer's account. All agreements between the parties concerning cash discounts must be in a writing signed by Seller. Payment shall be considered complete when Seller receives from Buyer the full invoice amount in readily available funds. 5.2 Seller reserves the right to use payments for the settlement of the oldest due invoice items plus any accrued default interest and costs and such payments shall be applied in the following order: costs, interest and outstanding balance. 5.3 Non-payment of the purchase price on the invoice due date shall be a default under the Agreement. 5.4 If in the sole judgment of Seller, Buyer's financial ability to perform under the Agreement is diminished, then Seller shall have the right, among any other right or remedy, to change payment terms, require full or partial advance payment or to cancel any outstanding order, without liability. 5.5 In the event of a payment default by Buyer, Seller shall be entitled to receive interest on the defaulted payment at a rate equal to eighteen percent (18%) per annum or the maximum interest rate permitted by law. 5.6 Buyer may only offset claims which are undisputed or have been finally determined by a court of law or arbitral panel acting with proper jurisdiction. 5.7 Seller shall retain a purchase money security interest in the Product(s) sold hereunder until all payments shall have been received in full by Seller and, if requested in writing to do so, Buyer agrees to do all acts necessary to perfect and maintain such security interest in Seller.

**6. DELIVERY** 6.1 Delivery shall be in accordance with the terms and conditions of the delivery clause of the applicable sales invoice. 6.2 Quoted price for all products is F.O.B. Seller's principal place of business or the location of shipment, whichever is applicable, unless otherwise agreed upon in writing. 6.3 Unless otherwise specified in writing, packing shall be Seller's standard packing. 6.4 Seller shall endeavor to punctually deliver the Products, provided, however, all specified delivery dates refer to the completion of manufacture and availability for shipment and merely represent Seller's best estimates. Seller reserves the right to modify the delivery dates with notice to Buyer and Buyer acknowledges that fixed delivery deadlines do not exist. Buyer also acknowledges that Seller's performance herein is subject to correct and punctual supply of Seller by its suppliers. 6.5 Buyer warrants there will be no diversion of any shipment that is (a) contrary to any applicable law, (b) for resale and/or transfer to any party to the Agreement, unless approved in writing by Seller, or (c) for shipment or use outside of the United States, unless approved in writing by Seller, and if so approved, Buyer warrants it will comply with all applicable laws, restrictions and regulations of the U.S. and other governments, including without limitation, the Export Administration Regulations, as amended, the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the Office of Foreign Asset Control Regulations.

**7. SHIPPING** 7.1 Seller reserves the right to choose the shipping route and the mode of transport. Additional costs resulting from special shipping requests by Buyer shall be for Buyer's account. In addition, Buyer shall be responsible for the payment of increases in freight rates, possible additional costs for diversion, storage costs etc. which occur after the sales invoice has been issued, insofar as freight-paid delivery has not previously been agreed upon by the parties. 7.2 Title shall pass to Buyer upon delivery to carrier. 7.3 Buyer shall assert claims arising from damages in transit directly against the carrier and shall have no recourse against Seller for such damages. Choice of carrier and insurances shall be at Buyer's discretion. Unless otherwise agreed in writing, Buyer shall be responsible for the observation of legal and official regulations relating to the import, transportation, storage and use of the Products. 7.4 If Products are not shipped within thirty (30) days after notification to the Buyer that they are ready for shipping, for any reason beyond Seller's reasonable control, including Buyer's failure to give shipping instructions, Seller may store the Products at Buyer's sole risk in a warehouse or storage facility or upon Seller's premises and Buyer shall pay all handling, transportation and storage costs upon submission of invoices therefore.

**8. FORCE MAJEURE** 8.1 Neither party shall be held responsible for any loss, damage, delay or lack of delivery arising from fire; strikes, lockouts, injunction or other labor troubles, governmental intervention including, but not limited to, prohibition or extraordinary taxation upon import or export; war; riots; acts of terrorism; explosion; weather; flood; acts of God or nature; inability to obtain on terms acceptable to Seller or shortage of, fuel, power, raw materials, labor, containers or transportation; accident; breakage of machinery or other apparatus; disruption of normal supplier channels of distribution; or any other act or force beyond the affected party's reasonable control. 8.2 If, as a result of any of the disruptions listed in Section 7.1 above, the delivery or acceptance of the Product is delayed by more than thirty (30), then either party may upon notice cancel the applicable sales contract and terminate any further obligation to the other party. 8.3 Seller reserves the right to allocate and fairly apportion Product(s) among its internal and external customers during force majeure events in any manner Seller, in its sole discretion, deems appropriate. 8.4 Seller shall have no obligation to acquire by purchase or otherwise any Product(s) that Seller is unable to supply to Buyer due to force majeure events.

**9. LIMITED WARRANTIES** 9.1 Seller warrants that the Products, if applicable, shall be free from defects in material and workmanship for a period of six (6) months from the date of delivery. Seller's obligations under the aforesaid warranty shall be discounting, repairing or replacing the Products, which if properly used and maintained, prove defective in material or workmanship. Such discount, repair or replacement shall be Seller's sole obligation and Buyer's sole remedy hereunder and shall be conditioned upon (a) Buyer's inspection of the Products within fourteen (14) days of receipt by Buyer, (b) Seller's receipt of written notice of any alleged defect within ten (10) days after its discovery, and (c) at Seller's option, return of such defective Products. Any Product repaired or replaced pursuant to this warranty will be warranted for the remainder of the original warranty period. Upon Seller's request, Buyer shall promptly provide samples and other evidence of, and shall allow Seller's representatives' access to the alleged defective Products. Claiming an alleged defect does not relieve Buyer of any of its payment obligation to Seller. Buyer must not return any alleged defective Products without Seller's prior written consent. Buyer agrees to reimburse Seller for all costs and expenses associated with any return of Products unauthorized by Seller. Receipt or inspection of returned Products by Seller shall not be deemed an admission of any alleged defect. 9.2 Seller's obligations under Section 9.1 above shall not apply to any part of the Products sold hereunder, which (a) are consumed by normal wear and tear, (b) have a normal life time inherently shorter than the herein stated warranty period, or (c) have been damaged due to negligent or faulty use, alteration, maintenance, storage or handling in contravention of the Products' Technical Data Sheet, the Material Safety Data Sheet, or otherwise by Buyer. 9.3 Any suggestions by Seller or Seller's agents regarding use, application or suitability of Products shall not be construed as an express warranty unless confirmed to be such in writing by Seller. 9.4 Buyer assumes all risk for misuse of the Products. 9.5 THE WARRANTY EXPRESSED HEREIN SHALL BE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, APPLICATION OR USE, NONINFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE WHICH ARE EXPRESSLY DISCLAIMED, AND IS IN LIEU OF ANY AND ALL OTHER OBLIGATIONS OR LIABILITY ON SELLER'S PART.

**10. LIMITATION OF LIABILITY** 10.1 NOTWITHSTANDING ANY PROVISION IN THESE CONDITIONS OF SALE OR ELSEWHERE TO THE CONTRARY: (a) SELLER'S MAXIMUM LIABILITY HEREUNDER AT ANY TIME FOR ANY CAUSE WHATSOEVER SHALL NOT EXCEED THE PRICE PAID FOR THE PRODUCTS OR SERVICES AT ISSUE, (b) SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND OR NATURE, ARISING AT ANY TIME, FROM ANY CAUSE WHATSOEVER, INCLUDING LOSS OF REVENUE OR PROFIT. 10.2 These limitations of liability shall apply notwithstanding any finding that any remedy fails its essential purpose.

**11. PROPRIETARY INFORMATION / CONFIDENTIALITY** All specifications, technical data sheets, manuals, security and safety data sheets and other information furnished by Seller to Buyer, including, but not limited to, pricing, volumes or the financial terms of the Agreement and the existence of the Agreement, are proprietary to Seller and confidential. Such information has been developed at substantial expense and contains trade secrets that are the exclusive property of Seller. Buyer may not reproduce or distribute such information except to Buyer's employees who are required to have such information in order to perform their duties and agree, in writing, to keep such information confidential. All such information supplied by Seller shall be received in confidence except for information that (a) was generally available to Buyer from public or published sources, provided publication did not take place in violation of the Agreement or through fault or omission of Buyer, (b) was lawfully obtained from a source under no obligation of confidentiality, directly or indirectly, to either Buyer or Seller, or (c) was disclosed to the general public with the written approval of Seller, and Buyer shall exercise due diligence and reasonable care to hold such information in confidence.

**12. SUSPENSION AND CANCELLATION** If Buyer shall omit delivery instructions or shall fail to accept Delivery, as required by Contract, or shall fail to make any payment when it becomes due or shall commit any other breach of contract, or if Buyer shall enter into any composition or arrangement with its creditors or if any distress or execution is levied upon any goods or property of Buyer, or if Buyer shall commit any act of bankruptcy or, if a corporation, a receiver shall be appointed of the whole or any part of its undertaking or assets or if Buyer shall pass a resolution for winding up or if a Court shall make an order to that effect or if Buyer shall have a receiving order made against it, then at Seller's sole option Seller may defer or cancel any further deliveries or services and treat the Contract or any other contract between Seller and Buyer as terminated, but such termination shall be without prejudice to Seller's right to any unpaid price for Products delivered or cost of work done under the Agreement and to damages for loss suffered in consequence of such termination.

**13. GOVERNING LAW; ARBITRATION** 13.1 THIS AGREEMENT SHALL BE CONSTRUED, INTERPRETED AND CONTROLLED BY THE LAWS OF THE STATE OF ILLINOIS, AND ALL CLAIMS ARISING OUT OF OR RELATED TO THE PARTIES' RELATIONSHIP CREATED BY THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE GOVERNED AND DECIDED PURSUANT TO THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REGARD TO ITS CONFLICT OF LAWS PROVISIONS. 13.2 All disputes arising under the Agreement shall be settled by final and binding arbitration in Chicago, Illinois in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect. The parties may agree on the selection of a single arbitrator, but in the event that they cannot agree, each party shall select an arbitrator and the two selected arbitrators shall select a third arbitrator. The award by the arbitrator(s) shall be final and judgment upon the rendered award may be entered in any court having jurisdiction thereof.

**14. EQUITABLE RELIEF** Buyer understands and agrees that Seller will not have adequate remedy at law for the material breach or threatened breach by Buyer, or its agents, employees, representatives or subcontractors, of any one or more of the covenants set forth in Section 10 of these Terms and Conditions. Buyer agrees that in the event of any such material breach or threatened breach, Seller may, in addition to (but not in substitution for) the other remedies which may be available to it either at law or in equity, file suit in equity to enjoin the Buyer from the breach of or threatened breach of said covenants.

**15. ADDITIONAL TERMS** 15.1 This Agreement may not be assigned by either party to any other party without the prior written consent of the other party hereto; provided, however, that (a) Seller may assign its rights and obligations hereunder to any Affiliate of Seller by written notice to Buyer, and (b) Seller may assign its rights and obligations hereunder, by written notice to Buyer, to a third party successor or transferee (whether by merger, consolidation, purchase or otherwise) of either (1) all or substantially all of the assets of Seller or (2) all or substantially all of the assets of the particular division of Seller identified on page one of the Agreement. "Affiliate" shall mean, with respect to a party, any individual, corporation or other business entity that, either directly or indirectly, controls such party, is controlled by such party, or is under common control with such party. "Control" means possession of the power to direct, or cause the direction of the management and policies of a corporation or other entity whether through the ownership of voting securities, by contract or otherwise. This Agreement shall be binding upon and inure to the benefit of the parties and their respective legal representatives, successors and permitted assigns. 15.2 Buyer represents and warrants that (a) it understands the nature and characteristics of the Product(s) and any hazards associated with its use, (b) it will adequately instruct and warn all persons, including all third parties, who may come in contact with, or be in the vicinity of, the Product(s) in the proper safe use and handling of the Product(s), (c) it is not relying upon any representation, statement or other assertion made by Seller or its representatives or agents, with respect to the suitability of the Product(s) for any purpose and that Buyer has made its own independent inquiry and testing and has formed an independent opinion concerning the suitability of the Product(s) for the end use, conversion or application intended, and (d) it will not assert any claim against Seller or hold Seller liable, with respect to any information, testing or design furnished, or failure to be furnished, by Seller, including, without limitation, technical advice or recommendations. Seller assumes no obligation or liability for the use by Buyer of any technical assistance rendered incident to the Agreement. Appropriate literature has been assembled which provides information concerning the health and safety precautions that must be observed when handling the Products. Before working with the Products, Buyer agrees to read and become familiar with the available information on the Product hazards, proper use, and handling. Additional information is available from Seller upon request. 15.3 No type of contractual obligation between Buyer and its customer(s) shall be applicable to, or create any liability with respect to Seller, whether via "pass-through", "flow-down" or otherwise, and Buyer shall not otherwise represent to its customer(s) such purported Seller liability. Buyer agrees to indemnify and hold Seller harmless against any losses, claims and damages or liabilities, joint or several, in connection with products manufactured by Buyer using Seller's Products sold under the Agreement. Buyer will reimburse Seller for any legal or other expenses reasonably incurred by Seller in connection with investigating or defending any such actions and, at Seller's request and election, Buyer will assume the defense of any such actions or claims. 15.4 Seller may, but is not obligated to, insure the Products sold hereunder against damage or loss during (a) transportation, and (b) if shipping is delayed by reasons beyond the reasonable control of Seller during this delay at the expense of Buyer unless the parties have agreed otherwise. Until final payment is made Buyer shall insure such Products at its expense for the benefit of Seller against damages and loss including, but not limited to, fire and flood, and shall provide written proof thereof to Seller. 15.5 Seller assumes no liability as to any patent or copyright infringement by virtue of the use of the Products in combination with other goods or services, or the use of the Products manufactured to Buyer's specifications. Buyer shall not use Seller's trademarks without Seller's prior written consent. 15.6 The rights and obligations under Articles 9, 10, 11, 13, 14 and 15 herein shall survive the cancellation, termination or expiration of the Agreement. 15.7 Should any part of the Agreement be deemed invalid by a court of law or arbitrator, it shall not constitute an invalidation of any other part of the Agreement, which shall otherwise remain in effect. 15.8 Failure of Seller to effect, or any delay by Seller to effect, any available right or remedy shall not be construed to operate as a waiver of same. 15.9 Except as otherwise expressly provided, the Agreement supersedes all prior agreements, understandings or otherwise, whether oral or written, between Buyer and Seller concerning the subject matter of the Agreement. 15.10 Seller's acceptance of (a) payment, or (b) specially endorsed checks shall not waive or limit any right or remedy of Seller. 15.11 Nothing contained herein is intended nor shall be construed as creating a partnership, joint venture, agency, distributorship or any other relationship except buyer and seller. 15.12 All headings herein are for reference only.