



TERMS AND CONDITIONS OF SALE

The following Terms and Conditions of Sale (“Terms”) shall apply to all sales of products of Portland Products, Inc. (“Seller”) and any quotation, purchase order, order acknowledgment, or invoice hereby incorporates and is governed exclusively by these Terms. Any and all products manufactured or sold by Seller are referred to below as “goods.” These Terms may not be altered or amended by the buyer named on the quotation, purchase order, order acknowledgment, or invoice (“Buyer”) in any manner without the prior written consent of Seller.

§ 1 Agreement

These Terms shall govern exclusively all sales of goods (including, but not limited to, all quotations, purchase orders, and invoices) by Seller to Buyer. Buyer agrees to these Terms as a precondition to Seller’s performance. Acceptance is expressly limited to and must be made on the exact terms and conditions as they appear in these Terms. Purchase orders, if accepted by Seller, are accepted subject to these Terms. Any different or additional terms or conditions are rejected and are replaced by these Terms, unless Seller agrees in writing and specifically refers to the different or additional terms that will be accepted. These terms supersede all prior or contemporaneous verbal or written agreements, orders, quotations, proposals, or any other communications between Buyer and Seller and any agents thereof. If Buyer has not objected to these Terms in writing within seven (7) days after receipt, Buyer is deemed to have accepted and assented to these Terms.

§2 Payment

Payment in full is due thirty (30) days after shipment. A time-price differential charge equal to one and a half (1.5) percent per month shall be charged on all balances not paid in full within thirty (30) days after shipment. If Buyer’s financial condition or credit rating becomes unsatisfactory to Seller at any time and for any reason, Seller shall have the right, in addition to Seller’s rights at law or equity, to require advance payment or may ship C.O.D. in addition to any other remedies. Buyer shall be responsible for costs and expenses (including, but not limited to attorney’s fees) incurred by Seller in collecting any amounts owing.

§3 Disclaimer of Warranties

Seller disclaims all warranties in connection with and makes no representations about the goods, express or implied, as to any matter whatsoever. Seller, without limiting the generality of this disclaimer, makes no warranties as to merchantability or fitness for any particular purpose, and Buyer is solely responsible for determining the proper application and use of the goods.

§4 Limitation of Liabilities

Seller shall not be liable to Buyer or any other person or entity for damages of any kind, including, but not limited to, indirect, special, incidental, consequential, or punitive damages arising from the sale of the goods or in connection with the use or inability to use the goods for any purpose whatsoever, irrespective of the basis for any legal or equitable claim or action. Seller's liability shall be limited to the amount of the purchase price paid by Buyer for the order of goods involved.

§5 Shipment and Risk of Loss

Seller shall accept the goods F.O.B. (Uniform Commercial Code term) Seller's facility unless Seller otherwise agrees in writing. Shipping, delivery, and performance dates are understood to be only estimates and time is not of the essence. Method and route of shipment (including, but not limited to, shipping all the goods at one time or in portions from time to time) are at Seller's discretion unless Buyer provides specific written instructions otherwise.

§6 Delays and Force Majeure

Seller shall make every practicable effort to make shipments of goods on time. If anything out of Seller's control (including, but not limited to, casualty, fire, equipment failure, and delays caused by Buyer) prohibits Seller from shipping the goods on time, then the estimated date of delivery shall be adjusted accordingly and Seller shall not be liable to Buyer for any damages caused by the delay. Additionally, Seller shall not be liable for late deliveries or delays in performance that are the result of an act of God, embargo, labor dispute, weather, acts of terrorism, or any other circumstances beyond Seller's control.

§7 Defects

Buyer agrees to inspect the goods immediately upon receipt. Buyer must notify Seller of any claim of shortage or defect in writing within five (5) days after receipt. Goods shall be considered defective if it is found by Seller to have been defective in material or workmanship and if the defect materially impairs the value of the goods to the Buyer, except that the goods shall not be defective to the extent that they: (a) conform with drawings of or specifications or a sample of goods that have been approved by Buyer; (b) conform with any manufacturing methods that have been submitted and approved in connection with the production part approval process (PPAP); or (c) are damaged due to the method or length of storage. Goods shall not be defective if Buyer's representative agrees, either orally or in writing, to a waiver of or alteration to the specifications for any item of goods. If Buyer provides to Seller satisfactory written evidence of a defect, Seller shall have thirty (30) days to either remedy the defect or shortage by repair or replacement at the Seller's expense. Buyer unconditionally waives any claim for breach of warranty if Buyer uses, fabricates or alters the goods, or fails to notify Seller of a defect or shortage in writing within five (5) days after receipt.

§8 Price Increases

Seller reserves the right to increase the price of goods from time to time in order to reflect increases in the costs to Seller (including, but not limited to, tooling arrangements, materials, and labor). In addition, Buyer shall be responsible for all of Seller's costs for goods or parts or materials that are produced, ordered, or received by Seller prior to the termination or expiration of these Terms or any order received from Buyer.

§9 Blanket Purchasing Agreement

If Seller consents in writing to a blanket purchasing agreement, then Buyer shall from time to time issue to Seller blanket purchase orders. Blanket purchase orders will require Seller to ship all of those goods within _____ days after Seller receives the blanket purchase order, regardless of different or contrary terms contained in the blanket purchase order. Blanket purchase orders must be submitted by Buyer within _____ (days/months) after Seller has consented in writing to a blanket purchasing agreement and must be for the entire quantity of goods provided for in the blanket purchasing agreement unless otherwise agreed to in writing by Seller. In the event Seller is unable for any reason to meet the delivery dates specified in any blanket purchase order, such dates will automatically be extended for a reasonable to allow for Seller to perform.

§10 Cancellation

Buyer has no right to cancel its purchase agreement unless prior written consent is given by Seller. In addition to any other remedy available to Seller, Buyer shall reimburse Seller for any and all expenses incurred by Seller in connection with such order (including, but not limited to, tooling arrangements, materials, and labor).

§11 Termination

Seller shall have the right to terminate any agreements or pending purchase orders of any kind, in whole or in part, if Buyer has failed to perform its obligations under these Terms. Seller shall also have the right to terminate any agreements or pending purchase orders in the event of the Buyer's insolvency, reorganization, bankruptcy, receivership, liquidation or an assignment for the benefit of creditors. Seller may from time to time request written assurance of adequate performance. If these requests are not deemed adequate in Seller's sole discretion, Seller may terminate any agreements or pending purchase orders.

§12 Seller's Intellectual Property Rights; Confidentiality

Seller reserves all proprietary rights in intellectual and industrial property (including, but not limited to, trademarks, servicemarks, trade secrets, designs, drawings, or specifications). Buyer unconditionally agrees not to disclose, duplicate, or otherwise disseminate any commercial, financial, or technical information that Buyer knows or has reason to know is confidential in nature without the prior written consent of Seller.

§13 Indemnification

Buyer agrees to indemnify and hold harmless Seller to the fullest extent permitted by law for all damages, claims, liabilities, and expenses (including, but not limited to, attorney's fees) arising or alleged to arise from any breach by Buyer of any of its obligations under these Terms, or from any negligent or wrongful act or omission of Buyer or Buyer's agents or employees.

§14 Entire Agreement

These Terms constitute the entire agreement between the parties. The parties acknowledge that there have been and are no representations, warranties, covenants, agreements or understandings other than those expressly set forth in these Terms.

§15 Amendments or Waiver

Any amendment, modification, or waiver of these Terms shall be invalid unless it is in writing and signed by the party intending to be bound. The failure of one party to insist in any one or more instances upon the strict performance of any of the terms or conditions of these Terms by the other party shall not be construed as a waiver.

§16 Captions

Captions contained in this Agreement are inserted for reference and in no way define, limit, extend or describe the Agreement or intent of any of its provisions.

§17 Assignment

Neither party may assign their rights or delegate their obligations under these Terms without the written consent from the other party. An assignment will not discharge assigning party from its obligations under these Terms.

§18 Governing Law

These Terms shall be interpreted in accordance with the laws of the State of Michigan. Buyer unconditionally consents to personal jurisdiction in Michigan and waives any objection that any court in Michigan is an inconvenient forum.

§19 Parties Bound

These Terms shall be binding upon and inure to the benefit of the parties and permitted successors and assigns.

§20 Severability

If any provision of these Terms becomes or is declared by a court of competent jurisdiction to be unenforceable, these Terms shall continue in full force and effect without that provision.