

SWM INTERNATIONAL

STANDARD TERMS AND CONDITIONS OF SALE

Unless otherwise provided by a separate written agreement signed by both Buyer and Seller, Buyer's purchase order or other agreement may be accepted ONLY upon the Terms and Conditions set forth below ("Contract"). SELLER'S QUOTATION, OR SELLER'S ACCEPTANCE OF BUYER'S ORDER, IS EXPRESSLY LIMITED TO AND MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THESE TERMS AND CONDITIONS. SELLER OBJECTS TO ANY DIFFERENT OR ADDITIONAL TERMS.

1. **Prices:** Unless otherwise specified, all prices are Free Carrier (FCA Incoterms 2010) Seller's facility, do not include fees, taxes, or duties, and are subject to correction or change without notice. Unless otherwise specified, Seller's quotation shall expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance. Seller reserves the right to accept or reject any order, or to specify a minimum quantity. Buyer is responsible for payment of all applicable state and local taxes, or for providing a valid sales tax exemption certificate.

2. **Payment:** All terms of payment are Net Cash, unless otherwise specified. Seller accepts payment by wire transfer or ACH or check. All credit that may be extended by Seller and the limits of such credit are at Seller's sole discretion, and may be reduced or revoked by Seller at any time, for any reason. Seller reserves the right to charge a late payment fee at the rate of one percent (1%) of the amount due for each month or portion thereof that the amount due remains unpaid, and to charge an attorney's fee of an additional 15% in the event that past-due amounts are collected through an attorney (or the highest legal limit, if lower than said amount). Anticipation and cash discounts are not allowed. All payments must be made in U.S. dollars. Seller has the right of set-off and deduction for any sums owed by Buyer to Seller.

3. **Delivery; Quantities:** Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the order. Quantities of goods delivered may be as much as ten percent (10%) greater or less than the exact quantity ordered by Buyer. Unless otherwise specified, title and risk of loss pass to Buyer upon tender of shipment to the carrier. If the goods are damaged in transit, Buyer's only recourse is to file a claim with the carrier. Partial deliveries are permitted. Seller may deliver goods in advance of the delivery schedule.

4. **Limited Warranty:** Seller warrants that the goods will meet Seller's specifications, as evaluated according to methods set forth therein. **THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** To the fullest extent permitted by law, the warranty provisions of this section shall supersede and exclude the application of any and all provisions of law regarding the warranty of defects and the guarantee of quality. Seller does not guarantee compliance or suitability of the goods it sells with any laws, codes or regulations, nor does Seller accept responsibility for design, application or use of goods by Buyer. Buyer is solely responsible to review the product application and all applicable laws, codes and regulations for each relevant jurisdiction to be sure that its use of the goods is compliant.

5. **Remedies:** If Buyer receives goods which do not meet specifications, or do not correspond to the quantity or type of goods ordered, Buyer must notify Seller within thirty (30) days after receipt of the goods. Failure of such notice shall be deemed acceptance of goods received. Buyer may return goods only with Seller's consent after rejection in accordance with this section. Seller shall replace goods which do not meet specifications at its expense and bear the costs of return transportation and disposal of rejected goods, or in the alternative, Seller shall grant Buyer a commercial credit in an amount not to exceed the sales price of the nonconforming goods. If goods fail to meet specifications for any reason, Seller's sole obligation shall be as set forth in this section.

SELLER SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES OF ANY NATURE OR KIND WHATSOEVER, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT OR OTHERWISE, OR FOR ANY LOSS OF PROFITS, LOSS OF USE OF EQUIPMENT OR SYSTEMS, INTERRUPTION OF BUSINESS, COST OF CAPITAL, OR INCREASED OPERATING COSTS. SELLER'S LIABILITY IN ALL EVENTS IS LIMITED TO THE PURCHASE PRICE PAID FOR THE PRODUCT THAT GIVES RISE TO ANY LIABILITY.

6. Special Orders: Seller will not be liable for any infringement arising from Goods manufactured to Buyer's specifications and not part of Seller's standard products. Buyer agrees to protect and defend Seller against any claim of patent infringement arising from compliance with Buyer's designs, specifications or instructions and to hold Seller harmless from damages, costs and expenses attributable to any such claim.

7. Intellectual Property: Nothing in the Contract is to be construed as a grant or assignment of any license or other right to Buyer of any of Seller's or its affiliates' intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise.

8. Confidentiality: Any pricing or other sensitive commercial information provided by Seller to Buyer is proprietary to Seller and shall be held in confidence by Buyer, shall only be used by Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without Seller's prior written consent. As to each item of information disclosed, the restrictions under this section 8 shall expire five (5) years after the date of disclosure. This section 8 does not supersede any separate confidentiality or nondisclosure agreement signed by the parties.

9. Force Majeure: Neither party shall be liable for failure to perform or delay in performing any obligation under this Contract if such failure or delay is due to fire, flood, earthquake, strike, war, embargo, blockade, legal prohibition, government action, riot, insurrection, damage, destruction, power outage, telephone outage, internet access provider failure or any other cause beyond the reasonable cause of the non-performing party.

10. Termination: Buyer may terminate the Contract only for material breach, provided that Buyer first gave Seller written notice of the breach and Buyer's intention to terminate, and provided Seller failed to cure the breach within 30 days after receipt of the notice. Seller may terminate this Agreement upon Buyer's failure to accept or pay for orders, or if Buyer becomes insolvent or bankrupt. Buyer cannot terminate or cancel the Contract, in whole or in part, for a reason other than material breach without Seller's consent, which may be subject to a restocking charge or other fee.

11. Compliance with Laws, Codes and Standards: Seller represents that the goods are produced in compliance with applicable fair labor standards laws, occupational safety and health laws, and laws related to non-segregation and equal employment opportunity, and laws relating to manufacture of products. Seller is committed to prohibiting bribery anywhere in the world, in connection with any kind of business, directly by Seller personnel or through intermediaries or third parties, to government or private individuals. Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control laws and regulations. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products. Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice.

12. Governing Law: This Contract shall be governed by the laws of the State of Delaware, except conflict of law provisions. Buyer and Seller agree that, unless otherwise specified in this Contract, any action, regardless of form, arising out of this Contract or the sale of the goods must be brought within one year after the date on which the goods in question were delivered to Buyer or the date on which the event giving rise to the action occurred, whichever is earlier. The terms of the United Nations Convention on the International Sale of Goods are expressly excluded and shall have no application to sales to which this agreement applies.

13. General Clauses: a. Products and services sold by Seller are not intended for use in connection with any articles on the U.S. Munitions List (22 C.F.R. sec. 121), and Buyer warrants that it shall not use or permit others to use products or services for such purposes without the advance written consent of Seller.

b. Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) shall be void.

c. If any Contract provision is found to be void or unenforceable, the remainder of the Contract shall not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.

d. The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract shall be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to products or services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver shall be binding on either party unless agreed in writing.

e. This Contract is only for the benefit of the parties, and no third party shall have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

14. U.S. Government Contracts: This section 14 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government. Buyer agrees that all products and services provided by Seller meet the definition of "commercial-off-the-shelf" ("COTS") or "commercial item" as those terms are defined in Federal Acquisition Regulation ("FAR") 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of products is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by American Recovery Reinvestment Act funds unless otherwise specifically stated in the Contract. The version of any applicable FAR clause listed in this section 13 shall be the one in effect on the effective date of this Contract. If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions. Buyer further agrees the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the invoice price. If Buyer is procuring the products or services as a contractor, or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract price.