

SULLIVAN SUPPLY COMPANY
1433 East 10th Street • Erie, Pennsylvania 16503
(814) 456-7574

TERMS AND CONDITIONS OF SALE

NOTICE TO BUYER: THIS SALE IS GOVERNED EXCLUSIVELY BY THESE TERMS AND CONDITIONS OF SALE, UNLESS BUYER HAS SPECIFICALLY AND INDIVIDUALLY OBJECTED TO SELLER'S TERMS IN WRITING AS PROVIDED FOR IN SELLER'S QUOTATION, AND SUCH OBJECTIONS HAVE BEEN ACCEPTED AND AGREED TO BY SELLER, THESE TERMS AND CONDITIONS STATED OR INCORPORATED HEREIN SHALL SOLELY AND EXCLUSIVELY GOVERN THIS SALE.

1. PARTIES

The term "Seller" shall denote Sullivan Supply Company, Inc., its successors and assigns, and the term "Buyer" shall denote the party designated in the space labeled "bill to" or "sold to" on the face of Seller's quotation, acknowledgement, sales order and/or invoice form and shall include that party's successors and assigns, and, unless otherwise indicated herein, any other parties in privity with or claiming through the party so named.

2. GOODS SUBJECT TO SALE

A. The goods subject to this sale (hereinafter "Goods") shall be limited to those goods described on the face of Seller's quotation, acknowledgement, sales order and/or invoice form.

B. Unless specifically noted on the face of Seller's quotation, acknowledgement, sales order and/or invoice form the Goods subject to this sale do not include, and Buyer assumes responsibility for: (1) safety equipment used with the Goods or by Buyer's employees or any third parties in handling or working with the Goods; or (2) manuals or instructions as to the proper use and/or installation of the Goods.

C. Seller reserves the right to substitute substantially comparable goods for the Goods which are the subject of this sale.

3. TERMS OF CONTRACT

Buyer's taking possession of the Goods shall result in a contract for the purchase of the Goods at the price set forth in this invoice. The resulting contract shall include all of the terms set forth in this invoice together with the terms of Seller's quotation, acknowledgement and/or sales order, all of which are hereafter called "Seller's Terms." Buyer shall be deemed to have accepted any of Seller's terms not specifically objected to by Buyer. Buyer shall be required to set forth each objection to Seller's terms in a separate writing signed and dated by Buyer and delivered to Seller. Seller's failure to further object to standard terms and conditions of purchase set forth in any or all of Buyer's contract documents shall not be construed as an acceptance of this same and any terms in Buyer's purchase order or any other document which are different from or additional to the Seller's terms are hereby specifically rejected and shall not become part of the contract unless specifically accepted by Seller in a separate document signed by both Buyer and Seller. Seller's signature on Buyer's purchase order or acknowledgement is merely an acknowledgement of receipt thereof and does not constitute Seller's agreement to any of the terms therein.

4. SELLER'S QUOTATIONS

A. Seller reserves the right to withdraw or modify any and all quotations at any time prior to acceptance by Buyer. In the event that Seller issues more than one quotation pertaining to the same Goods, the quotation latest in time shall control and all prior quotations shall be deemed withdrawn. Withdrawal of any quotation shall not reinstate the terms of any prior quotation, however, a subsequent quotation may modify a prior quotation, preserving the prior quotation to the extent specifically indicated on the face of the subsequent quotation form.

B. Seller's quotation is not and shall not be considered a firm offer.

C. No custom in the trade or usage between the parties which is contrary to Seller's terms shall apply.

5. PRICES

Except as noted on the face of a quotation, prices quoted by Seller in writing are firm for thirty (30) days from the date of the quotation, unless modified by a subsequent quotation sent prior to Seller's receipt of a written acceptance. Prices not quoted in writing are subject to change without prior notification. All such prices are based on U.S. dollars, F.O.B. Seller's warehouse, Erie, Pennsylvania, unless another F.O.B. point is specified. Any applicable taxes will be paid by Buyer, and Buyer hereby expressly agrees to indemnify and hold Seller harmless from any claim, loss, damage, liability or expense with regard to the payment of any taxes.

6. ERRORS

Seller reserves the right to correct any typographical or clerical errors which may be present in prices, specifications, quotations, acknowledgements and/or invoices.

7. TERMS OF PAYMENT

A. Unless other terms of payment are specified in Seller's quotation, acknowledgement and/or invoice, payment shall be made in full at Seller's main offices in Erie, Pennsylvania, U.S.A., or at another point designated by Seller, within thirty (30) days from the date of shipment. Buyer hereby agrees to make such payment in full without any deduction for claim of set-off or recoupment on account of this contract or any other contract or matter between the parties.

B. Should Buyer delay payment beyond the date on which it is due, Seller may charge, and Buyer agrees to pay, interest on the unpaid balance at the rate of one and one-half (1½%) percent per month, or at the maximum rate allowed by applicable state laws, whichever is less.

8. CANCELLATION

After Seller has sent acknowledgement of Buyer's purchase order to Buyer or begun preparations for acquisition of the Goods, Buyer will have no right of cancellation of the order without written approval of Seller. If written approval is given, Buyer shall be responsible to Seller for, and hereby agrees to pay, all costs incurred by Seller as of the effective date of cancellation, plus a cancellation fee equal to fifteen percent (15%) of the total price set forth in the contract. Should Goods already have been shipped prior to the request for cancellation, Seller has the option to accept or refuse return of the Goods. If return is accepted, Buyer must return all Goods to the location designated by Seller, freight prepaid. The return will be subject to a restocking charge of fifteen percent (15%) of the total price set forth in the order for return to the Seller's inventory. In addition, if any or all of the Goods are in an unsaleable condition, Buyer shall be charged for those Goods at the contract rate.

9. SHIPMENT AND DELIVERY

A. Any shipment date slated in Seller's quotation and/or other contract documents is approximate only and does not constitute any guarantee of shipment on any particular date. Time shall not be of the essence of the contract.

B. Notwithstanding the reservation of title by Seller, risk of loss or damage to all Goods shall pass from Seller to Buyer upon delivery by Seller to the possession of the carrier. When F.O.B. destination is specified, there shall be tailgate delivery only, with removal of the obligation of Buyer. Unless other arrangements are made by Buyer at Buyer's expense, Buyer agrees to the standard valuation and/or released rate set forth in the carrier's standard rate schedule. Any claims for loss or damage after possession by the carrier will be solely between Buyer and the carrier. Seller will provide reasonable assistance to Buyer in filing loss or damage claims.

10. DELAYS

A. Seller shall not be responsible to Buyer or any third party for any damages resulting from failure or delay in supplying the Goods due to any cause beyond the reasonable control of Seller, including, but not limited to, the requirements of any statute, act, ordinance, regulation, order or instruction of any governmental body; acts of God, acts of civil or military authority; fire; flood; strikes or other labor disputes; embargoes, war, riot or civil disturbance; delays in transportation; inability of Seller to obtain necessary labor; lack of utilities or utility service; unavailability of energy sources; or inability to obtain materials, supplies, components or other goods and/or services from third parties.

11. TITLE

Title to all Goods shall not pass to Buyer until full payment therefore has been received by Seller.

12. WARRANTY

A. No Warranty as to Goods

SINCE SELLER IS NOT THE MANUFACTURER OF THE GOODS, SELLER MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE GOODS, AND BUYER'S SOLE REMEDY WITH RESPECT TO ANY DEFECTS OR BREACH OF WARRANTY OF THE GOODS SHALL BE UNDER THE WARRANTY, IF ANY, GIVEN BY THE MANUFACTURER OF THE GOODS. If requested in writing by Buyer, Seller shall assign to Buyer all manufacturers' warranties with respect to the Goods and shall render Buyer reasonable assistance in pursuing any claim against the manufacturer of the Goods for breach on any event shall Seller have any warranty liability with respect to the Goods, and Buyer shall indemnify and hold Seller harmless from same.

B. Warranty as to Services

Any incidental services provided by seller with respect to the Goods are warranted to the original Buyer to be free from defective workmanship for a period of one (1) year from date of shipment. This warranty shall not be assignable by Buyer.

Seller's obligation under this warranty may, at its option, be discharged by furnishing or repairing, without charge, at its warehouse or other location designated by it, similar Goods or parts to replace any Goods or parts of its own supply which, within the above specified period, malfunction or fail to perform as a result of a breach of this warranty, provided that within a reasonable time for inspection after delivery, Seller is notified of such breach and the Goods claimed to be malfunctioning or failing to perform are delivered prepaid to Seller at its warehouse in Erie, Pennsylvania with evidence that they have been properly installed, maintained and used by the original Buyer. If, in connection with this warranty, repairs are performed by the Buyer with the written authorization of Seller, then the cost to Seller shall not exceed the cost of materials and direct labor. If such repairs or alterations are performed by Buyer without the written authorization of Seller, Seller will not assume any of the expenses in connection with such repairs and will immediately void any remaining warranty as to Seller's incidental services provided in connection with the Goods.

C. Exclusivity

THE ASSIGNMENT AND ASSISTANCE REMEDY PROVIDED IN SUBPARAGRAPH (A) OF THIS PARAGRAPH AND THE REPAIR OR REPLACEMENT WARRANTY SET FORTH IN SUBPARAGRAPH (B) OF THIS PARAGRAPH ARE THE EXCLUSIVE REMEDY AND WARRANTY GIVEN BY SELLER FOR THE GOODS AND INCIDENTAL SERVICES RELATED THERETO. THIS WARRANTY AND REMEDY ARE GIVEN IN LIEU OF ANY OR ALL WARRANTIES, WHETHER WRITTEN OR ORAL, EXPRESS OR IMPLIED. ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE ARE HEREBY EXPRESSLY EXCLUDED BY SELLER. SELLER NEITHER ASSUMED, NOR DOES IT AUTHORIZE ANY OTHER PERSON TO ASSUME ON ITS BEHALF, ANY OTHER LIABILITY IN CONNECTION WITH THE SALE OF THE GOODS OR SERVICES.

13. LIMITATIONS OF LIABILITY AND INDEMNITIES

IN NO CASE, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY OR TORT (INCLUDING SELLER'S OR BUYER'S NEGLIGENCE OR STRICT LIABILITY) SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES INCURRED BY BUYER, INCLUDING, BUT NOT LIMITED TO, LOSS OF SALES, PROFIT, REVENUE OR GOOD WILL; LOSS OF USE OF GOODS OR ANY ASSOCIATED EQUIPMENT OR MATERIAL; COST OF CAPITAL; COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICE; DOWNTIME COSTS; ATTORNEYS' FEES; OR LOSSES OR CLAIMS OF CUSTOMERS OF BUYER FOR SUCH DAMAGES. BUYER HEREBY AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL SUCH DAMAGES. HOWEVER, NOTHING CONTAINED IN THIS AGREEMENT IS INTENDED TO RELIEVE EITHER SELLER OR BUYER FROM ANY CLAIMS, LIABILITY, DAMAGES OR EXPENSES RESULTING FROM BODILY INJURY, INCLUDING DEATH, TO BUYER, SELLER, THEIR EMPLOYEES AND THIRD PARTIES OR FROM PROPERTY DAMAGE INCURRED DUE TO THE BREACH OF CONTRACT, BREACH OF WARRANTY, WILLFUL ACTS, NEGLIGENCE OR STRICT LIABILITY OF THAT PARTY. BUYER AGREES TO DEFEND, INDEMNIFY AND HOLD SELLER HARMLESS FROM ANY AND ALL SUCH CLAIMS, LIABILITY, DAMAGES OR EXPENSES TO THE EXTENT OF THE BREACH OF CONTRACT, BREACH OF WARRANTY, OR NEGLIGENCE OF SELLER OR THE STRICT LIABILITY CAUSED BY THE ACTS OR OMISSIONS OF SELLER.

14. LIMITATION OF ACTIONS

A. Buyer or anyone claiming through Buyer must bring any action against Seller within one (1) year from the date on which the act complained of occurs.

B. Seller shall have a minimum of four (4) years from the date when payment is due from Buyer for Seller to bring any action against Buyer.

15. PATENTS

A. Since Seller is not the manufacturer of the Goods, Seller makes no warranty with respect to infringement of any patent, trademark or copyright, and disclaims any and all liability which may arise from such infringement.

16. COLLECTION COSTS, ATTORNEYS' FEES

Buyer agrees that in the event suit is instituted by Seller to recover possession of any Goods sold, to enforce any of these terms and conditions, or to collect any sums of money, damages or costs from the Buyer hereunder or any sum of money for the use or rental of the Goods, Buyer shall pay all actual costs of collection and reasonable attorneys' fees incurred by Seller in such suit or suits. In the event that Buyer brings any action against Seller arising from the sale or use of Seller's Goods and Buyer fails to prevail in such action, Buyer hereby agrees to reimburse Seller for any attorney's fees and costs related to such litigation.

17. ASSIGNMENT

A. Except as provided to the contrary hereunder, seller or Buyer may assign any contract resulting from one or more quotations, acknowledgements and/or invoices, only with the other party's written consent, which shall not be unreasonably withheld. Any assignment of such contract by Buyer, if approved by Seller, shall not relieve Buyer of Buyer's duties to Seller hereunder.

18. APPLICABLE LAW; FORUM

The validity, performance and all matters relating to this sale and the interpretation and effect of a contract resulting from any one or more quotations, acknowledgements, sales orders and/or invoices shall be governed by the laws of the Commonwealth of Pennsylvania, and any litigation arising therefrom shall be decided in the state and federal courts located in Erie County, Pennsylvania, which shall be the exclusive venue for such matters. Both parties hereby submit themselves to the jurisdiction of such courts for these purposes.

19. WAIVER

Failure of Seller to require Buyer's performance of any of these Terms and Conditions or waiver by Seller of any breach by Buyer of any of these Terms and Conditions shall not prevent subsequent enforcement of such term and/or condition, nor shall it be deemed a waiver of any subsequent breach thereof.

20. ENTIRE AGREEMENT

The terms of a quotation, acknowledgement, sales order and/or invoices (including any specifications or other documents incorporated by reference therein) and these Terms and Conditions will constitute the entire understanding and agreement between Buyer and Seller concerning the subject matter. Any representation, promise, course of dealing or trade usage not contained herein will not be binding on either party. No modification, amendment, rescission, waiver or other change of any resulting agreement or any part hereof shall be binding upon Seller unless consented to in writing by Seller's authorized representatives in Erie, Pennsylvania. If any term or condition set forth in a quotation and/or acknowledgement is declared null and void by any court of competent jurisdiction, the remaining terms and conditions shall nevertheless remain applicable.