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## **TERMS AND CONDITIONS OF SALE**

**CONTROLLING PROVISIONS:** No terms and conditions other than the terms and conditions contained herein shall be binding upon Fair-Rite Products Corporation (hereinafter "Seller") unless accepted by in writing signed by the Seller's authorized representative. All terms and conditions contained in any prior oral or written communication, including, without limitation, Buyer's purchase order, which are different from or in addition to the terms and conditions herein are hereby rejected and shall not be binding on Seller, whether or not they would materially alter this document, and Seller hereby objects thereto. All prior proposals, negotiations and representations if any, are merged herein. Buyer will be deemed to have assented to all terms and conditions contained herein if any part of the goods described herein are shipped or an invoice is presented in connection with the said goods.

**TERMS:** Prices are quoted and components are manufactured, tested, packaged and sold according to Seller's standard specifications, procedures, and quality requirements as indicated by the Seller's part number. Any deviation from these procedures must be agreed upon prior to order acceptance and may require a price adjustment. If requested at the time of order placement, standard components documentation (C of C) will be supplied free of charge. Documentation requested at a later date and/or special documentation will incur a charge to be determined by the Seller but no event less than \$125.00. Buyer agrees to pay for the products according to the Seller's payment terms. In the event Buyer fails to make any payment to Seller when due, Buyer's entire account(s) with Seller shall become immediately due and payable without notice or demand. All past due amounts are subject to finance charges at the rate of 1.5% per month, otherwise at the maximum contract rate permitted by law. Buyer does hereby grant Seller a purchase money security interest in the products until such time as Seller is fully paid. Buyer will assist Seller in taking the necessary action to perfect and protect Seller's security interest. A reduction in the original order quantity, which would make the revised order subject to the higher price bracket (based on that reduced quantity), will incur a bill back of 10% of the unproduced quantity but in no event less than \$125.00. Orders are released and shipped in Seller's standard pack quantities (cartons/bags/reels) and sets of components are shipped in equal quantities, unless agreed to in advance by Seller and Buyer. Fair-Rite reserves the right to ship 10% over or under the original quantity ordered, based upon manufacturing yields. Non-recurring engineering charges for tools, dies, and/or gauges are the responsibility of Buyer and do not convey ownership to Buyer or the right to remove any tools, dies, and/or gauges from Seller's factory. Such tools, dies, and/or gauges remain the property of Seller.

**REMEDIES OF SELLER:** Upon default by Buyer, Buyer agrees to reimburse Seller all attorney fees and court costs incurred by Seller in connection therewith. Buyer agrees that any of the following shall constitute an event of default which shall enable Seller, at its option, to cancel any unexecuted portion of this order or to exercise any right or remedy which it may have by law: (a) the failure of Buyer to perform any term or condition contained herein; (b) any failure of Buyer to give required notice; (c) the insolvency of Buyer or its failure to pay debts as they mature, an assignment by Buyer for benefit of its creditors, the appointment of receiver for Buyer or for the materials covered by this order or the filing of any petition to adjudicate Buyer bankrupt; (d) the death, incompetence, dissolution or termination of existence of Buyer; (e) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (f) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired. All rights and remedies of Seller herein are in addition to, and shall not exclude, any rights or remedies that Seller may have by law. In the event it becomes necessary to incur any expense for collection of any overdue account, reasonable collection charges, including reasonable attorneys' fees, will be added to the balance due and Buyer shall pay all such charges.

**GOVERNING LAW:** This transaction shall be governed in all respects by the laws of the State of New York (excluding choice of law provisions). All actions, regardless of form, arising out of or related to this transaction or the products sold hereunder must be brought against Seller within the applicable statutory period, but in no event more than ONE (1) YEAR after the date of invoice. Venue for any such action shall be in Ulster County, New York or in the United States District Court for the Southern District of New York, White Plains Division, as the case may be.

**DELIVERY:** Seller will make a good faith effort to complete delivery of the products as indicated by Seller in writing, but Seller assumes no responsibility or liability and will accept no back charge for loss or damage due to delay or inability to deliver, whether or not such loss or damage was made known to Seller, including, but not limited to, liability for Seller's non-performance caused by acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers or any other causes of any kind whatever beyond the control of Seller. Under no circumstances shall Seller be liable for any special, consequential, incidental, indirect or liquidated damages, losses, or expense (whether or not based on negligence) arising directly or indirectly from delays or failure to give notice of delay.

**WARRANTY:** Seller makes no expressed or implied warranties. Seller hereby disclaims all expressed or implied warranties, whether implied by operation of law or otherwise, including, without limitation, all implied warranties of merchantability and fitness for a particular purpose. Under no circumstances, and in no event, will Seller be liable for personal injury or property damage of any other loss, damage, cost of repairs or incidental, punitive, special, consequential, or liquidated damages of any kind, whether based upon warranty, contract, strict liability, negligence, or any other cause of action arising in connection with the design, manufacture, sales, transportation, installation, use or repair of the products sold by Seller. Buyer hereby acknowledges and agrees that under no circumstances and in no event, shall Seller's liability, if any, exceed the net sales price of the defective product(s); no additional allowance shall be made for the labor or expense of repairing or replacing defective products or workmanship or damage resulting from the same. Except as expressly set forth in this paragraph, all products and/or services provided by Seller and its employees and agents are provided "as is," "where is" and "with all faults."

**RECOMMENDATIONS BY SELLER:** Buyer acknowledges that Seller does not make and specifically negates, renounces and disclaims any representations, warranties and/or guaranties of any kind or character, expressed or implied, with respect to (i) the products sold, their use, design, application or operation, their merchantability, their physical condition or their fitness for a particular purpose, (ii) the maintenance or other expenses to be incurred in connection with the products, (iii) the engineering, design, fabrication work or any other work or service (whether gratuitous or for payment) supplied by Seller and/or its agents, suppliers or employees or (iv) the accuracy or reliability of any information, designs or documents furnished to Buyer. Seller neither assumes, nor authorizes any person to assume for it, any other obligation in connection with the sale of its products. Any recommendations made by Seller concerning the use, design, application or operation of the products shall not be construed as representations or warranties, expressed or implied. Failure by Seller to make recommendation or give advice to Buyer shall not impose any liability upon Seller.

**INDEMNIFICATION:** The Buyer shall at its own expense apply for and obtain any permits and inspections required for the installation and/or use of the products. Seller makes no promise or representation that the products will conform to any federal, state or local law, ordinances, regulations, codes or standards, except as particularly specified and agreed upon in writing by an unauthorized representative of Seller. Seller shall not be responsible for any losses or damages sustained by the Buyer or any other person as a result of improper installation or misapplication of the products. Buyer shall defend, indemnify and hold harmless Seller and its agents and employees against any loss, damage, claim, suit, liability, judgment or expense (including, without limitation, attorney's fees) arising out of or in connection with any injury, disease or death of persons (including, without limitation, Buyer's employees and agents) or damage to or loss of any property or the environment, or violation of any applicable laws or regulations resulting from or in connection with the sale, transportation, installation, use or repair of the products by Buyers or the information, designs, services or other work supplied to Buyer, whether caused by the concurrent and/or contributory negligence of Buyer, Seller, or any of their agents, employees or suppliers. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of this transaction.

**INSPECTION AND ACCEPTANCE:** Claims for damage, shortage or errors in shipping must be reported within thirty (30) days following delivery to Buyer. Buyer shall have thirty (30) days from the date Buyer receives any products to inspect such products for defects and nonconformance which are not due to damage, shortage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such products. After such thirty (30) day period, Buyer shall be deemed to have irrevocably accepted the products, if not previously accepted. After such acceptance, Buyer shall have no right to reject the products for any reason or to revoke acceptance. Buyer hereby agrees that such thirty (30) day period is a reasonable amount of time for such inspection and revocation. Buyer shall have no right to order any change or modification to any product previously ordered by Buyer on its representatives or cancel any order without Seller's written consent and payment to Seller of all charges, expenses, commissions and reasonable profits owed to or incurred by Seller. Specially fabricated or ordered items may not be canceled or returned, and no refund will be made. The sole and exclusive remedy for merchandise alleged to be defective in workmanship or material will be the replacement of the product.

**RETURNS:** At Fair-Rite's discretion, Buyer may be permitted to return(at its own cost and expense) any "standard" or "catalog" product which Seller stocks within one (1) year from the date of shipment if: (i) it is in new condition, suitable for resale in its undamaged original packaging and with all its original parts and original markings, (e.g., Lot numbers, serial numbers) and (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged and (iii) meets all Local, State and Federal laws governing the type of products that can be sold or put into transit in the State in which the product is being returned and (iv) Buyer pays a 25% restocking fee. Buyer's surplus job returns, and those not meeting (i), (ii) and (iii) above, will be evaluated on an individual basis after Buyer has contacted Seller's authorized representative for prior written permission. Except for items Seller stocks which meet (i), (ii) and (iii), above, credit memoranda issued for authorized returns shall be subject to the following deductions: (a) cost of putting items in salable condition; (b) transportation charges, if not prepaid; and (c) handling and restocking charges. Products that are "non-standard" or "non-catalog" are not cancellable and not returnable.

**SHIPMENTS/RISK OF LOSS:** All products are shipped Ex-Works/F.O.B. Sellers point of shipment. Risk of loss shall transfer to the Buyer upon tender of goods to Buyer, Buyer's representative, or common carrier. The cost of any special packing or special handling caused by Buyer's requirements or requests shall be added to the amount of the order. If Buyer causes or requests a shipment delay, or if Seller's ships or delivers the products erroneously as a result of inaccurate, incomplete or misleading information supplied by Buyer or its agents or employees, storage and all other additional costs and risks shall be borne solely by Buyer. Claims for products damaged or lost in transit should be made by Buyer to the carrier, as Seller's responsibility ceases upon tender of goods to Buyer, Buyer's representative or common carrier. If the carrier's account number that was provided by Buyer is or becomes invalid and the transportation provider invoices Fair-Rite for the freight charges, Fair-Rite will invoice Buyer separately and directly for those charges and will add a fee for it additional processing costs.

**TAXES:** The amount of any sales, excise or other taxes, if any, applicable to the products shall be the responsibility of the Buyer unless Buyer provides Seller with an exemption certificate acceptable to the taxing authorities. 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 or consumption of any of the products, including taxes upon or measured by the receipts from the sale thereof, shall be for the account of the Buyer, who shall promptly pay the amount thereof to Seller upon demand.

**SEVERABILITY:** These terms and conditions of sale shall not be construed against the party preparing them, but shall be construed as if all parties jointly prepared these terms and conditions of sale and any uncertainty or ambiguity shall not be interpreted against any one party. If any provision hereof is held to be illegal, invalid or unenforceable under any present or future laws, such provision shall be fully severable and the terms and conditions herein shall be construed and enforced as if such illegal, invalid or unenforceable provision had never been made a part hereof. The remaining provisions herein shall remain in full force and effect and shall not be affected by such illegal, invalid or unenforceable provisions or by their severance here from.

**SET-OFF:** Buyer shall not be entitled to set-off any amounts due Buyer against any amount due Seller in connection with this transaction.

**NON-WAIVER:** Seller's failure to insist upon the strict performance of any term or condition herein shall not be deemed a waiver of any of Seller's rights or remedies hereunder, nor of its right to insist upon the strict performance of the same or any other term herein in the future. No waiver of any term or condition hereunder shall be valid unless in writing and signed by Seller's authorized representative.

**ENTIRE AGREEMENT:** This document constitutes the entire, complete and exclusive agreement between the parties with respect to the subject matter hereof and contains all the agreements and conditions of sale; no course of dealing or usage of the trade shall be applicable unless expressly incorporated herein. The terms and conditions contained herein may not be added to, modified, superseded or otherwise altered except by a written modification signed by the Seller's authorized representative. All transactions shall be governed solely by the terms and conditions contained herein.

**PURCHASE ORDER LIFETIME:** The lifetime of an order, unless otherwise negotiated, is twelve (12) months from its original placement with Fair-Rite. After 12 months, Fair-Rite reserves the right to cancel and invoice for any unreleased balance, or order lifetime may be renegotiated between authorized representatives of Buyer & Seller.

**PURCHASE ORDER SCHEDULE:** Scheduled shipments (releases) may be rescheduled out Sixty (60) days prior to the planned ship date. If a request to push out a scheduled release is within this 60-day window, shipment will take place. Releases for a non-standard product may be cancelled once the quoted minimum charge has been satisfied at Fair-Rite Products discretion. Additional charges may apply based upon manufacturing costs for product(s) in the production process incurred up to the point of notification. Non-recurring engineering (NRE) charges are additional.