

TERMS AND CONDITIONS OF SALE

CONTROLLING PROVISIONS:

These terms and conditions of sale ("Terms") shall govern Fair-Rite Products Corporation's ("Seller") provision of goods and services described in applicable Quote (collectively, "Products") to Buyer (as such term is defined in an applicable Quote). No terms and conditions, other than these Terms, shall be binding upon Seller or govern Seller's provision of Products to Buyer, unless memorialized in a written agreement, signed by the Seller's authorized representative. All terms and conditions contained in any prior oral or written communication (excluding Seller's Quote), which are different from or in addition to these Terms, are hereby rejected and shall not be binding on Seller, whether or not they would materially alter these Terms, and Seller hereby objects thereto. All prior proposals, negotiations, and representations, if any, are merged herein. Furthermore, Seller rejects, and in the future is deemed to have rejected, any purchase order terms to the extent they add or conflict in any way with these Terms and such additional or conflicting terms shall have no effect, unless memorialized in a written agreement, signed by the Seller's authorized representative. Buyer will be deemed to have agreed and assented to these Terms if any Products are shipped or an invoice is presented in connection with the Products, in each case, following issuance of a purchase order by Buyer and a order acknowledgement from Buyer.

TERMS:

Prices for Products are as quoted in the applicable Quote provided to Buyer by Seller. Products are manufactured, tested, and packaged according to Seller's standard specifications, procedures, and quality requirements (each which will be provided by Seller at Buyer's reasonable request) as indicated by the Seller's part number. Any deviation from these procedures must be agreed to by Seller in writing prior to order acceptance and may require a price adjustment. If requested by Buyer 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 in no event will such charge be less than \$125.00). Buyer agrees to pay for the Products according to the Seller's payment terms as set forth in the applicable Quote. 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 upon notice and Buyer shall pay the Seller's costs of collection, including reasonable attorneys' fees. 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 hereby grants Seller a purchase money security interest in the Products until such time as Seller is fully paid for such Products. Buyer will assist Seller in taking all reasonably necessary action to perfect and protect Seller's security interest in the Products. A reduction in the original order quantity by Buyer, which would make the revised order subject to Seller's higher price bracket (based on that reduced quantity), shall cause all such Products in that order to be subject to the higher price bracket. Orders are released and shipped in Seller's standard pack quantities (cartons/bags/reels) and sets of Products are shipped in equal quantities, unless agreed to in writing in advance by Seller and Buyer. Seller shall inform Buyer if any non-recurring engineering charges for tools, dies, and/or gauges will be incurred by Seller in the manufacturing, testing, and/or packaging of Products for Buyer. Any such non-recurring engineering charges are the responsibility of Buyer. Buyer shall not receive any ownership interest in any such tools, dies, and/or gauges, nor does Buyer have the right to remove any tools, dies, and/or gauges from Seller's factory. Such tools, dies, and/or gauges shall remain the property of Seller.

REMEDIES OF SELLER:

In the event of Buyer's Default (as defined below), in addition to exercising any right or remedy which Seller may have by law, Seller shall have the right, at its option, to cancel any unexecuted portion of the applicable order and/or modify Buyer's payment terms (ex: require upfront payment of remaining order amount). Buyer agrees that any of the following shall constitute an event of default ("Default"): (a) the failure of Buyer to perform any term or condition contained herein (including timely payment); (b) 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; (c) the death, incompetence, dissolution or termination of existence of Buyer; (d) a failure by Buyer to provide adequate assurance of performance within ten (10) days after a justified demand by Seller or (e) if Seller, in good faith, believes that Buyer's prospect of performance under this Agreement is impaired.

DELIVERY:

Seller will make a good faith effort to complete delivery of the Products as indicated by Seller in writing in the Seller-issued order acknowledgement. Notwithstanding the foregoing, Seller assumes no responsibility or liability, and will accept no back charge, for loss or damage, due to delay or inability to deliver Products, including, but not limited to, delay, inability to deliver, or non-performance hereunder caused by forces beyond Seller's reasonable control, including but not limited to acts of God, war, labor difficulties, accidents, inability to obtain materials, delays of carriers, contractors or suppliers. For the avoidance of doubt, 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 in performance hereunder (including delivery) or failure to give notice of delay.

LIMITED WARRANTY; WARRANTY DISCLAIMER:

Provided that Buyer has paid in full for the Products, Seller warrants the Products for use by Buyer, against defects in material and workmanship and that the Products shall conform in all material respects to Product specifications (provided such specifications were

issued by Seller to Buyer in writing or agreed to by Seller in writing) for a period of twelve (12) months from the date of delivery (the "Limited Warranty"). Seller does not warrant any Products against defects caused by misuse, abnormal operating conditions, alterations, or damage caused by events beyond the control of Seller. Seller shall not be liable for Product defects caused by or resulting from any drawing, description, or specification supplied by Buyer. Following written request from Buyer during the warranty period, Seller shall, at its option, replace the defective Product (at no charge to Buyer) or provide Buyer with a credit for the defective Product. The original term of warranty applies, without extension, for replaced Products. The foregoing shall be Buyer's sole remedy, and Seller's sole liability, for breach of the Limited Warranty.

Other than the foregoing Limited Warranty, 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, and all Products provided by Seller and its employees and agents are provided "as is," "where is," and "with all faults." Except for the above Limited Warranty, 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.

The Buyer shall be responsible for, at its own expense, applying for and obtaining any permits and inspections required for the installation and/or use of the Products and ensuring that all contemplated use of the Products by Buyer complies with applicable law and regulations. 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.

LIMITATION OF LIABILITY:

Under no circumstances, and in no event, will Seller be liable for personal injury or property damage or 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, unless caused by Seller's gross negligence or willful misconduct. Buyer hereby acknowledges and agrees that under no circumstances and in no event, shall Seller's liability, if any, exceed the net sales price paid by Buyer for the Products; and 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.

INDEMNIFICATION:

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, attorneys' 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: (a) the sale, transportation, installation, use, or repair of the Products by Buyers; or (b) the information, designs, services or other work supplied by Buyer to Seller. The obligations, indemnities and covenants contained in this paragraph shall survive the consummation or termination of the applicable transaction for Products.

INSPECTION AND ACCEPTANCE:

Claims for damages in shipping due to improper packaging by Seller (assuming no abnormal handling during shipping and delivery) or shortage in shipping amounts caused by Seller must be reported within thirty (30) days following delivery to Buyer. Following written request by Buyer during such time period, Buyer shall replace the damaged or missing Products. The foregoing shall be Buyer's exclusive and sole remedy for such damage or shortage. Buyer shall not be responsible for any damage in shipping not caused by improper packaging by Seller.

Buyer shall have thirty (30) days from the date Buyer receives any Products to inspect such Products for material defects and nonconformance which are not due to damage or errors in shipping and notify Seller, in writing, of any defects, nonconformance or rejection of such Products. Buyer's exclusive and sole remedy for such defective Products shall be replacement of the Product by Seller. 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.

ORDER MODIFICATIONS:

For standard orders, Buyer shall have sixty (60) days before the Seller's confirmed ship date to request modifications in the volume or ship date of Products. A reduction in the original order quantity by Buyer, which would make the revised order subject to Seller's higher price bracket (based on that reduced quantity), shall cause all such Products in that order to be subject to the higher price bracket. Except as expressly stated below, all custom orders are non-cancelable and non-refundable following issuance of the purchase order by Buyer. In the event Buyer wishes to cancel a custom order, Buyer must pay to Seller the full amount for all Products under the purchase order plus non-

recurring engineering (NRE) charges. Notwithstanding the foregoing, releases for a custom Products may be canceled at Buyer's request once the quoted minimum charge has been satisfied at Seller's discretion. However, in such an event, additional charges may apply based upon manufacturing costs for Product(s) in the production process incurred up to the point of notification, in addition to non-recurring engineering (NRE) charges.

Any requested changes in the type or specifications of the Products shall require written agreement by Seller and may result in increased pricing.

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); (ii) it has not been used, installed, modified, rebuilt, reconditioned, repaired, altered or damaged; (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 cancelable 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 Seller for the freight charges, Seller 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 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 the Products.

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:

These Terms 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 may not be added to, modified, superseded or otherwise altered except by a written modification signed by the authorized representative of Seller and Buyer.

PURCHASE ORDER LIFETIME:

The lifetime of a purchase order, unless otherwise negotiated, is twelve (12) months from its original placement with Seller. After 12 months, Seller reserves the right to cancel the purchase order and invoice Buyer for any increased pricing for previously shipped/released Products caused by the reduction in the order quantity by Buyer (which resulting in the revised order volume to be subject to Seller's higher price bracket based on that reduced quantity), or the purchase order lifetime may, at Seller's discretion, be renegotiated between authorized representatives of Buyer and Seller.

SHIP SCHEDULE:

At Buyer's request, shipping may be delayed within a reasonable amount of time from the originally scheduled ship date if Buyer provides Seller with notice more than sixty (60) prior to the original ship date. Absent written agreement of Seller (which may also subject Buyer to increased fees), Buyer is prohibited from changing the ship date within sixty (60) days from the original ship date. In such an event, the Products will be shipped on the original ship date and Buyer shall be responsible for payment in full.

GOVERNING LAW:

These Terms, and the sale of Products hereunder, shall be governed by and interpreted in accordance with the laws of the State of New York (excluding choice of law provisions). All actions, regardless of form, arising out of or related to these Terms or the Products sold hereunder must be brought within the applicable statutory period, but in no event more than ONE (1) YEAR after the date of invoice. The parties irrevocably consent to 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.