



ETCO Incorporated Sales Terms

1. Acceptance.

ACCEPTANCE BY ETCO Incorporated ("Seller") OF BUYER'S PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS OF SALE, WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER OR THE GOODS. BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS DOCUMENT SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S ACCEPTANCE OF ALL OR ANY PART OF THE GOODS OR FROM PAYMENT BY BUYER FOR ALL OR ANY PART OF THE GOODS. NONE OF THESE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERCEDED OR OTHERWISE ALTERED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED EXECUTIVE OF SELLER. FAILURE OF SELLER TO OBJECT TO ANY TERMS OR CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT OR FORM OF BUYER SHALL NOT BE CONSTRUED AS A WAIVER OF THESE CONDITIONS, NOR AS AN ACCEPTANCE OF ANY SUCH TERMS AND CONDITIONS.

2. Payment Terms.

Payment terms are net 30 days after date of invoice unless otherwise agreed in writing. Any Manufacturer's Taxes, Retailer's Occupation Tax, Use Tax, Sales Tax, Excise Tax, Duty, Custom, inspection or Testing Fees, or other tax, fee or charge of any nature whatsoever, imposed by a government authority on or measured by any transactions between Seller and Buyer, shall be paid by Buyer in addition to the prices quoted or invoices. In the event Seller shall be required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore. Buyer's orders must state the existence and amount of any such tax, fee or charge which it shall be the Seller's responsibility to collect from Buyer and pay; but Buyer's failure to state any such tax, fee or charge shall not excuse Buyer from paying or reimbursing Seller.

3. Taxes.

The quoted purchase price may be increased to the extent that Seller's cost of the product sold hereunder may be increased as a result of (1) any agreements, codes, or legislative enactments made or enacted pursuant to federal, state or municipal legislation; and (2) increase in the cost of labor or raw materials. In addition to paying the quoted purchase price, Buyer is solely liable for any excises, levies or 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, consumption or transportation of any of the goods covered hereby, and Buyer agrees to pay the amount thereof on the same terms as it shall pay the quoted purchase price.

4. Warranty.

Seller warrants that the goods supplied (the "Goods") shall conform to the description stated. THE FOREGOING WARRANTY IS SELLER'S SOLE WARRANTY WITH RESPECT TO THESE GOODS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. SELLER'S LIABILITY FOR BREACH OF WARRANTY HEREUNDER IS LIMITED SOLELY TO THE REPLACEMENT OF THE DEFECTIVE PRODUCT, WHICH SHALL BE RETURNED TO SELLER'S PLANT, TRANSPORTATION CHARGES PREPAID BY BUYER; AND THE FAILURE TO GIVE NOTICE OF A WARRANTY CLAIM WITHIN THIRTY (30) DAYS FROM DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BORROWER OF ALL CLAIMS IN RESPECT TO



SUCH GOODS. THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OF BUYER AND THE SOLE LIABILITY OF SELLER UNDER THIS WARRANTY.

5. LIMITATION OF LIABILITY.

SELLER'S LIABILITY TO BUYER, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED IN ANY CASE THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE GOODS IS CONSIDERATION FOR LIMITING SELLER'S LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THE INVOICE MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE DATE OF THE INVOICE. WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT WILL SELLER BE RESPONSIBLE OR LIABLE FOR (A) PENALTIES OR PENALTY CLAUSES OF ANY DESCRIPTION, OR (B) INDEMNIFICATION OF BUYER OR OTHERS FOR CLAIMS, DAMAGES OR EXPENSES ARISING OUT OF OR RELATED TO THE GOODS.

6. Claims.

Claims by Buyer for shortages or errors in delivery must be made within five (5) days after the delivery of the Goods. Goods are sold subject to the standard manufacturing practices of Seller's suppliers. Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry.

7. Returns.

No Goods shall be returned for credit without first obtaining written consent from an executive officer of Seller.

8. Shipment.

All prices quoted are F.O.B. Seller's facility. Buyer shall assume all risk of loss or damage upon delivery by Seller to the carrier at the point of shipment. Scheduled dates of delivery are determined from the date of Seller's acceptance of any order or orders placed by Buyer and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery. Seller shall not be liable for any damages caused by failure or delay in shipping the goods described herein, if such failure or delay is due to any war, embargo, riot, fire, flood, accident, mill condition, strike or other labor difficulty, an act of Buyer, an act of God, an act of a governmental authority, transportation shortage or failure, inability to obtain sufficient fuel, labor, materials or manufacturing facilities, or any other cause beyond the reasonable control of Seller.

9. Security Interest.

Shipments, deliveries and performance of work by Seller shall at all times be subject to the approval of and requirements of the credit department of Seller, including the requirement that Buyer pay part or all of the purchase price in advance. Seller retains a purchase money security interest in all Goods not paid for in full, notwithstanding that the goods have been delivered to Buyer, and Buyer hereby authorized Seller to execute and file financing statements describing the Goods, and other document which may be requested by Seller to evidence its security interest.

10. Cancellations.

Orders accepted by Seller are subject to cancellation by Buyer only upon the express written consent of executive officer of Seller. Upon such cancellation and consent, Seller shall cease work and hold for



Buyer all completed and partially completed articles and work in progress and Buyer shall pay Seller for all work and materials that have been committed to and/or identified Buyer's order plus a cancellation charge as presented by Seller, in addition to a reasonable profit to Seller on the entire contract.

11. Indemnification.

In addition to the foregoing, Buyer agrees to save and hold Seller harmless from any claims, demands, liabilities, costs expenses or judgments arising in whole or in part, directly or indirectly, out of the negligence or lack of care by Buyer or Buyer's customers, agents, employees or invitees including the use of the goods supplied by Seller. This indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon Seller in connection with the defense of any such claim.

12. Governing Law.

Any agreement arising out of this transaction shall be deemed to have been made in Manatee County, Florida. The parties agree that the validity, interpretation and performance of any agreement arising out of this transaction shall be governed by the laws of the State of Florida without regard to conflicts of interest laws. Buyer and Seller hereby submit to the exclusive jurisdiction for the resolution of any disputes hereunder, to the Circuit Court in Manatee County, Florida. This shall be the sole and exclusive jurisdiction and venue for the purpose of adjudication of any rights and liabilities hereunder.

13. Default.

In the case of default or breach by Buyer in the performance of any or all of the provisions of this agreement, Seller may cancel any outstanding order from Buyer and declare all obligations immediately due and payable, and shall in addition to all remedies afforded by the Uniform Commercial Code as enacted in Florida, and any other applicable law. Buyer shall in addition, be liable for Seller's expenses incurred in exercising any remedies available to it, including reasonable attorney's fees and legal expenses. All unpaid obligations shall bear interest at the contract rate provided under terms of payment above.

15. Delay.

If Buyer requests deferral of deliveries, Seller's agreement to defer delivery shall not excuse Buyer from its obligation to pay for the goods at the same times and in the same quantities as the original delivery schedule, including interest due pursuant to these terms and conditions. In addition to adhering to the original payment schedule, Buyer shall pay such storage charges as Seller may assess for storing the goods awaiting delivery. If Buyer requests deferral prior to commencement of production, Seller may require progress payments in connection with expenses for materials and services incurred by Seller in anticipation of production.

16. QUOTATIONS AND PRICES

This quotation automatically expires 60 days from date hereof unless previously terminated by Seller's written notice. Prices are based on manufacturing the complete order at one time, unless specifically agreed to in writing. Deliveries scheduled more than 60 days from the date hereof are subject to the provision of those terms and conditions captioned "Escalation."

17. QUANTITIES

All quotations are based on Buyer accepting over-run or under-run on each individual item not exceeding 10% of quantities ordered. Where a closer control of quantity is required, specific written arrangements between Buyer and Seller must be made.



18. PACKAGING

Packaging will be in accord with Seller's standard practice (bulk), sufficient to assure safe arrival unless otherwise requested on inquiry or blueprint and accepted by the Seller.

19. TOOLING

If Seller is to furnish and use tooling in the manufacture of goods for the Buyer, the following shall apply to that tooling, unless otherwise agreed to in writing by Seller and Buyer.

- a) Tools will be retained by Seller for Buyer's exclusive use without storage charge.
- b) Seller reserves the right to discontinue the use of tools as obsolete when in Seller's opinion they are worn out or have not been used for two years. Buyer will be given thirty days written notice of Seller's intention to dispose of tools in accordance with Buyer's Instructions. If such instructions are not received by Seller from Buyer within such thirty day period, Seller may dispose of such obsolete tools without liability or further obligation to Buyer.
- c) Seller reserves the right to add a 30% charge to total tooling costs on tools released to Buyer, which charge Buyer will promptly pay Seller.
- d) Seller shall have a lien upon and right of possession to all the Buyer's permanent tools for any payments due the Seller by the Buyer, including in the event of default, all costs of collection together with reasonable attorney's fees.
- e) Unless otherwise specified, Seller will not carry insurance of any type on Buyer's tools, fixtures, etc. Seller shall be held harmless for any injury or damage to such materials which occurs through no fault of the Seller.
- f) All processes and manufacturing techniques, developed, created, and utilized by Seller for the production of any such tooling or the manufacturing processes for the Product shall belong to Seller.