

**SAERTEX USA, LLC - TERMS AND CONDITIONS OF SALE**

**NOTICE: THIS SALES TRANSACTION AND ALL DOCUMENTS PERTAINING TO IT, INCLUDING, BUT NOT LIMITED TO, ANY OFFER, QUOTATION, ORDER CONFIRMATION/ACCEPTANCE, OR INVOICE ("SALES DOCUMENTS") IS SUBJECT TO AND CONDITIONED UPON ACCEPTANCE OF THE TERMS AND CONDITIONS STATED BELOW. IF ANY OF THESE TERMS CONFLICT WITH SELLER'S ORDER CONFIRMATION/ACCEPTANCE, THE SPECIFIC TERMS STATED IN SELLER'S ORDER CONFIRMATION/ACCEPTANCE SHALL PREVAIL OVER THESE TERMS AND CONDITIONS. ANY ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS PROPOSED BY THE PURCHASER ARE OBJECTED TO BY, AND WILL NOT BE BINDING UPON, SAERTEX USA, LLC ("SELLER"). THESE TERMS AND CONDITIONS OF SALE SHALL APPLY TO THIS SALES TRANSACTION UNLESS EXPLICITLY OBJECTED TO IN WRITING BY PURCHASER, WHICH WRITING MUST BE RECEIVED BY SELLER WITHIN FIVE (5) DAYS AFTER THE DATE OF THIS DOCUMENT. THIS SALES TRANSACTION AND ANY SALE OF PRODUCTS IS ENTERED INTO IN NORTH CAROLINA AND THEN ONLY IN ACCORDANCE WITH SELLER'S SALES DOCUMENTS AND THESE TERMS.**

1. *Acceptance.* All orders received by SELLER are subject to final acceptance or confirmation in writing by SELLER in North Carolina and no orders are binding upon SELLER until so accepted.

2. *Deliveries.* All deliveries are EXW (Ex Works) SELLER's facility (INCOTERMS 2010 TM) Huntersville, N.C. PURCHASER must make all arrangements for shipment and shipment shall be for PURCHASER'S sole account and risk. Partial deliveries of PRODUCTS are permissible. All delivery dates are SELLER's estimate only. All risk of loss to PRODUCTS shall pass to PURCHASER by SELLER upon notification by SELLER to PURCHASER that the PRODUCTS are ready for collection by carrier. Delivery is conditional on the timely receipt by SELLER of all documents necessary for the completion of the order, any down payment, and PURCHASER maintaining credit satisfactory to SELLER. SELLER will not be liable for any damages suffered by PURCHASER by reason of any delay in SELLER's performance or delivery of the PRODUCTS caused by PURCHASER failing to timely provide such documents or down payments or maintain satisfactory credit. If SELLER deems PURCHASER's credit unsatisfactory for any reason, SELLER may require the payment to SELLER of the purchase price of PRODUCTS, in full or in part, or the payment to SELLER of any outstanding amounts owed to SELLER.

3. *Prices.* All prices are quoted EXW (Ex Works) SELLER's facility (INCOTERMS 2010 TM) Huntersville, N.C. Prices stated in catalogs or price lists or in quotes older than thirty (30) days are subject to change by SELLER without notice to PURCHASER. Only those prices set forth in SELLER's invoice will apply to the order. Unless otherwise specified, prices do not include any packing or handling charges, any sales, use or similar tax, or any duty levied by any government; and PURCHASER shall pay any such applicable charges, taxes, and duties. Upon the request of SELLER, PURCHASER shall provide SELLER with a tax exemption certificate acceptable to the appropriate taxing authorities. If PURCHASER returns shipping boxes carriage free in a usable condition within two (2) months after delivery, the amount paid by the PURCHASER for such box on the invoice will be credited to PURCHASER's account.

4. *Terms of Payment.* Payment terms are net thirty (30) days from the date of invoice. Any required down payment is non-refundable, but shall be applied to the purchase price. Extension of credit, if any, may be changed or withdrawn by SELLER at any time. Invoices not paid by their due date will be subject to carrying charges. Carrying charges shall accrue and be added to the unpaid balance at the rate of one and one-half percent (1½%) per month of any overdue unpaid balance, or the maximum rate permitted by law, whichever rate is less. PURCHASER shall reimburse SELLER for the costs of collection, including, without limitation, reasonable attorneys' fees, of any overdue amount owed by PURCHASER to SELLER, and such collection costs shall also be subject to carrying charges. PURCHASER may not retain or set-off any amounts owed to SELLER in satisfaction of any claims asserted by PURCHASER against SELLER. Payment received by SELLER shall be applied to the oldest outstanding amounts (including interest and collection costs), regardless of any designation by PURCHASER.

5. *Claims and Return of PRODUCTS.* Within two (2) weeks after PURCHASER's receipt of PRODUCTS, PURCHASER must give written notice to SELLER of any claim by PURCHASER based upon the condition, grade, or quantity of PRODUCTS; such notice must indicate the basis of the claim in detail. PURCHASER's failure to comply with this paragraph shall constitute irrevocable acceptance by PURCHASER of PRODUCTS as delivered and shall bind PURCHASER to pay to SELLER the full price of such PRODUCTS. PRODUCTS shall not be returned to SELLER without SELLER's prior written consent; and transportation charges for any authorized returns of PRODUCTS shall be pre-paid by PURCHASER.

6. *Cancellation/Changes.* PURCHASER may not cancel or change an order once placed with and accepted by SELLER except with the prior written consent of SELLER and upon terms that will indemnify SELLER against any loss. SELLER may correct mathematical or clerical errors. SELLER may make any technical changes to PRODUCTS as SELLER may deem necessary.

7. *Excusable Delays.* SELLER shall not be liable for delays or failure to perform due, directly or indirectly, to causes beyond SELLER's control, including the inability of SELLER's suppliers to deliver needed goods, services, or raw materials, acts of any governmental authority, wars, strikes or other labor disputes, fires, and natural calamities.

8. *Selection and Application.* PURCHASER is solely responsible for proper selection and application of PRODUCTS. PURCHASER agrees that it will use and apply PRODUCTS only for their intended uses and according to specifications and limitations established by SELLER from time to time. PURCHASER shall indemnify and hold SELLER harmless from and against any and all damages, claims, or expenses (including reasonable attorneys' fees) arising out of or relating to abuse of PRODUCTS or use or application of PRODUCTS other than according to specifications and limitations established by SELLER from time to time.

9. *LIMITED WARRANTY.* The SELLER warrants that the PRODUCTS shall be delivered in substantial conformance to the specifications published by it applicable to the particular PRODUCT sold and that such PRODUCT will be free from material defects in material and workmanship. References to quality or patterns in SELLER's printed materials such as the processing instructions do not

constitute warranties. Minor deviations acceptable within the trade in quantity, color, width, weight, fittings or design shall not constitute defects or breaches of warranty. SELLER will, repair or, in its sole discretion, replace any PRODUCT and ship it to PURCHASER found to be defective if such defect is reported to SELLER pursuant to paragraph 5. Dealers and sales representatives are not authorized to offer different or additional warranties or remedies, and descriptions, representations and other information or claims made by dealers or sales representatives are not binding on SELLER. This limited warranty does not cover damage or deterioration caused by normal wear and tear, use under circumstances exceeding specifications, abuse, unauthorized repair or alteration, lack of proper maintenance or damage caused by natural calamities.

**THIS LIMITED WARRANTY IS PURCHASER'S EXCLUSIVE REMEDY.** It shall not be deemed to have failed of its essential purpose so long as SELLER is willing and able to repair or replace defective PRODUCTS. This limited warranty shall terminate automatically if Purchaser fails to make payments for the PRODUCTS covered herein. **NO OTHER EXPRESS WARRANTIES AND NO IMPLIED WARRANTIES OF ANY TYPE, WHETHER OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR OTHERWISE, SHALL APPLY TO PRODUCTS.**

**10. LIMITATION AND EXCLUSION OF DAMAGES. IN NO EVENT SHALL SELLER'S LIABILITY TO PURCHASER EVER EXCEED THE PURCHASE PRICE OF PRODUCTS. SELLER SHALL NOT BE LIABLE TO PURCHASER FOR INJURIES, LOSSES, OR DAMAGES RESULTING FROM THE NEGLIGENCE OR WILLFUL MISCONDUCT OF PURCHASER, NOR SHALL SELLER BE LIABLE TO PURCHASER, IN ANY EVENT, FOR CONSEQUENTIAL, INCIDENTAL, OR SPECIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOST PROFITS, WHETHER ARISING FROM THE SALE OF PRODUCTS, ANY DEFECT IN PRODUCTS, ANY USE OR INABILITY TO USE PRODUCTS, OR OTHERWISE.**

11. *Proprietary Information.* SELLER owns all intellectual property rights (including, without limitation, patents, trademarks, trade names, trade secrets, and copyrights) now or hereafter applicable to the PRODUCTS or arising from work carried out by SELLER or PURCHASER pursuant to this sales transaction, and all models, documents, and electronic files prepared in connection with the PRODUCTS or this sales transaction ("Proprietary Information"). PURCHASER shall not copy for any purpose or disclose to any other person any Proprietary Information without SELLER's prior written consent.

12. *Indemnity.* PURCHASER shall hold SELLER harmless against any claim, liability and damage and at PURCHASER'S expense defend any suit or proceeding, brought against SELLER based on, arising out of or relating to an allegation that any of the designs, drawings, specifications provided by PURCHASER to SELLER or any PRODUCTS resulting therefrom, or any part thereof, or the application or use of PRODUCTS for the intended purpose, constitute an infringement of any patent or copyright or misappropriation or misuse of any trade secret.

PURCHASER shall hold SELLER harmless against any claim, liability and damage and at PURCHASER'S expense defend any suit or proceeding, brought against SELLER based on, arising out of or relating to any allegation regarding any products sold or furnished by PURCHASER that contain PRODUCTS.

All warranty obligations for products sold by PURCHASER are the exclusive obligation of PURCHASER.

13. *Security Agreement.* PURCHASER hereby grants to SELLER a continuing purchase money security interest in PRODUCTS including PRODUCTS acquired from SELLER after this sales transaction and to the proceeds thereof. SELLER's security interest shall continue in finished goods and to the proceeds thereof if PURCHASER processes the PRODUCTS or incorporates them into finished goods for sale to its customers. PURCHASER shall execute and deliver any financing statements and other documents that SELLER may reasonably require for the perfection of the security interest hereby granted to SELLER by PURCHASER, and PURCHASER hereby authorizes SELLER to do all other acts reasonably necessary for the establishment, perfection, preservation, and enforcement of such security interest. PURCHASER shall maintain adequate insurance against casualty, loss, fire, or theft of PRODUCTS for so long as the security interest is in effect.

14. *Assignment.* PURCHASER may not assign its rights or obligations hereunder without the prior written consent of SELLER and any purported assignment by PURCHASER without the consent of SELLER shall be of no effect.

15. *Limitations.* Any action by PURCHASER under this Agreement or relating to PRODUCTS must be commenced within one (1) year after such cause of action has accrued.

16. *Choice of Law, Forum, Venue, and Consent to Jurisdiction.* Any dispute or claim relating to PRODUCTS sold shall in all respects be governed by and construed according to the laws of the State of North Carolina, excluding its conflict of law principles. Except with respect to an action instituted by SELLER for equitable relief or an action by SELLER to join or implead PURCHASER, PURCHASER and SELLER agree that the General Courts of Justice of the State of North Carolina, and the United States District Courts situated in Charlotte, North Carolina, shall constitute the exclusive forum(s) for the adjudication of any and all disputes or controversies arising out of or relating to this order or to PRODUCTS. PURCHASER consents to the exercise of jurisdiction over it by such courts with respect to any dispute or controversy.

17. *Construction of Agreement.* These terms and conditions of sale may not be amended, modified, or supplemented except by written agreement executed by PURCHASER and SELLER. The provisions of this Sales Transaction are intended to be severable and the invalidity or unenforceability of one provision shall not affect the validity or enforceability of any other provision. These terms and conditions of sale, together with the other Sales Documents, constitute the entire agreement between PURCHASER and SELLER with regard to the sale or transfer of PRODUCTS, and supersede all prior oral or written statements of any kind made by the parties or their representatives.