

TERMS OF PURCHASE (Revision 12.21.2022)

- 1. AGREEMENT.** The Terms of Purchase are located on our website, www.fillrite.com. These terms shall apply when referenced in any other writing between Buyer and Seller with respect to the purchase of goods described in Buyer's document (e.g. the "Quantity Contract or Purchase Order"). These 'Terms of Purchase may be modified, supplemented or deleted only when' mutually agreed to in writing by Buyer and Seller. Any other terms mutually agreed upon in writing between Buyer and Seller shall take priority over these Terms of Purchase if those other terms conflict with these Terms of Purchase. Buyer objects and shall not be bound by any additional or different terms, whether printed or otherwise, in Seller's quotation or proposal or in Seller's acknowledgment or in any other communication from Seller to Buyer (whether or not referred to herein) unless particular terms therein contained are specifically incorporated herein by reference. The contract is not assignable by Seller.
- 2. FACILITY ANALYSIS.** Fill-Rite Company reserves the right to inspect the Seller's facility and to perform verification of the purchased product or service at the Seller's facility.
- 3. DELIVERY.** Time is of the essence and deliveries are to be made both in the quantities and at times specified on purchase order, request for release or any other written communication. Should the supplier have reason to assume that it will not be able to meet the 'Delivery Time', it shall immediately notify the Buyer in writing (e-mail is an acceptable form of communication), identifying both the cause and estimated duration of the delay. If seller's deliveries fail to meet the schedule agreed upon and acknowledged, Buyer, without affecting its' other rights or remedies, may direct expedited routing and any excess costs incurred thereby shall be debited to Seller's account. Goods which are delivered in advance of schedule may, at Buyer's option, (i) be returned at Seller's expense for proper delivery or (ii) have payment therefore withheld by Buyer until the date that goods are actually scheduled for delivery. Buyer may in accordance with Clause # 7, cancel all or part of this order in the event the Seller fails to deliver goods to meet Buyer's agreed upon delivery schedule.
- 4. LIQUIDATED DAMAGES.** Buyer may recover for goods and services delivered later than scheduled the greater of either (a) the value of parts that Seller failed to deliver on time, (b) Buyer's lost revenue resulting from Seller's failure or (c) Buyer's actual loss resulting from Seller's failure. The parties agree that such amounts are an exclusive remedy for the damages resulting from the delay period only. The amounts specified in (a) and (b) above will be assessed as liquidated damages and not as a penalty.
- 5. EXCUSABLE DELAY.** Neither party shall be liable for damages for delay in delivery arising out of causes beyond its control and without its fault or negligence, including, but not limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, freight embargoes and unusually severe weather. Seller shall not be liable to Buyer in damages if the delay is caused by the delay of a subcontractor (at any tier) of Seller and if such delay arises out of causes beyond the control of both Seller and said subcontractor and without the fault or negligence of either of them. Seller will notify Buyer in writing within 48 hours after the beginning of any such cause. Notwithstanding the foregoing, if the materials or services to be furnished by the said subcontractor were obtainable from other sources in sufficient time to permit the Seller to meet the required delivery schedule, Seller shall be liable to Buyer for damages.

6. **SUSPENSION OF WORK.** Seller shall develop and keep current a formal business recovery plan that details strategies for response to and recovery from a broad spectrum of potential disasters. Upon request, Seller shall make such plan available to Fill-Rite or its designated representative for review.
7. **TERMINATION AND CANCELLATION.** Buyer by notice to Seller may terminate the contract with respect to all or any portion of the goods not delivered at the time notice of such termination is given to Seller and, in such event unless Seller is then in default under the contract, Seller shall be entitled to be reimbursed for all reasonable non-recoverable costs theretofore incurred by Seller in connection with the performance of the contract but not more than that portion of the purchase price properly allocable to the goods with respect to which the contract has been terminated. If Seller shall fail to make shipment or delivery at the time stated in the contract or otherwise breaches the contract, Buyer, by notice to Seller, in addition to any other remedies it may have hereunder or by law by reason of such breach, may cancel the contract with respect to all or any portion of the goods not delivered at the time notice of such cancellation is given to Seller without being liable for any costs with respect to the goods with respect to which the contract has been cancelled. No substitutions of any nature whatsoever will be made, unless authorized. Time is of the essence of the contract. Acceptance of late delivery shall not constitute a waiver of a claim for breach due to delay in delivery.
8. **GENERAL INSTRUCTIONS.** Seller shall include a packing list with each shipment and show purchase order, quantity, and contract number on each package, packing list, bill of lading, invoice and all correspondence.
9. **EXTRA CHARGES.** Unless otherwise provided in the contract, no charge shall be made by Seller for boxing, packing, crating or other charges.
10. **WARRANTIES.** In addition to any other description furnished or specified by law, Seller warrants that the goods will conform to specifications, drawings, samples or other descriptions furnished or specified by Buyer, will be merchantable, of high quality and fit for the purpose made known to Seller by Buyer and free from defects in design, material and workmanship. All warranties shall survive acceptance and payment.
11. **PARTIAL SHIPMENT AND ROUTING.** No partial shipments are to be made unless specifically authorized by Buyer in writing (e-mail is an acceptable form of communications). All materials must be forwarded by the particular route named and to the point given (if any); otherwise Buyer shall be entitled to reimbursement from Seller for the difference in freight and cost of carriage.
12. **INSPECTION.** All goods which do not exactly conform to the contract may be rejected by Buyer without prejudice to any other rights Buyer may have by reason of such failure to conform. A notice or communication that reasonably informs Seller of nonconformity in the goods shall be deemed to be notice of breach. Goods so rejected at the option of the Buyer shall be returned to Seller at Seller's expense and risk or held at the Seller's risk and expense for Seller's instructions. Seller shall reimburse Buyer for any expense incurred in unpacking, inspecting, repacking, storing and reshipping any goods so rejected. Buyer shall also be entitled to reimbursement from Seller for freight and other charges incurred with respect to such goods. Payment for goods before inspection shall not constitute acceptance thereof and is without prejudice to any and all claims buyer may have against Seller.

13. **INDEMNITY.** Seller will indemnify and save harmless Buyer and any purchaser from Buyer of the materials or articles furnished under this agreement, from and against any and all costs, damages, liabilities and expenses of any kind or nature whatsoever (including attorneys' fees) which may arise out of, or result from, or be reasonably incurred in contesting, any claim by any person, firm or corporation (a) arising from or related to (i) any alleged negligence, products liability, tort or other claim involving the design or manufacture of the products sold pursuant to this contract or the warnings or instructions or lack thereof provided or not provided by Seller with respect to such products, or (ii) the breach of any warranties extended by Seller in this contract or by operation of law, or (b) that the manufacture, purchase, or use or sale of any said materials or articles infringes or contributes to the infringement of any letters patent. Without prejudice to the generality of the foregoing, at the request of Buyer, Seller will defend at its own expense any suit brought against Buyer to enforce any such claims, it being understood that Buyer will give the Seller notice in writing of the starting of any such suit, Seller hereby agreeing to reimburse Buyer upon demand for any expense incurred by it in rendering such assistance. Buyer after any such demand, loss or liability may withhold from any amounts at any time payable to the Seller under this contract such sum or sums and for such period or periods as the Buyer may deem necessary to protect against possible loss or expense, including attorney's fees, from or in connection with any such demand, loss or liability. Seller will also indemnify and save harmless Buyer from and against loss of or damage to any and all patterns, molds, templates or materials delivered to Seller by or for Buyer so long as the same shall be in the Seller's possession; however such loss or damage may occur.
14. **DESIGN AND TRADEMARK.** If the goods are peculiar to Buyer's design, either as an assembly or component part of any assembly, or if the material bears Buyer's trademark and/or identifying mark, it shall not bear the trademark or other designation of the maker or Seller and similar material shall not be sold or otherwise disposed of to anyone other than Buyer.
15. **GOVERNMENT REGULATIONS.** Seller warrants that all applicable laws, rules and regulations of governmental authorities covering the production, sale and delivery of the goods shall be complied with.
16. **TAXES.** Unless otherwise provided in the contract, Seller shall hold Buyer harmless from the assessment or imposition of any excise, use or other tax (however designated) upon the production, sale, delivery or use of the goods to the extent such assessments or impositions are required or not forbidden by law to be borne by Seller.
17. **PRICE AND TERMS.** If the price is omitted in the contract, Seller's price shall be the lowest prevailing market price at time this order is acknowledged by Seller but no higher than the price last quoted by Seller to Buyer. The cash discount period, if any, shall date from receipt of goods or invoice, whichever is later. Unless otherwise provided in the contract, delivery shall be F.O.B. destination.
18. **SET-OFF.** Upon notice to Seller, Buyer may deduct damages for breach of warranty or any other provision of the contract from the amount shown as due Seller on any invoice, irrespective of whether the deduction and the invoice are unrelated to the same sale or series of sales.
19. **REMEDIES.** The remedies provided for herein shall be cumulative and in addition to any other remedies provided by law. No waiver of a breach of any provision of the contract shall constitute a waiver of any other breach or of such provision.



20. **VALIDITY.** If any provision in the contract is invalid or unenforceable in any respect, the validity and enforceability of the remaining provisions of the contract shall not be affected.
21. **APPLICABLE LAW.** The formation and performance of the contract shall be governed by the laws of the State of Ohio, without regard to its conflict of law rules.
22. **CONFIDENTIALITY.** Seller agrees to safeguard all materials and processes of a confidential nature and not to divulge any such materials or processes which may be disclosed to or developed by the Buyer in connection with the work under this purchase order. The Seller is required to obtain similar agreements of all his suppliers and agents to whom any work or duty relating to this purchase order may be allotted.

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