

## TERMS AND CONDITIONS OF SALE

These Terms and Conditions of Sale govern the sale of goods by Parts Pak, Inc. These Terms and Conditions of Sale will apply to all purchases of goods, whether the purchase is made online through Parts Pak, Inc.'s website, by telephone or by mail. Please read this document, the Terms of Use of Website and Privacy Cookie Policy carefully before placing your order. Parts Pak, Inc. may amend these Terms and Conditions of Sale from time to time.

### 1. Defined Terms.

"Business Day" shall mean a day, other than a Saturday, Sunday or federal holiday, when Parts Pak, Inc. is open for business.

"Buyer" shall mean the individual or entity purchasing the Goods.

"Contract" shall mean the contract between Buyer and Seller for the sale and purchase of the Goods in accordance with these Terms and Conditions.

"Delivery Address" shall mean the address stated by Buyer on the Order.

"Invoice" shall mean the invoice issued by Seller covering the Goods in the Order.

"Goods" shall mean the Goods of the Seller described in the Order.

"Order" shall mean the purchase order issued by Buyer to Seller.

"Terms and Conditions" shall mean these Terms and Conditions of Sale, which may be amended from time to time.

"Seller" shall mean Parts Pak, Inc.

"Specifications" shall mean the description or serial number of the Goods provided by the Buyer.

### 2. Basis of Contract.

2.1 The Order constitutes a binding offer by Buyer to purchase the Goods from Seller in accordance with and subject to these Terms and Conditions, as amended from time to time.

2.1 Seller will be deemed to have accepted the Order only when it sends Buyer notice of acceptance in writing. The Contract constitutes the entire agreement between the parties.

2.3 Buyer acknowledges it has not relied on any statement, promise, representation, assurance or warranty made or given by or on behalf of Seller which is not set out in the Contract.

2.4 Any samples, drawings, descriptive matter, or advertising produced by Seller and any descriptions or illustrations contained in Seller's catalogues or brochures or on Seller's website are produced for the sole purpose of providing an approximate idea of the Goods described in them. They shall not form part of the Contract.

2.5 Seller shall transfer to Buyer any applicable product warranties authorized by the manufacturer.

### **3. Prices/ Payment.**

3.1 The price of the Goods shall be specified on the Order. Pricing for Goods is subject to increase due to changes in market conditions or other causes beyond the Seller's reasonable control. Unless otherwise agreed to in writing by Seller, all prices quoted are exclusive of transportation and insurance costs, duties and all taxes. Buyer agrees to indemnify and hold Seller harmless for any liability for tax in connection with the sale, as well as with the collection hereof, including penalties and interest thereon. A price quotation provided by Seller shall not constitute an offer to the Buyer, and shall only be valid for a period of ten (10) Business Days from its date of issue.

3.2 Seller shall provide the Invoice for the Goods to Buyer upon delivery of the Goods. Buyer shall pay the Invoice in full within thirty (30) days after the date of the Invoice. Payment for Goods shall be made by check, money order, credit card or wire transfer (all fees to be borne by Buyer). Time of payment is of the essence. If the Buyer shall fail to make payment for the Goods when due, interest shall accrue at the maximum interest rate for sales contracts permitted under applicable law. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount. The Buyer shall pay all amounts due under the Contract in full without any set-off, counterclaim, deduction or withholding (except for any deductions or withholding required by applicable law). Seller may at any time, without limiting other rights or remedies it may have, set off any amount owing to it by the Buyer against any amount payable by Seller to Buyer.

3.3 If Seller becomes dissatisfied with Buyer's creditworthiness, Seller may change payment terms or decline to make further shipments until such time as Buyer's credit has been established to Seller's satisfaction.

### **4 No Exclusivity.**

The Contract is a non-exclusive agreement between Buyer and Seller for the purchase and sale of Goods.

### **5 Termination; Cancellation.**

Seller may cancel the Contract, as that term is defined in 13 Pa.C.S.A. § 2106, effective upon written notice to Buyer, in the event Buyer breaches the Contract. In the event Seller shall cancel the Contract, Seller shall retain any and all remedies for breach of the whole Contract or any unperformed balance thereof. Seller reserves the right to terminate the Contract, as that term is defined in 13 Pa. C.S.A. §2106, in the following events: (i) Buyer becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) Buyer becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, which is not fully stayed within ten (10) Business Days or is not dismissed or vacated within forty-five (45) days after filing; (iii) Buyer is dissolved or liquidated or takes any corporate action for such purpose; (iv) Buyer makes a general assignment for the benefit of creditors; or (v) Buyer has a receiver, trustee, custodian or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business. In the event Seller shall terminate the Contract, all of Seller's rights due to any prior breach of Contract by Buyer shall survive the termination.

### **6 Assignments.**

6.1 The Seller may, at any time, assign or otherwise transfer its rights, duties and obligation under the Contract.

6.2 Buyer shall not assign or otherwise transfer its rights, duties and obligations under the Contract, except with the prior written consent of Seller.

6.3 The Contract shall bind and inure to the benefit of the parties' successors and permitted assigns.

## **7 Intellectual Property.**

7.1 Buyer acknowledges that it has no rights in or to any of the intellectual property, including without limitation the trademarks and trade dress, copyrightable material, domain names, generic top-level domain name (gTLD), and patents used on and/or in connection with any of the Goods whether used on Goods, packaging, labeling, advertising, sales promotion materials, or otherwise ("Intellectual Property"). Buyer shall not attempt directly or indirectly to register, or otherwise make any claim of ownership or any other right in any of said Intellectual Property or anything confusingly similar thereto, and shall not at any time do, or cause to be done, any act or thing impairing or tending to impair any of the Intellectual Property.

7.2 Buyer shall not in any way alter, or permit the alteration of, the content, composition, presentation, container, packaging, or trademarks of any of the Goods.

7.3 Buyer shall notify Seller promptly of (i) any claim or action alleging the Buyer's activities relating to the Product and the Intellectual Property are infringing upon the intellectual property rights of others and (ii) any infringement of any of the Intellectual Property by others which comes to Buyer's attention.

7.4 Buyer hereby acknowledges that Seller has made no representations or warranties with respect to the status of any of the Intellectual Property including, but not limited to, the availability for use of the trademark(s) used on the Goods, or the ability to import, sell, or distribute any of the Goods, without infringing upon the rights of any third party, and Seller hereby disclaims any such representations or warranties. Any import, sale, or distribution of any of the Goods anywhere by Buyer shall be at Buyer's sole risk and responsibility, notwithstanding Buyer's obligations under Paragraph 7.3 above.

## **8 Modification of Terms and Conditions of Sale.**

These Terms and Conditions may be revised by Seller from time to time and Buyer agrees to be bound thereby. No modifications or additions to these Terms and Conditions shall be binding upon Seller unless agreed to in writing signed by an authorized representative of Seller.

## **9 Risk of Loss; Title.**

9.1 Title to the Goods and risk of loss or damage passes to Buyer upon delivery to the Delivery Address. If Buyer fails to accept delivery of any of the Goods on the date of delivery, or if Seller is unable to deliver the Goods to the Delivery Address on the date because Buyer has failed to provide appropriate instructions, documents, licenses, or authorizations, then (i) title and risk of loss to the Goods will pass to Buyer, (ii) the Goods will be deemed to have been delivered to Buyer, and (iii) Seller, at its option, may store the Goods until Buyer takes possession of them, at which time Buyer will be liable for all costs and expenses resulting from the failure (including but not limited to the cost of storage and insurance).

9.2 Seller shall maintain a purchase money security interest in the Goods until Seller receives payment in full for the Goods.

## **10 Force Majeure.**

Neither party shall be liable for any failure or delay in performing its obligations under the Contract to the extent that such failure or delay is caused by a force majeure, such as war, fire, flood, other natural disasters or extreme adverse weather conditions, strike, labor trouble, breakage of equipment, accident, riot, act of governmental authority, act of God or any other contingency beyond the reasonable control of the parties interfering with the production, supply, transportation, acceptance or use of any Goods covered

by the Contract. In the event of inability to obtain, on terms deemed by Seller to be acceptable, any raw material (including energy source) used in connection with any of the Goods, quantities so affected shall be eliminated from the Contract without liability, but the Contract shall otherwise remain unaffected. Events of force majeure also include, but are not limited to, the adoption or implementation of any (a) federal or state occupational safety and health standard, or (b) pollution, air emission, waste removal and/or effluent discharge control program, standard, restriction, order or directive by a federal, state or local government body or agency -- if compliance with the same would result in additional and/or unexpected costs to Seller which would effectively prevent Seller from realizing a reasonable commercial profit hereunder. During any period of shortage due to any of said causes, Seller may allocate its supply of raw materials among its various uses therefore (e.g., manufacturing and sales), and allocate its supply of Goods among its customers in any manner which is fair and reasonable. In no event shall Seller be obligated to purchase goods in order to make delivery to Buyer.

### **11 Limited Warranty.**

Seller shall assign to Buyer any applicable manufacturer warranties extended to Seller. Seller's warranty is limited to the Goods conforming, in all material respects, with the Specifications. SELLER MAKES NO WARRANTY RESPECTING THE MERCHANTABILITY OF THE GOODS, THEIR FITNESS FOR ANY PARTICULAR PURPOSE OR THE NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. SELLER MAKES NO WARRANTY AGAINST LATENT DEFECTS. THERE IS NO OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT SUCH AS IS EXPRESSLY STATED IN THIS PARAGRAPH.

### **12 Limitation of Liability.**

Seller shall not be liable to Buyer for direct, indirect, special or consequential damages, or for loss of production or loss of profits or claims of third parties against Buyer, resulting from any cause whatsoever including, but not limited to, any delay, act, error or omission of Seller, and Seller's sole liability to Buyer for any cause of action, whether based upon negligence, contract or strict liability, shall in no case exceed the price of the Goods. Buyer assumes all risks and liability arising from unloading, discharge, storage, handling and use of the Goods sold hereunder, including risk or damage resulting from the use of such Goods either alone or in combination with other materials. Seller shall not be liable for any technical difficulties associated with receiving orders through the website or sending acceptance of orders via any form of electronic communication.

### **13 Delivery & Acceptance:**

13.1 The method of delivery of the Goods varies depending on the size and type of Goods delivered, and the Delivery Address. Seller shall deliver the Goods to the Delivery Address provided in the Order. Delivery of the Goods shall be completed upon the Goods' arrival at the Delivery Address. Any delivery date provided by Seller for the Goods is only an estimate and is based upon prompt receipt of all necessary information from Buyer. Time of delivery is not of the essence. If Buyer causes Seller to delay shipment or completion of the Goods, Seller will be entitled to any and all extra costs and expenses resulting from the delay. Seller's failure to deliver within the time estimated will not be a material breach of the Contract on Seller's part.

13.2 Seller will deliver the Goods in accordance with standard methods for packaging and shipping same unless otherwise agreed to in advance in writing by the parties. Seller may, upon advance agreement with Buyer, without liability or penalty, make partial shipments of Goods to Buyer. Each partial shipment of Goods will constitute a separate sale, and Buyer shall pay for the portion of Goods shipped. Buyer is responsible for obtaining any import licenses and other consents required for the shipment of Goods at its own expense, and will provide the licenses and consents to the Seller before shipment.

13.3 If some or all of the Goods are defective or otherwise do not comply with the warranty provided in Section 11 hereof, the Buyer must give notice to Seller in writing within a commercially reasonable period of time after delivery of the Goods ("Notice of Defect"). After receipt of the Notice of Defect from Buyer, Buyer shall issue a Return Merchandise Authorization ("RMA") to Buyer, and Buyer shall return the Goods to Seller's place of business at Buyer's sole expense. After Seller has had a reasonable opportunity to examine the returned Goods, and in the event Goods delivered to Buyer are not subject to a manufacturer's warranty, Seller shall, at its option, replace the defective or nonconforming Goods, refund the purchase price of the Goods or issue a credit for the price of the Goods to Buyer. Seller reserves the right to charge Buyer a re-stocking fee. Notwithstanding anything herein to the contrary, the Seller shall not be liable if the Goods fail to conform with the warranty provided in Section 11 hereof in the following events:

(a) The Buyer makes further use of such Goods after giving notice in accordance with this Section 13.3;

(b) the defect arises because the Buyer failed to follow the Seller's oral or written instructions as to the storage, installation, use and maintenance of the Goods or (if none) good trade practices regarding the same;

(c) the Buyer alters or repairs such Goods without the written consent of the Seller;

(d) the defect arises as a result of fair wear and tear, willful damage, negligence, abnormal storage or working conditions; or

(e) the Goods differ from the Specifications as a result of changes made to ensure they comply with applicable statutory or regulatory requirements.

#### **14 Miscellaneous.**

The Contract constitutes the entire agreement between the parties concerning the subject matter hereof. No statements or agreements, oral or written, made prior to or at the signing hereof shall supplement or modify the written terms hereof. No amendment, modification, waiver, or release from any provisions hereof shall be enforceable unless the same is in a writing signed by the party against which enforcement of same is sought which specifically states that the same is an amendment to the Contract. All notices shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile (with confirmation of transmission) or email if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the addresses indicated herein. The only official version of these Terms and Conditions, and all communications related to these Terms and Conditions, will be in the English language. The Contract shall be construed according to the laws of the Commonwealth of Pennsylvania.

#### **15 Compliance with Laws.**

Buyer agrees that, in performing its obligations under these Terms and Conditions, Buyer will comply (and will require all of its employees and other agents involved in Buyer's performance under these Terms and Conditions to comply) with all applicable federal, state, local and foreign laws, rules, statutes, regulations, ordinances, and other provisions having the full force and effect of law, and orders, policies, judgments or requirements of any applicable governmental or regulatory authority.

#### **16 Taxes and Other Charges**

Any use tax, sales tax, excise tax, duty, custom, inspection or testing

fee, or any other tax, fee or charge of any nature whatsoever imposed by any government authority, on or measure by the transaction between the Buyer and Seller shall be paid by the Buyer in addition to the price quoted or invoiced. In the event Seller is required to pay any such tax, fee or charge, Buyer shall reimburse Seller therefore or, in lieu of such payments, Buyers shall provide Seller at the time the Contract is submitted an exemption certificate or other document acceptable to the authority imposing the tax, fee or charge.

Purchaser shall be solely responsible for any applicable sales, use, excise or similar tax and agrees to indemnify Seller for any such tax if not properly paid by Purchaser. Purchaser is responsible to confirm that its account is set up properly and that any applicable exemption documents are provided. Purchaser should contact Seller to correct or update its account information and should note any updates to this effect on applicable orders.