

Terms and Conditions of Sales

Revised May 1, 2019

1. ACCEPTANCE.

For purposes of the "Agreement" between the Buyer and Seller, "Seller" shall mean the Portescap legal entity that sells the Goods to Buyer. To the extent that a disagreement may arise under the "Agreement", that Portescap legal entity shall be entitled to all remedies available under applicable law. All orders are subject to acceptance by Seller at Seller's applicable manufacturing facility. "Terms and Conditions" means collectively, the terms and conditions contained herein, any Seller's "Supplement to Terms and Conditions of Sale", and terms and conditions stated in Seller's quotation. "Agreement" means the agreement arising from the acceptance of this order and its attachments, including these Terms and Conditions, which are incorporated into and are part of the purchase order. Any terms and conditions originating with Buyer are superseded by the Terms and Conditions and shall not be or become part of the /Agreement between Buyer and Seller unless specifically accepted in writing signed by a duly authorized representative of Seller. Acknowledgement of the receipt of any order, including signing and returning to Buyer as its acknowledged copy, if any, shall not constitute acceptance by the Seller of any additional or different terms and conditions, nor shall Seller's commencement of an effort, in itself, be construed as acceptance of an order containing additional or different terms and conditions. Seller shall have no liability until and unless the orders are accepted. Buyer assumes full responsibility for inaccurate, incomplete or faulty data supplied to Seller for Seller's use in the performance of orders. For purposes of the Agreement between Seller and Buyer, the Seller shall be the legal entity where the Goods are manufactured.

2. PRICES.

Prices and shipping lead times are subject to change without notice for any reason, including without limitation, changes related to the cost of raw materials for the Goods. Any such changes shall apply to booked and/or acknowledged orders. This information is prepared for the purpose of furnishing general information and are not quotations or offers to sell on the part of the Seller. No payment discounts are offered, and minor inadvertent administrative errors contained in an invoice are subject to correction and shall not constitute reason for untimely payment. All Prices are quoted net, Ex-Works (EXW), (INCOTERMS 2010), Seller's factory in US dollars unless noted differently within associated quotation. Shipping, packing, applicable taxes, (including VAT), transport, insurance and export costs are not included in the pricing. Goods shall be billed at the prices in effect at the time of shipment. Partial shipments on quantity orders shall be deemed a separate and independent Agreement for billing. Freight charges will be "collect" unless specified otherwise. Prepaid charges will be invoiced using Seller's freight and handling rates. Courier service charges will be prepaid and added to the invoice using current rates.



3. TAXES.

Prices do not include any sales, use, excise, property, import, export or such taxes that may be levied on the transaction by local, state, federal or foreign governments. Any such taxes shall be the responsibility of Buyer. If Seller is required to pay any such taxes, the cost shall be added to the invoice or billed to Buyer separately.

4. DELIVERY.

Unless otherwise agreed to by Seller, all shipments are made Ex Works (INCOTERMS 2010) Seller's factory. Delivery to a common carrier or licensed trucker shall constitute tender of delivery to Buyer and all risk of loss or damage in transit shall be borne by Buyer. In no event shall Seller be held liable for any damages or expenses caused by delays in delivery. The parties recognize that delivery dates are approximate.

Method and route of shipment are at Seller's discretion, unless Buyer supplies explicit instructions that are accepted by Seller in writing in accordance with these Terms and Conditions. If Seller is prepared to make shipment, and Buyer delays delivery, terms of payment shall apply as though delivery had been affected as of the date that Seller was prepared to make shipment. All costs associated with handling, care and custody of the Goods shall be to the account of Buyer. The acceptance of the Goods by Buyer shall constitute a waiver of all claims for delay. Buyer and Seller agree that "TIME IS NOT OF THE ESSENCE" in Seller's performance of this order.

Any request for modification of delivery times or quantities for each delivery, must be submitted to Seller in writing at least twelve (12) weeks in advance and Seller reserves the right to claim compensation for costs incurred in the execution of the order, or to carry out the deliveries as indicated on the front of this order confirmation.

Seller reserves the right to ship the Goods up to five (5) days in advance of the specified delivery dates without affecting the terms of payment, price or any other of the terms of the order. Delivery dates are approximate and an eventual delay in delivery does not give the Buyer the right to cancel or reduce the order, nor to claim compensation for direct, indirect or consequential damages, loss of production, loss of profit, etc., Seller shall not be liable for delay in delivery or failure to manufacture due to causes beyond its or its subcontractors' reasonable control, including, but not limited to, delays or failures due in whole or in part to, acts of God, acts of Buyer, acts of civil or military authority, priorities, fire, strike, floods, acts of terrorism, insurrection, epidemics, quarantine, war, riot, transportation delays, acts of a public enemy, obsolescence of components, inability to obtain necessary labor, materials or manufacturing facilities, or other causes similar to those enumerated. In the event of any such delay or failure, the date of delivery shall be extended for a period equal to the time lost by reason of the delay.

5. SCHEDULED SHIPMENT POLICY.

All Goods listed are eligible for scheduled shipment under the following terms:

- Releases to be entered into the Seller's system are limited to shipment requested within 12 months of receipt of the order by Seller.
- Releases will be entered into Seller's system with firm release dates only.
- After an order is received, booked and scheduled in the Seller's system, any delivery schedule changes may be subject to additional charges.
- Prices are valid only for releases that are booked and acknowledged. All unreleased, and/or unscheduled shipments of Goods are subject to invoice at the price of the Goods at the time of shipment.
- Cancellations of orders require a notice period as follows:
 - Within four (4) weeks of scheduled shipment (within eight (8) weeks if ocean transit)
 - a. Cancellation charges will equal to full price of order.
 - Beyond four/eight (4/8) weeks of scheduled shipment
 - a. Cancellation charges will be equal to 40% of selling price.
 - Beyond twelve (12) weeks of scheduled shipment
 - a. Cancellation charges will be equal to the cost of any unique materials that cannot be cancelled, plus 10% for freight and administrative charges. Minimum charge is US\$100.
- Seller reserves the right to ship and bill "in place" any order which is complete and which meets Buyer's requirements and specifications as defined in the order if shipment of this order is delayed by Buyer more than five (5) calendar days from its scheduled shipping date.

6. TERMS OF PAYMENT.

Terms of payment are Net 30 from date of invoice. Late charges at the interest rate (i) of 1.5% per month (18% annually) or (ii) the maximum rate permitted under applicable law, whichever is less, may be charged on past due accounts. All shipments on open account are subject to approval of Seller's credit department.

7. LIMITED WARRANTY.

Seller warrants that the Goods sold hereunder are free from defects in material and workmanship for the Warranty Period set forth below. Seller warrants its Good(s) only to the original Buyer. There are no warranties whatsoever on Goods built or acquired, wholly or partially, to a Buyer's designs or specifications.

This express warranty in this Section is in lieu of and excludes all other warranties, express or implied, by operation of law or otherwise including THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE (WHETHER KNOWN TO SELLER OR NOT), all other such warranties being hereby expressly disclaimed by Seller and waived by Buyer.



Written notice of claimed defects shall have been given to Seller within the Warranty Period, and within thirty (30) days from the date any such defect is first discovered. The Good(s) or parts claimed to be defective must be returned to Seller, accompanied by a Return Material Authorization (RMA) issued by Seller's facility responsible for supplying Goods, with transportation prepaid by Buyer, with written specifications of the claimed defect within thirty (30) days of the RMA being issued. Warranty may be voided if the Goods are returned modified or disassembled.

The Warranty on all Goods will be for a period of 12 months from date of manufacture ("Warranty Period").

Seller's warranty obligations are limited to at its sole discretion (a) repairing or replacing, at its approved repair facility, any Goods or parts which prove to Seller's satisfaction to be defective as a result of defective materials or workmanship, in accordance with Seller's stated warranty or (b) in the event that Seller is unable to repair or replace the alleged defective product, the Seller may return the purchase price of the applicable Goods to satisfy its warranty obligations. This sets forth the sole obligation of Seller and sole remedy of Buyer in connection with this warranty.

If a warranty claim is valid, Seller may, at its sole discretion pay reasonable one-way costs of transportation of the defective Goods from the original destination. Under no circumstances shall Seller be liable for removal of Seller's Goods from Buyer's equipment or re-installation into Buyer's equipment. No person including any agent, distributor, or representative of Seller is authorized to make any representation or warranty on behalf of Seller concerning any Goods manufactured by Seller.

8. LIMITATION OF LIABILITY.

IN NO EVENT SHALL SELLER BE LIABLE (AND BUYER WAIVES ALL CLAIMS AGAINST SELLER) FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL OR INDIRECT DAMAGES, COSTS OR EXPENSES BASED UPON NEGLIGENCE, BREACH OF WARRANTY, BREACH OF CONTRACT, STRICT LIABILITY IN TORT, OR ANY OTHER LEGAL THEORY OR CAUSE OF ACTION ARISING, DIRECTLY OR INDIRECTLY, FROM GOODS THAT ARE THE SUBJECT OF THIS AGREEMENT, OR THE USE OR FAILURE THEREOF, INCLUDING BUT NOT LIMITED TO, DAMAGES FOR LOSS OF PRODUCTION, PROFITS OR INJURY TO PERSONS OR PROPERTY. THIS DISCLAIMER SHALL REMAIN IN FULL FORCE AND EFFECT EVEN IN THE EVENT THAT BUYER'S SOLE AND EXCLUSIVE REMEDY SHALL FAIL OF ITS ESSENTIAL PURPOSE.

SELLER'S MAXIMUM LIABILITY SHALL NOT EXCEED THE PRICE PAID BY BUYER FOR THE GOODS THAT GAVE RISE TO ANY SUCH LIABILITY. THE PROVISIONS OF THIS PARAGRAPH SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE AGREEMENT AND SHALL APPLY REGARDLESS OF THE BASIS OF BUYER'S CLAIM, BE IT IN CONTRACT, WARRANTY, TORT OR OTHERWISE. THE REMEDIES OF BUYER CONTAINED IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO BUYER UNDER APPLICABLE LAW.



9. GENERAL INDEMNITY.

Buyer agrees to hold Seller harmless from any and all liability, and to pay all costs and attorney's fees, for injury or damage to persons or property caused in any manner by Goods covered by the order while in possession or under the control of **Buyer or Buyer's successor in interest.**

10. INTELLECTUAL PROPERTY RIGHTS INDEMNITY.

Seller shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as specifically provided in this section. Any liability of Seller shall be limited as set forth in section 9. Seller, may at his sole discretion defend and indemnify Buyer against allegations of infringement of patents, trademarks, copyrights, trade dress and trade secrets as (hereinafter collectively referred to as the "Intellectual Property Rights") subject to the limitations and conditions set forth in this section. Seller will defend at its expense and will pay the cost of any settlement or damages awarded in any action brought against Buyer based on an allegation that the Goods sold to Buyer infringe the Intellectual Property Rights of a third party. Seller's obligation to defend and indemnify Buyer is contingent on Buyer notifying Seller within ten (10) days after Buyer becomes aware of such allegations of infringement, and Seller having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If the Goods are subject to a claim that it infringes the Intellectual Property Rights of a third party, Seller may, in its sole discretion, procure for Buyer the right to continue using the Goods, replace or modify the Goods so as to make it non-infringing, or offer to accept return of the Goods and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Seller shall have no liability for claims of infringement based on information provided by Buyer, or directed to Goods for which the designs are specified in whole or in part by Buyer, or infringements resulting from the modification, combination or use in a system of the Goods. The foregoing provisions of this section shall constitute Seller's sole and exclusive liability and Buyer's sole and exclusive remedy for infringement of Intellectual Property Rights. If a claim is based on information provided by Buyer or if the design for an Item is specified in whole or in part by Buyer, Buyer shall defend and indemnify Seller for all costs, expenses or judgments resulting from any claim that such Item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

11. PROPERTY RIGHTS.

Except where otherwise expressly agreed, all patterns, tools, jigs and fixtures, drawings, designs, software and other materials and data developed, fabricated or otherwise required in the performance of this order, notwithstanding any charges, shall be and remain Seller's property and in Seller's possession and control.

Except as specifically provided for in this order or in an agreement signed by both Seller and Buyer, Buyer shall have no right in any technical data, Intellectual Property Rights, and computer software



associated with this order or any Goods furnished to Buyer. In the event Seller agrees to provide Buyer with proprietary information, drawings, designs or data in conjunction with this order, Buyer agrees that such information, drawings or data will not be disclosed to a third party, or used by Buyer, without the written permission of an authorized official of Seller.

The Goods delivered under this Agreement shall remain the property of Seller until full payment is received by the Seller.

12. RIGHT TO GOODS; DEFAULT, INSOLVENCY.

If Buyer becomes insolvent or if Buyer is in default for any reason under the terms of this or any other agreement between Buyer and Seller, Seller shall be entitled, at Seller's sole discretion, to discontinue further performance of all or part of the order, to withhold shipments, in whole or in part, and/or to recall Goods in transit, retake same, and repossess all Goods which may be stored with Seller for Buyer's account, without the necessity of taking any other proceedings. Buyer consents that all Goods so withheld, recalled, retaken or repossessed shall become Seller's absolute property. The foregoing shall not be construed as limiting, in any manner, any rights or remedies available to Seller under contract, at law or equity.

13. CONDITIONS.

The order is accepted with the understanding that it is subject to Seller's ability to obtain the necessary raw materials, and the order and all shipments applicable thereto are subject to Seller's current manufacturing schedules, and governmental regulations, orders, directives and restrictions that may be in effect from time to time.

14. NON-WAIVER BY SELLER.

Waiver by Seller of a breach of any of the Terms and Conditions shall not be construed as a waiver of any other breach. Any failure at any time of Seller to enforce any provision of these Terms and Conditions shall not constitute a waiver of such provisions or prejudice Seller's right to enforce such provisions at any time. Should any provision of these Terms and Conditions be or become void or not enforceable by force or operation of law, all other provisions shall remain valid and enforceable.

15. ASSIGNMENT.

Buyer shall not assign, subcontract, or otherwise transfer the order, in whole or in part, without the prior written consent of Seller, and any such assignment, subcontract, or transfer without Seller's prior written consent shall be void.



16. BUYER SUPPLIED MATERIAL.

All material or equipment owned or furnished by Buyer while in Seller's possession will be carefully handled and stored but Seller will not be responsible for accidental loss thereof or damage thereto.

17. CHANGES.

Changes in whole or in part of the order can be made only with Seller's prior written consent and upon terms that will permit an equitable adjustment to be made in both the price and schedule of the Goods to be delivered. Changes will be recognized and implemented only when communicated to Seller by Buyer's authorized representative, in writing.

18. TERMINATION.

Termination of the order in whole or in part can be made only with Seller's prior written consent and upon terms that will indemnify Seller against loss and afford an equitable profit.

19. PLACE OF MANUFACTURE.

Seller has the right to determine in which of Seller's manufacturing facilities all or part of the order may be manufactured, fabricated, processed, assembled, etc.

20. RESERVATION OF RIGHTS.

Seller reserves the right to make subsequent improvements and changes in the design of Goods without imposing any obligation to make such changes or improvements upon Goods sold to Buyer.

21. INSPECTION AND ACCEPTANCE OF GOODS.

Final inspection and acceptance of Goods provided under this order shall be made by Buyer within fourteen (14) days of receipt of the Goods at Buyer's facility, except in the cases where Buyer's source inspector or authorized representative inspects the Goods at Seller's facility. Failure of Buyer to inspect and reject in writing, said Goods within the above time period (where source inspection is not applicable) shall be deemed to mean acceptance has occurred. In the event Buyer's source inspector is delegated to perform inspection and acceptance, then sign-off of the relevant test documentation by the source inspector or authorized representative shall constitute acceptance of the Goods by Buyer. All Goods rejected at inspection shall adhere to the warranty and RMA parameters of Section 7.



22.INSTALLATION.

All Goods shall be installed by and at the expense of Buyer.

23.GOVERNING LAW; LIMITATION ON ACTIONS.

This order shall be governed and construed in accordance with the laws of the State of Delaware, USA. No actions arising out of the sale of Goods covered by this order, other than an action by Seller to recover the purchase price of such Goods, may be brought by either party more than one (1) year after the cause of action accrues.

24.RESTRICTIONS ON EXPORT.

Buyer acknowledges that the Goods and any technical data related to the Goods may be controlled for export by the U.S. Department of Commerce or Department of State and that such items may require authorization prior to export from the United States or re-export. Buyer agrees that it will not export, re-export, or otherwise distribute the Goods or any technical data related thereto, in violation of any applicable export control laws or regulations.

25.UNCISG.

With respect to transactions to which the 1980 United Nations Convention for the International Sale of Goods (UNCISG) would otherwise apply and notwithstanding the venue to which the parties to a particular order may have agreed for dispute resolution, the rights and obligations of the Parties hereto including these Terms and Conditions shall not be governed by the provisions of the UNCISG.

26.Entire Agreement.

This is the complete and exclusive statement of the agreement between Seller and Buyer with respect to Buyer's purchase of the Goods. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer.