

Terms and Conditions of Sale

The following terms and conditions of sale are incorporated and made a part of the attached quotation between **Barber-Nichols, LLC** (Seller) and the Buyer.

ARBITRATION

All unresolved claims, demands, or disputes between Buyer and Seller arising out of or related to the attached quotation and sale of goods to Buyer shall be resolved by final and binding arbitration by a single arbitrator administered by the American Arbitration Association and under its Commercial Rules. In lieu thereof the parties may mutually agree in writing to a designated arbitrator and submit the dispute for resolution pursuant to the Commercial Rules. A final award may be entered in any court having jurisdiction thereof. Any such arbitration shall be held in Denver, Colorado, to the exclusion of any other venue. The prevailing party in any such arbitration shall be entitled to recover its reasonable attorney's fees except as limited under any other provision of these Terms & Conditions of Sale.

Notices and demands for arbitration shall be served on the parties at their respective addresses recited in the quotation, or at such other address provided in writing by one party to the other.

CHANGES, RESCHEDULES AND CANCELLATIONS

Buyer may request to modify the contract, including designs, specifications, scope, quantities and delivery dates, or may request to cancel all or part of this order; however, no such requested modification or cancellation shall become part of the contract between Buyer and Seller unless accepted by Seller in a written amendment to this Agreement. Acceptance of any such requested modification or cancellation shall be at Seller's discretion and shall be upon such terms and conditions as Seller may require. If Buyer cancels or terminates this order, Buyer shall pay Seller's reasonable charges, including but not limited to, a quantity price adjustment for any goods delivered, and all other costs incurred and committed for by Seller, and Seller's pro rated profit thereon.

CLAIMS

If any of the Goods received by Buyer are nonconforming, damaged, visibly defective, or if the quantities received by Buyer do not agree with the quantities indicated on the shipping documents, and if Buyer intends to assert any claim against Seller on this account, Buyer shall within 45 days after receipt of such of the Goods, furnish Seller with detailed written information of such damage, non-conformance, defect or shortage. Buyer's failure to so inform Seller of Buyer's use of the Goods shall be Buyer's acknowledgement that Seller has satisfactorily performed.

CONFIDENTIALITY

Buyer will keep confidential all information, drawings, specifications or data furnished by Seller and marked as Confidential, and shall not divulge or use such information, drawings, specifications or data for the benefit of any third person or entity. All information, drawings, specifications or data furnished or disclosed to Seller by Buyer in connection with this contract is furnished or disclosed as a part of the consideration for this contract.

DELIVERY

The prices quoted are for the delivery dates provided on the Seller's quotation on an "After Receipt of Order (ARO)" basis unless otherwise noted, and are only valid for the stated quote validity. Firm deliveries will be reconfirmed to Buyer by order acknowledgement within 14 days of order receipt. While the Seller shall have no obligation to comply with unilateral directives to change schedules or temporarily cease work, Seller will endeavor to accommodate Buyer's reasonable written request for acceleration or deceleration made at least sixty/thirty (60/30) days respectively prior to scheduled delivery. Such changes may or may not be accepted by Seller at its sole discretion. In the event Seller accepts such changes, Seller shall be under no obligation to comply therewith until a price adjustment acceptable to Seller is negotiated between the parties and evidenced by a written order amendment authorizing the change. Seller may offer and accomplish early delivery without penalty, provided Buyer is given written notification 7 days prior to the accelerated delivery date. Domestic delivery terms are F.O.B. Seller's place of business in Arvada, Colorado USA (as defined by section § 2-319 of the Uniform Commercial Code). International delivery terms are EXW Seller's place of Business in Arvada, Colorado USA (as defined by ICC Incoterms 2000) unless otherwise noted.

ENTIRE AGREEMENT/GOVERNING LAW

The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions expressly accepted by Seller in writing, shall constitute the entire Agreement concerning the items sold, and there are no oral or other representations or agreements which pertain thereto. This Agreement shall be governed in all respects by the law of the State of Colorado. No claims or dispute resolution procedure arising out of the sale of the items sold hereunder or this Agreement may be brought by either party more than two (2) years after any such claim accrues.

EXPORT REGULATIONS

Buyer acknowledges that if the items purchased hereunder are to be exported, they are subject to the U.S. Commerce and/or State Department Export Regulations and Buyer accepts full responsibility for and agrees to comply fully with such regulations. If Buyer takes delivery of goods in the U.S., Buyer accepts full responsibility for obtaining export licenses and re-export permission. If Buyer takes delivery outside of the U.S., buyer agrees to provide all requested documentation for export license application by Seller, and is liable for reasonable cancellation charges on work accomplished in the event any license is rejected.

FORCE MAJEURE

In addition to other liability limitation herein contained neither party shall be responsible to the other for any loss or damage due to failure or delay in performance or delivery of any of the items or services required under this order when such delay or failure is due to causes beyond the failing or delaying parties reasonable control. Such causes shall include without limitation fires, floods, epidemics, quarantines, unusually severe weather, embargoes, wars, political strife, riots, terrorist acts, delays in transportation, compliance with any regulation or directives of any national, state or local municipal government or authority and unforeseeable shortages in fuel, power, materials or labor.

GOVERNMENT CONTRACTS/COMPLIANCE WITH LAWS

Where Buyer has indicated that Buyer's order is or will be placed under a prime contract with the United States Government or a subcontract thereunder and has designated any one or more of the clauses contained in the Armed Services Procurement Regulations (FARS/DFARS) as presently in effect, such clauses so designated are incorporated herein to the extent they are required by any Federal statute or regulations or by the terms of Buyer's prime contract or subcontract.

LIMITATION OF LIABILITY

Notwithstanding any other provisions hereof, and without waiving any of Sellers' disclaimers, Seller shall not under any circumstances be liable for any damages greater than the unit price of any item(s) sold hereunder with respect to which any claim is made, including all costs and expenses and attorney fees, special, incidental or consequential damages of any nature whatsoever whether arising from Seller's breach of contract, or breach of express or implied warranty, arising in tort, or otherwise, at law or in equity, including any law giving rise to a claim of strict liability, or from any other cause.

PAYMENT TERMS

Payment terms are offered as Net 30 days with approved credit unless otherwise agreed to in writing. Payment is due against Seller's dated invoice, which will coincide with goods delivery date.

PROPERTY OF SELLER

Unless otherwise negotiated, all designs, inventions (whether or not patented), processes, technical data, know how, component drawings, plans and/or confidential information related to the items or services to be purchased (Hereinafter "Property"), not furnished by Buyer, are exclusively Seller's Property, and all rights, title and interest in and to such Property shall remain exclusively in Seller.. Buyer shall not use or disclose such Property to any third party or any one not having a need to know, including employees, without the prior written consent of Seller. Title to all tools, test equipment and facilities not furnished by Buyer or specifically paid for by Buyer as a separate line item under any order, shall remain with Seller.

RETURNED GOODS

Any return of goods to Seller, for repair, service or warranty consideration must receive written approval and return authorization prior to receipt by Seller. Buyer is responsible for any product decontamination and submittal of any required MSDS (Material Safety Data Sheet) and Seller retains the right to reject any shipment without such documentation. Goods shipped to Seller for repair, replacement, or service shall be shipped freight paid by Buyer.

SUSPENSION OF PERFORMANCE

If in Seller's judgment, reasonable doubt exists as to Buyer's financial responsibility, or if Buyer is past due in payment of any amount owing to Seller, Seller reserves the right, without liability and without prejudice to any other remedies, to suspend performance, decline to ship, or stop any material or the Goods in transit, until Seller receives payment of all amounts owing to Seller, whether or not due, or adequate assurance of such payment.

TAXES

Unless stated otherwise in this quotation, the selling prices do not include Federal, State, or Local sales, use, or other taxes that may be applicable to the sale of offered products and/or services. Buyer shall be solely responsible for any import and other foreign duties and taxes on Goods. The amount of any such applicable taxes will be added to the invoice at the rate in effect at the time of sale.

TOOLS, DIES AND FIXTURES

All tooling, dies and fixtures are the property of Seller. Seller will accept Buyer's special tooling if sent freight prepaid. Seller will maintain this tooling, exercising reasonable care, in order to produce Buyer's Products. Permanent molds for cast Products shall be the property and responsibility of Seller.

VALIDITY PERIOD

All offers of sale by Seller are firm for thirty (30) days from the date of the offer unless otherwise specifically stated in the Seller's offer or as otherwise may be expressly agreed to in writing by the Seller. All such offers of Seller are subject to change without notice after this period unless otherwise negotiated.

WARRANTY

The following warranty is extended to purchaser on new products manufactured by Seller:

Seller warrants all components and materials of its manufacture against defects in workmanship and material for 12 months from date of equipment start-up, not to exceed 18 months from date of delivery to Buyer. Seller will repair or replace such components or materials as Seller finds defective (domestic shipments are F.O.B. Arvada, Colorado as defined by section § 2-319 of the Uniform Commercial Code and international shipments are EXW Arvada, Colorado as defined by ICC Incoterms 2000). This warranty is limited to the repair or replacement of defective components or materials, subject to the conditions stated herein and to products returned to Seller's facility, freight prepaid. This warranty does not cover the cost of labor to remove or reinstall Seller's product from or into any other product into which it has been incorporated or made a part of.

Seller shall not be responsible for any consequential or incidental damages incurred as a result of any defect in components or materials or loss arising from any cause by reason of the operation or failure of the operation of Seller's product.

No claim shall be made pursuant to this warranty until the full price of the shipment of which any unit or units with defective components or materials is a part has been paid.

THIS WARRANTY IS THE ONLY WARRANTY APPLICABLE TO SELLER'S PRODUCT AND EXCLUDES ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND AGAINST INFRINGEMENT.

THIS WARRANTY IS VOID IF:

1. SELLER'S PRODUCT HAS BEEN DAMAGED BY FREEZING, FIRE OR ANY OTHER CONDITIONS NOT ENCOUNTERED IN ORDINARY USE.
2. SELLER'S PRODUCT IS NOT INSTALLED, OPERATED, MAINTAINED OR SERVICED IN ACCORDANCE WITH SELLER'S SPECIFICATION.
3. SELLER'S PRODUCT IS DAMAGED DUE TO DIRT, AIR, MOISTURE OR OTHER FOREIGN MATTER ENTERING THE PRODUCT.
4. SELLER'S PRODUCT IS DAMAGED DUE TO IMPROPER HANDLING, IMPROPER STORAGE OR FAILURE BY BUYER OR ITS CUSTOMER TO USE REASONABLE CARE TO PROTECT THE PRODUCT DURING THE WARRANTY PERIOD.