

THE AEROACOUSTIC CORPORATION

TERMS AND CONDITIONS OF SALE

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A. Controlling Effect of These Terms and Conditions

Any terms and conditions stipulated in Buyer's order which is at variance with Seller's terms and conditions shall NOT be binding upon Seller unless Seller specifically agrees in writing.

B. Acceptance

- (1) All orders are subject to acceptance by Seller at its Roselle, New Jersey office.
- (2) Buyer's failure to object in writing within five (5) days to any of Seller's terms and conditions shall constitute Buyer's acceptance. Additionally, Buyer's receipt of any portion, or all, of the goods and services from Seller to Buyer shall constitute Buyer's acceptance.

C. Prices

- (1) Seller's proposals and price quotations are binding for thirty (30) days and apply only to the quantity and delivery stipulated in Seller's proposals and quotations. Thereafter, price subject to change without notice.
- (2) Prices shall not be in excess of those permitted by any applicable Federal price control status and regulations.
- (3) Prices do not include shipping charges. Buyer shall prepay all shipping charges F.O.B. point of origin, Seller's plant.
- (4) All prices are exclusive of any local, state or federal taxes.

D. Cancellations

If Buyer cancels an order, Buyer agrees to pay Seller:

- (1) 20% of the order if cancellation occurs after approval of drawings but before fabrication;
- (2) 40% of the order if cancellation occurs after shop drawings have been completed;
- (3) 70% of the order if cancellation occurs after material fabrication;
- (4) the actual cost plus 20% of any and all "buy outs" and materials or items supplied that Seller does not manufacture;
- (5) 100% of the order after assembly begins
- (6) A premium may be charged for any "rush job" cancelled, or other order cancelled after shop preparation.

E. Credit

All orders are subject to credit approval by Seller's Credit Department. Seller reserves the right to require full or partial payment in advance as a condition to acceptance of Buyer's order. If Buyer fails to make payment in accordance with the Seller's terms, or fails to comply with any terms and conditions herein, Seller may, at its option and in addition to other remedies, cancel any unshipped portion of Buyer's orders without liability to Buyer. Buyer will remain liable for all unpaid accounts and entire account shall immediately come due immediately.

F. Terms of Payment

Terms of payment are Net Cash 30 Days unless full payment in advance is required by Seller's Credit Department. Payment is NOT conditioned upon Buyer's prior receipt of payment from another source unless Seller's legal department specifically agrees in a separate writing. Invoices are dated the day of project completion. In the event Buyer does not authorize shipment with five (5) days of notice by Seller that goods are ready for shipment, Seller shall send invoice to Buyer and terms of payment are Net Cash 30 days. Thereafter, Seller shall store Buyer's order and charge a storage fee of 1% per week unless otherwise agreed to in writing.

G. Shipment and Risk of Loss

- (1) All shipments are F.O.B. Roselle, NJ, or Darlington, SC, at Seller's option.
- (2) Title to the goods shipped shall pass to Buyer upon delivery to the carrier. Buyer shall bear all risk of loss, injury or destruction of goods from FOB point of origin. Any claim for damages or shortages must be filed by Buyer with the carrier.
- (3) Seller reserves the right to route shipments.
- (4) Seller shall not be responsible for failure to deliver goods and/or merchandise due to (a) fires, floods or other natural disasters; (b) wars, riots, civil commotion, embargoes, governmental regulations, or Seller's inability to obtain necessary materials (finished or otherwise) from its usual source of supply; (c) shortage of cars or trucks or delays in transit; (d) strikes or other labor troubles affecting production or shipment, whether involving employees of Seller or employees of others; (e) shortages of products or raw materials, or any other cause beyond Seller's control, whether or not of a class or kind mentioned herein.

H. Shortages and Discrepancies

Buyer must notify Seller, in writing, of any shortages or discrepancies in goods or materials for Buyer's order, including, but not limited to hardware and electrical components, within 24 hours of delivery. Seller shall not be held liable for any shortages or discrepancies, and Buyer shall be fully responsible for all payment to Seller without credit for shortages or discrepancies unless same are reported to Seller via letter, facsimile or e-mail.

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I. Warranties

Seller warrants its products to be free from defects in material and workmanship for a period of two years from the date of delivery. Seller will repair or replace, at its option, any product that within two years from the date of delivery, fails to meet the performance standard for which it was designed. If Buyer claims that Seller's product has failed, a Performance Evaluation must be conducted by the Seller's Engineering Department to substantiate that the product has been used and operated in accordance with the data and criteria provided by the Buyer.

Buyer shall extend to Seller a reasonable opportunity to investigate and conduct its Performance Evaluation, and to repair the product, at the job site should Seller deem it feasible and practical. Upon conclusion of Seller's Performance Evaluation, should Seller determine that the product was subject to conditions beyond those for which it was designed, then Seller shall invoice Buyer, and Buyer shall pay Seller all costs and expenses incurred by Seller, including for each of Seller's employees or representatives, including but not limited to hourly rates, travel, lodging and meals, for the performance evaluation and repair, if any. Seller is NOT responsible for errors in the data or criteria provided by Buyer, or Buyer's agents or representatives. Seller is NOT responsible for incorrect installation of its product. In those instances where Seller determines that Buyer supplied incorrect data or criteria, or improperly installed the product, Buyer shall pay Seller all costs and expenses incurred by Seller, including for each of Seller's employee's or representatives, including but not limited to hourly rates, travel, lodging and meals. However, should Seller determine that the product failed to meet the performance criteria for which it was designed; Buyer shall not be responsible for Seller's costs and expenses.

This warranty does not include any handling costs, labor charges, back charges, product disposal, site preparation or similar expenses that may be incurred by the Buyer resulting from the product replacement or repair. This warranty is in lieu of and excludes all other warranties, whether expresses or implied.

J. Remedies

During the two-year warranty period, Seller will replace the product with the next larger size, or redesign the product configuration, or make proper modifications to the existing product, at Seller's option. In the event Seller chooses to provide a replacement product, the freight charges will be "prepaid" by the Seller. Should it be required that the product be returned to Seller for modification, Seller will provide written instructions as to method of shipment and approved "freight carrier." Any returned product delivered by other than an approved freight carrier will be at the Buyer's expense. Buyer shall not return any products without prior written approval of Seller.

Seller shall not be liable for incidental or consequential loss, damage or expense, directly or indirectly arising from the sale, handling or use of its products or from any other cause relating thereto. Buyer's remedies are expressly limited to product - Sellers factory replacement or repair, or at Seller's election, to the repayment of any amount equal to the purchase price of such product excluding shipping, whether such claims are for breach of warranty or negligence.

In the event Buyer fails to pay Seller's invoice, and legal intervention is necessary, then Buyer agrees to pay Seller's reasonable attorney's fees for collection.

K. Proprietary Information

All drawings, memoranda, ideas and technical information furnished by the Seller shall remain the Seller's property and shall be considered proprietary information received by the Buyer in trust and confidence, for the sole purpose of installing and operating specified equipment.

L. Patents

Buyer agrees to indemnify and defend Seller against all claim or liability or costs of suit arising from the manufacture and/or sale of goods furnished the Buyer where such goods were made to Buyer's specifications.

M. Governing Law

This contract of sale shall be constructed according to the laws of the State of New Jersey.

Seller hereby certifies that all products are produced in compliance with applicable requirements of sections 6, 7 and 12 of the Fair Labor Standards Act, as amended, and with the regulations and orders of the United States Department of Labor issued pursuant to section 14 thereof.

I have read and understand and Agree to all of The Aeroacoustic Corporation's Terms and Conditions.

Accepted by Buyer: _____
(signature)

Date: _____

(print name)