

## STANDARD TERMS AND CONDITIONS OF SALE

THE FOLLOWING TERMS AND CONDITIONS SHALL BE A PART OF ANY CONTRACT OF SALE WHICH MAY BE ENTERED INTO BETWEEN BUYER AND TRIGON PRODUCTS, INC. (THE "SELLER").

THE TERMS AND CONDITIONS SET FORTH BELOW AND ON ANY QUOTATION/ORDER ACKNOWLEDGMENT TO WHICH THESE STANDARD TERMS AND CONDITIONS OF SALE ARE ATTACHED CONSTITUTE THE EXPRESSION OF ALL THE TERMS OF THIS AGREEMENT AND A COMPLETE AND EXCLUSIVE STATEMENT OF THE AGREEMENT BETWEEN BUYER AND SELLER. ALL REPRESENTATIONS, PROMISES, WARRANTIES OR STATEMENTS BY ANY AGENT OR EMPLOYEE OF SELLER THAT DIFFER IN ANY WAY FROM THE TERMS AND CONDITIONS HEREOF SHALL BE GIVEN NO EFFECT OR FORCE.

Any additional contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the Goods described on the face hereof are hereby objected to. No course of prior dealings between parties and no usage of the trade shall be relevant to supplement or explain any term used in this Agreement. Acceptance or acquiescence in a course of performance rendered under this Agreement shall not be relevant to determine the meaning of this Agreement even though the accepting or acquiescing party has knowledge of the nature of the performance and the opportunity for objection. All orders are subject to approval of Seller at its offices in Pearland, Texas. No waiver or alteration of terms herein shall be binding unless in writing, and signed by an executive officer of the Seller.

**1. PRICE.** All prices are ex-works. Seller's plant, Pearland, Texas, unless otherwise specifically set forth on the quotation or order acknowledgment. Price stated are subject to change without notice in the event of: (1) alterations in specifications, quantities, designs, or delivery schedules; and/or (2) foreign or domestic legislation enacted by any level of government, including tax legislation, which increases the cost of producing, warehousing, or selling the Goods purchased hereunder. No discount will be allowed unless specifically set forth on the face side hereof. Until the purchase price and all other sums due pursuant hereto are paid in full, Seller retains a security interest in the materials described on the face hereof (herein sometimes referred to as "Goods") and in all proceeds of said Goods.

**2. WARRANTY.** Seller warrants Goods manufactured by it will be free from defects in material and manufacture for one (1) year from the date of shipment. THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE NOT EXPRESSLY SET FORTH HEREIN. No affirmation of seller by words or action, shall constitute a warranty. Goods which may be sold by Seller but which are not manufactured by Seller are not warranted by Seller, but are sold only with the warranties, if any, of the manufacturers thereof. Seller's warranty does not apply to any Goods which have been subjected to misuse, mishandling, misapplication, neglect (including but not limited to improper maintenance), accident, improper installation, modification (including but not limited to use of unauthorized parts or attachments), or adjustment or repair performed by anyone other than Seller or one of Seller's authorized agents.

**3.** Any claim by Buyer of a breach of the foregoing warranty shall be deemed waived by the Buyer unless submitted in writing to Seller within ten (10) days from the date Buyer discovered or by reasonable inspection should have discovered such claimed breach. Any cause of action for breach of the foregoing warranty shall be brought within one year from the date the alleged breach was discovered or should have been discovered, whichever occurs first.

**4. LIMITATION OF REMEDIES.** Seller's liability (whether under the theories of breach of contract or warranty, negligence, or strict liability) for its Goods shall be limited to repairing or replacing parts found by Seller to be defective, or at Seller's option, to refunding the purchase price of such Goods or parts thereof. At Seller's request, Buyer will send, at Buyer's sole expense, any alleged defective parts or Goods to the plant of Seller which manufactured them.

**5. DISCLAIMER OF CONSEQUENTIAL DAMAGES.** IN NO EVENT SHALL SELLER BE LIABLE FOR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING WITHOUT LIMITATION BREACH OF ANY OBLIGATION IMPOSED ON SELLER HEREUNDER OR IN CONNECTION HERewith. CONSEQUENTIAL DAMAGES FOR PURPOSES HEREOF SHALL INCLUDE, WITHOUT LIMITATION, LOSS OF USE, INCOME OR PROFIT, OR LOSSES SUSTAINED AS THE RESULT OF INJURY (INCLUDING DEATH) TO ANY PERSON, OR LOSS OF OR DAMAGE TO PROPERTY (INCLUDING, WITHOUT

LIMITATION, PROPERTY HANDLED OR PROCESSED BY THE USE OF THE EQUIPMENT). BUYER SHALL INDEMNIFY SELLER AGAINST ALL LIABILITY, COST OR EXPENSE WHICH MAY BE SUSTAINED BY SELLER ON ACCOUNT OF ANY SUCH LOSS, DAMAGE OR INJURY.

**6. ACCEPTANCE AND TRANSPORTATION.** Upon Buyer's receipt of shipment, Buyer shall immediately inspect the Goods. Unless Buyer provides Seller with written notice of any claim for shortages of or defects in the Goods within forty eight (48) hours after receipt of the Goods from Seller, such Goods shall be deemed finally inspected, checked and accepted by Buyer.

**7. SHIPPING.** In the absence of shipping and packing instructions, Seller shall use its own discretion in choice of carrier and method of packing. Seller shall not be responsible for insuring shipments unless specifically requested by Buyer and any insurance so requested shall be at Buyer's expenses and valuation. If Seller is specifically obligated to pay freight on shipments, any increase in freight rates paid by Seller arising subsequent to acceptance of Buyer's order may, at Seller's option, be added to the price of Goods and in that event shall be paid by Buyer.

**8. TITLE AND RISK OF LOSS.** Title to any Goods sold and risk of loss of such Goods passes to Buyer upon delivery by Seller to carrier, and any claims for losses or damage shall be made by Buyer directly with carrier.

**9. CREDIT TERMS.** Net payment in full is due thirty (30) days after shipment unless otherwise specifically stated in writing by Seller in the quotation or order acknowledgment. All payments are to be made in U.S. funds at par. All orders and shipments shall at all times be subject to the approval of the Seller's Credit Department. The Seller reserves the right of declining to make shipment whenever, for any reason, there is doubt as to Buyer's financial responsibility and Seller shall not in such event be liable for breach or nonperformance of this contract in whole or in part.

**10. TAXES.** Unless otherwise specifically provided on the face hereof, the price for the Goods purchased is net and does not include sales, use, excise or similar taxes, whether federal, state or local. The amount of any such taxes applicable to the Goods shall be paid by Buyer in the same manner and with the same effect as if originally included in the purchase price.

**11. PACKAGING.** Prices stated are based on Seller's standard packaging. Seller reserves the right of packaging material in pallets, bulk or individual cartons. Packaging will be standard commercial package and acceptable to commercial carrier. Special customer packaging will be furnished only when specified and so stated herein, and the cost thereof shall be borne by Buyer.

**12. DELAYS.** Unless expressly specified to the contrary, Goods in stock will be shipped immediately, and Goods not in stock will be shipped as soon as possible. However, all shipping dates are approximate, and are based upon current availability of materials, present production schedules, and prompt receipt of all necessary information. Seller will not be liable for any damage, loss, fault, or expenses arising out of delays in shipment or other nonperformance of this Agreement caused by or imposed by: (1) strikes, fires, disasters, riots, acts of God, (2) acts of Buyer, (3) shortages of labor, fuel, power, materials, supplies, transportation, or manufacturing facilities, (4) governmental action, (5) subcontractor delay, or (6) any other cause or condition beyond Seller's reasonable control. In the event of any such delay or nonperformance, Seller may, at its option, and without liability, cancel all or any portion of this Agreement and/or extend any date upon which any performance hereunder is due.

**13. CANCELLATION, TERMINATION AND CHANGES.** Orders cannot be canceled, terminated or modified, or shipment deferred after acceptance of Buyer's order by Seller, except with Seller's written consent and subject to conditions then agreed upon which shall indemnify Seller against liability and expense incurred and commitments made by Seller and which shall provide for profit on work in process and contract value of products or parts completed and ready for shipment.

**14. PATENTED PROCESS.** The purchase of the Goods does not entitle Buyer to employ the same with any patented process owned by Seller or others.

**15. PATENT INFRINGEMENT.** Buyer agrees to defend and indemnify Seller against any claims or liabilities for, or by reason of, the infringement of any United States Patent arising from the manufacture of any of the Goods in accordance with specifications furnished by Buyer or from the sale thereof.

**16. ADDITIONAL CHARGES.** If substitute or additional Goods, or repair parts, are purchased by Buyer from Seller the terms and conditions of this contract shall be applicable thereto, the same as if such substitute or additional Goods or repair parts had been originally purchased hereunder.

#### **GENERAL CONDITIONS**

A. No agent, salesman or other party is authorized to bind Seller by any agreement, warranty, statement, promise or understanding not herein expressed.

B. The sale of Goods pursuant to this order shall be governed by the laws of the State of Texas.

C. In addition to the rights and remedies conferred upon Seller by law, Seller shall not be required to proceed with the performance of any order or contract, if Buyer is in default in the performance of any order or contract with Seller, and in case of doubt as to Buyer's financial responsibility, shipments under this order may be suspended or sent sight draft with bill of lading attached by Seller.

D. Any clerical errors are subject to correction.

E. No delay or omission by Seller in exercising any right or remedy provided for herein shall constitute a waiver of such right or remedy and shall not be constituted as a bar to or a waiver of any such right or remedy on any future occasion.

F. This contract shall be binding upon and shall inure to the benefit of the successors, and assigns of Buyer and Seller, provided, however, that Buyer may not assign or transfer this contract, in whole or in part, except upon the prior written consent of Seller.

#### **ENTIRE CONTRACT**

Upon Seller's acceptance of Buyer's order the terms and provisions set forth herein shall constitute the entire agreement between Buyer and Seller and no statement, correspondence, sample or other term shall modify or affect the terms hereof.