

Terms and Conditions of Sale

1. **GOVERNING PROVISIONS:** These terms and conditions of sale (the "**Terms**") apply to all sales by Hoffman Manufacturing Corporation ("**Seller**") and constitute the entire agreement between Seller and any buyer ("**Buyer**") identified on the attached quotation, invoice, or order confirmation ("**Attachment**") with respect to the purchase and sale of the products ("**Products**") described on the Attachment. Seller's acceptance of any order is conditional upon the Buyer's assent to these Terms. Buyer assents to and accepts these Terms by signing the Attachment and delivering it to Seller. No additional or different terms or conditions, including any contained in any purchase order, acknowledgment, or other form or correspondence from Buyer shall be of any force or effect; and Seller hereby objects to any such additional or different terms or conditions. No alteration, waiver, modification of or addition to these Terms shall be binding on either party unless set forth in a writing that expressly states that it is an alteration, waiver, modification of, or addition to these Terms and is signed Buyer and Seller.
2. **ACCEPTANCE, CREDIT APPROVAL; CANCELLATION AND MODIFICATION:** Nothing in these Terms shall oblige Seller to accept any order from Buyer. All orders are subject to approval and acceptance at Seller's offices in Madison, Wisconsin and credit approval. If Buyer's credit is not approved, all orders shall be paid in advance or Seller may cancel the order. Buyer is bound by all orders accepted by Seller. No order may be cancelled or modified by Buyer except on terms and conditions acceptable to Seller, as evidenced by a written consent signed by an authorized officer of Seller.
3. **PRICES:** Price quotations are in U.S. currency and automatically expire 30 calendar days after the date issued and are subject to termination by notice within such period. Pricing for an order that is delayed at Buyer's request more than 30 calendar days shall be subject to review and modification. Buyer shall be liable for any applicable taxes and tariffs, duties, and related charges in connection with sale and shipment of the Products. Such taxes, tariffs, duties, and charges, unless expressly included in the price, shall be added to the invoice as a separate charge to be paid by Buyer.
4. **SHIPPING AND PACKAGING:** Unless stated otherwise on the Attachment, delivery shall be F.O.B. Seller's facilities in Madison, Wisconsin. Buyer shall bear the cost of packaging, insurance, and shipping. Title to, and risk of loss for, the Products shall pass to Buyer upon leaving Seller's facilities. No delay in the shipment or delivery of any Product relieves Buyer of its obligations under any order.
5. **PAYMENT:** Unless stated otherwise on the Attachment, payment terms are net 30 days, date of invoice, to approved credit. At Seller's request, Buyer shall execute and deliver to Seller such financing statements and other documents as may be requested by Seller to evidence and perfect its security interest in the Products. A 1.5% per month service charge shall be applied to all invoices 30 days or more past due. Buyer shall pay Seller's costs of collection, including reasonable attorneys' fees and expenses.
6. **SHIPPING CLAIMS; REJECTION:** Buyer must notify Seller and the carrier within 10 days of receipt of Products of any shortage in, damage to, or loss of the Products. Failure by Buyer to give such notification shall result in a waiver of all claims which Buyer may otherwise have against Seller for such shortages, damages, or loss. Any rightful rejection of Products by Buyer must be made within a commercially reasonable time by written notice to Seller, but in any event within 21 days following the date of Buyer's receipt of such Products.
7. **WARRANTY; REMEDY:** Seller represents and warrants the Products shall: (i) be free and clear of all liens and encumbrances and (ii) conform to the plans and specifications provided by Seller and approved by Buyer. If any such Products do not meet such warranties, Seller shall, at its option, repair or replace the non-conforming Products or, at Seller's election, refund the purchase price paid for the Products. Buyer must bring a claim for breach of warranty within 30 days of discovery of such non-conformance but in no event later than one year after Seller's delivery of such Products. THE WARRANTIES SET FORTH IN THIS SECTION ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH OTHER WARRANTIES ARE HEREBY EXPRESSLY EXCLUDED, AND THE REMEDY PROVIDED IN THIS SECTION SHALL BE BUYER'S SOLE REMEDY IN THE EVENT SUCH WARRANTIES ARE BREACHED. The liability of Seller arising out of the sale, use, inability to use, performance, or operation of Products whether in warranty, contract, or tort, shall not in any event exceed the cost of furnishing a replacement for non-conforming Products as provided above. Without limiting the foregoing, Buyer acknowledges that Buyer is responsible for assuring that Buyer's choice of design and technology, and any Products ordered from Seller that meet the warranties in this Section, will be adequate for Buyer's purposes. SELLER SHALL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, OR SPECIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, ANY LOST PROFITS OR LABOR COSTS) ARISING FROM THE SALE, USE, INABILITY TO USE, PERFORMANCE, OR INSTALLATION OF ANY PRODUCTS OR ANY BREACH OF OBLIGATIONS ARISING FROM THE ORDER OR ATTACHMENT. Any legal action or suit against Seller in any way arising from the duties and obligations of Seller under the Attachment or with respect to any Products must be commenced within one year after Seller's delivery of the applicable Products.
8. **INFRINGEMENT:** Buyer at its own expense shall defend, indemnify, and hold Seller harmless from and against all damages, costs, and expenses (including reasonable attorneys' fees) arising from any claim of infringement of any patent or other intellectual property rights arising from Products manufactured from designs or specifications provided by Buyer.
9. **CONFIDENTIALITY:** Buyer and Seller each agree that it shall not disclose to any third party the other party's Confidential Information, and that it shall make no use of any such Confidential Information other than in connection with performance of its obligations arising under the Attachment. "Confidential Information" shall mean all of the following, whether in written, graphic, machine readable, machine-reproducible, oral or other form or format: information, details of operations, methods, know-how, successes and failures, practices, technical plans, blueprints, schematics, designs, specifications, customer lists, price lists, supplier lists, marketing plans and systems, financial information, the details of the Terms and Attachment, and all other compilations of information which relate to the business of a party and which derive independent economic value from not being generally known to, and not being readily ascertainable by proper means by, other persons and which are the subject of efforts on the part of a party to maintain its secrecy that are reasonable under the circumstances. Confidential Information shall not include information or material that: (i) was in the public domain prior to the date of the Attachment or that subsequently comes into the public domain through no fault of the other party, (ii) a party can show through tangible evidence was known to it at the time of disclosure and not acquired directly or indirectly as a consequence of its relationship with the other, (iii) was lawfully received by a party from a third party free of any obligation of confidentiality, or (iv) is required to be disclosed in a judicial or administrative proceeding or by a governmental or regulatory authority, domestic or foreign. Each party agrees to promptly give the other notice of any request for a disclosure described in the preceding clause (iv). Each party shall require its respective employees and agents to keep confidential such Confidential Information and shall indemnify the other party in the event of a breach of this provision by its respective employees or agents.
10. **FORCE MAJEURE:** Seller shall have no liability arising out of any failure or delay in the performance of any obligation where such failure or delay arises out of any cause beyond the reasonable control and without fault or negligence of Seller. Such causes include, without limitation, storms, floods, other acts of nature, fires, explosions, riots, war, terrorism, civil disturbance, strikes or other labor unrests, embargoes, and other governmental actions or regulations.
11. **MISCELLANEOUS:** The sale of Products hereunder shall be governed by and construed in accordance with the internal laws of Wisconsin without reference to principles of conflicts of laws. Each party agrees that all actions, claims, disputes, or proceedings relating to the Attachment or any transaction arising from or connected to it or the sale of Products hereunder shall be brought in a state or federal court situated in Dane County, Wisconsin. Buyer shall not raise any claim of inconvenient forum with respect to any court so located. Buyer may not assign its rights and responsibilities relating to the purchase of Products without the prior written consent of Seller. No waiver of any default is a waiver of any other or subsequent default. The relationship between Seller and Buyer is that of independent contractor. Nothing in these Terms or any agreement between the parties shall create any agency, partnership or other joint enterprise, employment or fiduciary relationship and neither party shall have the authority to contract for or bind the other party in any manner whatsoever.