



## **TERMS & CONDITIONS OF SALE**

The following Terms & Conditions of Sale (“Conditions”) apply to any sale of products and services (“Products”) by Intervala, LLC (“Seller”) to you, the “Buyer”:

- 1. Exclusive Conditions.** All sales of Products by Seller shall be governed solely and exclusively by these Conditions and the terms stated in the associated Seller Quotation, if any, unless expressly superseded by the terms of a separate written agreement signed by both Seller and Buyer. Performance by Seller is expressly conditioned on acceptance by Buyer of these Conditions. Seller hereby objects to and rejects as material alterations the provisions of any acknowledgement, purchase order, acceptance, or other document that are inconsistent with or in addition to these Conditions and any associated Quotation issued by Seller.
- 2. Quotations.** Quotations issued by Seller are good-faith statements of intent to hold firm the terms quoted; they are not to be considered as offers to sell. All Quotations, whether written or oral, are subject solely to these Conditions. Unless otherwise stated, all Quotations are based upon Seller use of standard materials and equipment and are only for the quantities stated. Written Quotations automatically expire 30 calendar days from the date issued, unless stated otherwise in the quotation or sooner withdrawn by Seller.
- 3. Prices.** Prices shall be (1) as applicable on the date of delivery and (2) net of shipping costs and any applicable taxes, duties, and similar charges, which shall at all times remain the sole responsibility of Buyer. If Buyer claims entitlement to tax exemptions, it shall provide to Seller appropriate exemption certificates prior to delivery. Prices may also include additional charges as applicable and stated below in “Excess Material”.
- 4. Shipment, Delivery and Claims.** Unless otherwise agreed in writing by both parties, delivery shall be EXW (Incoterms 2010) Seller dock. Title and risk of loss shall pass to Buyer upon carrier commencing to load Products for delivery. Seller will exercise reasonable efforts to make delivery as scheduled; however, Seller shall not be liable for any loss or damage or for any failure to deliver or delays in delivery for any reason whatsoever, in which case delivery dates shall be extended for a reasonable time, at least equal to the time lost by reason of the delay. Seller performance shall in any event be excused by Events Force Majeure. Furthermore, Seller shall not be liable for any incidental, special, or consequential damages resulting from Seller failure to meet delivery schedules or any other causes. Seller shall not be bound to ship any product for which Buyer has not given shipping instructions.
- 5. Inspection and Acceptance.** Upon receipt of Products, Buyer shall have ten (10) business days in which to inspect. Buyer may reject any Products not meeting contract requirements by giving notice to Seller setting forth the basis therefor and holding the Products for disposition by Seller. Products not timely rejected shall be deemed accepted. Destructive tests of the Products by Buyer to determine acceptability shall be permitted only by written agreement between Seller and Buyer. After acceptance, disposition of defective Products shall be subject to Seller warranty.
- 6. Invoicing and Payment.** Seller shall invoice for Products on date of delivery and in the case of Excess Materials, at its discretion (ordinarily at the conclusion of performance). Terms are NET cash or cash equivalent thirty (30) days from date of invoice. Any invoice remaining unpaid after thirty (30) days will be assessed an interest charge of 1-1/2% per month, compounded monthly, on the unpaid balance, pro-rated to date of payment, or the highest rate permitted by law, whichever is less. Absent a breach or threatened breach of contract, neither party shall exercise any right of setoff, common law or otherwise, against the other. In the event a collection action becomes necessary in Seller discretion, Buyer shall be responsible for costs of collection, including a reasonable attorney’s fee. New customer credit terms will be established by Seller based on information provided by Buyer as well as any information in the public domain. Credit terms are subject to periodic review and can be adjusted at any time, as Seller deems appropriate.
- 7. Limited Warranty.**
  - a. Seller warrants that (i) it will deliver good title to the Products, free of liens, claims and encumbrances; and (ii) the Products will be free from defects in workmanship under normal use and service for a period of twelve (12) months commencing on the date of delivery.
  - b. Seller will, at its cost, use reasonable effort to repair, or, at its discretion, replace, any Product containing a defect and return the Product in a timely manner, provided that the defect was not the result of unreasonable use, misuse, failure to provide reasonable and necessary maintenance, or damage occurring during or after delivery.
  - c. To obtain performance under this warranty, Buyer must deliver the Product to Seller at Seller expense, however, Seller shall be responsible for only those delivery costs associated with the return of the Product from Buyer’s own location.
  - d. Rights under this limited warranty are not assignable. Any unauthorized repair, modification or adjustment of a Product voids the warranty set forth herein.

EXCEPT FOR THE LIMITED WARRANTIES SET FORTH IN THIS SECTION 7, SELLER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND HEREBY DISCLAIMS THE WARRANTY OF MERCHANTABILITY, THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, AND THE WARRANTY OF NON-INFRINGEMENT.

- 8. Excess Material.** Any items that appear on the Bill of Material that Seller currently stocks and purchases on a regular basis for its production floor will be excluded from the excess material charges. The only items that will be included for excess material charges are those which Seller does not stock, are customer specific, or are new items to Seller item master and have never before been purchased. Excess material charges are calculated based on the order minimum of each component, the actual component quantity required for a given quantity of an assembly to be built, and the exact quantity of Product listed on the proposal or quote. Quoted assembly quantities and excess material are interrelated; deviation from the exact assembly quantity quoted will have an impact on the overall excess material exposure. Buyer shall be liable for all excess purchased raw materials and components, including excess created by NCNR, changes or Product revisions, last time buys, and minimum/multiple requirements.
- 9. Compliance with Buyer's Specifications.** Seller assumes no liability for errors or omissions in any drawings and specifications provided by Buyer, including errors or omissions made by Seller in the exercise of due care in the interpretation of any such drawings and specifications, irrespective of any review, use, or incorporation of such specifications in any Product. Buyer shall indemnify, defend, and hold Seller harmless from any third party claim arising from any review, use, or incorporation of Buyer specifications into any Product.
- 10. Cancellation.** Performance by Seller is not subject to cancellation unless Buyer obtains specific written approval from Seller in advance of shipment of the Products. If Seller performance is cancelled, Buyer shall pay Seller reasonable cancellation charges, as invoiced by Seller, including but not limited to completed Product at the contract rate, work in process, material, components, labor, and overhead expenses incurred or allocated by Seller in performing or preparing to perform the Contract, as well as Seller anticipated profit.
- 11. Force Majeure.** Except for the payment of money, neither of the parties shall be liable for any failure or omission in the performance of any provision of this Agreement if the failure is caused by or arises directly or indirectly, from events outside the reasonable control of the party affected, including but not limited to acts of God, acts or omissions of the other party, government orders, legislation, or regulations, acts of terrorism, embargoes, fire, storm, floods, strikes, labor trouble, wars, riots, failure of carriers or suppliers to transport or furnish materials, or inadequacy or failure of supply (each, an "Event Force Majeure").
- 12. Indemnification.** Buyer agrees to indemnify, defend and hold harmless Seller and its owners, officers, directors, employees, and representatives from and against any and all causes of action, claims, costs, damages, expenses (including attorney's fees), liabilities, and losses of any nature whatsoever, whether involving injury or death to person or damage to property of Buyer or any third party related to (i) breach of these Conditions by Buyer or the use or misuse of the Products by Buyer or by any third party; and/or (ii) damages, claims, and demands for actual or alleged infringement of any patent or other intellectual property right and for any alleged infringement arising from the manufacture, sale, or use of any Product.
- 13. Exclusive Remedy; Limitation of Liability.** BUYER'S SOLE AND EXCLUSIVE REMEDY AGAINST SELLER SHALL BE REPAIR OR REPLACEMENT OF A DEFECTIVE PRODUCT, OR REFUND OF THE PURCHASE PRICE, AS DECIDED BY SELLER IN ITS SOLE DISCRETION. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER, ANY USER OF THE PRODUCT, OR ANY THIRD PARTY FOR LOST PROFITS, LOSS OF BUSINESS, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR OTHER INDIRECT DAMAGES WHATSOEVER ARISING FROM THE USE OR PERFORMANCE OF THE PRODUCT, OR FROM THE NON-DELIVERY, DELAYED DELIVERY, DAMAGE OF PRODUCT OR OTHERWISE, IRRESPECTIVE OF WHETHER SUCH DAMAGES ARE FORESEEABLE OR WHETHER SELLER WAS MADE AWARE OF THE POTENTIAL OF SUCH DAMAGES. SELLER LIABILITY ON ANY CLAIM OF ANY KIND, INCLUDING NEGLIGENCE, OR FOR ANY LOSS OR DAMAGE RESULTING FROM ANY CONTRACT FOR SALE OF PRODUCTS, OR FROM THE PERFORMANCE OR BREACH THEREOF, OR FROM DESIGN, MANUFACTURE, SALE, DELIVERY, RESALE, INSTALLATION, INSPECTION, REPAIR, OPERATION OR USE OF ANY PRODUCTS COVERED BY OR FURNISHED BY IT SHALL IN NO CASE EXCEED THE PRICE ALLOCABLE TO THE PRODUCT, MATERIAL, EQUIPMENT OR UNIT THEREOF WHICH GIVES RISE TO THE CLAIM.
- 14. Termination by Seller.** Seller shall be entitled to cease the manufacture or delivery of any Product and terminate any performance if Buyer: (a) breaches any obligation it owes to Seller under these Conditions; (b) files or has filed against it a petition for voluntary or involuntary bankruptcy; (c) makes a general assignment for the benefit of its creditors; or (d) has appointed a receiver, custodian, or similar agent to take charge of or sell any material portion of its property or business.
- 15. Relationship of the Parties.** The relationship between the parties is that of independent contractors. Nothing contained in these Conditions shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the parties and neither party shall have authority to contract for or bind the other party in any manner whatsoever.
- 16. Use of Products; Compliance with Law.** Buyer assumes all risk and liability related to the use of the Products, whether used independently by Buyer or in combinations with other materials. Buyer shall obtain all necessary permits and authorizations, and shall comply with all applicable laws, regulations and ordinances, relating to or governing the installation and use of the Products by Buyer. Buyer shall comply with all export and import laws governing the shipment of Products. Buyer assumes all responsibility for shipments of Products requiring any government export or import clearance.
- 17. Governing Law; Jurisdiction.** These Conditions and all acts or omissions of the parties related to these Conditions or any Product shall be governed exclusively by the laws of the Commonwealth of Pennsylvania, without regard to its or any other jurisdiction's conflicts of laws principles that may cause the law of another jurisdiction to govern. The federal and state courts situated in Allegheny County, Pennsylvania shall have sole and exclusive jurisdiction over any dispute arising from these Conditions, any Product, or any act or omission of either party related to these Conditions or any Product, and each party hereby irrevocably consents and submits to the exclusive jurisdiction of these courts.
- 18. Miscellaneous.** These terms shall be binding upon and shall ensure to the benefit of the parties hereto and their permitted successors and assigns. If any portion of these Conditions shall for any reason be held by a court of competent jurisdiction to be invalid and unenforceable, the valid and enforceable provisions will continue to be given effect and bind the parties hereto. Neither party may assign any of its rights or obligations hereunder without the express consent of the other.

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