



# TERMS AND CONDITIONS OF SALE

## APPLICABILITY

THESE TERMS AND CONDITIONS OF SALE ("TERMS") APPLY TO ALL SALES OF PRODUCTS BY S.R.SMITH, LLC ("SELLER"). BUYER ACCEPTS THESE TERMS BY SIGNING A DOCUMENT SIGNIFYING ACCEPTANCE, BY SENDING A PURCHASE ORDER IN RESPONSE TO A QUOTATION THAT INCLUDES THESE TERMS, OR BY BUYER'S INSTRUCTIONS TO SELLER TO SHIP THE PRODUCT AFTER RECEIPT OF THE TERMS. IN THE ABSENCE OF BUYER'S SIGNATURE, BUYER SHALL BE BOUND BY ALL OF THESE TERMS: (A) 10 DAYS AFTER BUYER RECEIVES THESE TERMS UNLESS WRITTEN NOTICE OF OBJECTION IS GIVEN TO SELLER WITHIN THE 10-DAY PERIOD; (B) WHEN BUYER ISSUES ANY INSTRUCTIONS TO SELLER AND SELLER MAKES A SUBSTANTIAL BEGINNING OF PROCESSING OF THE PRODUCTS OR COMMITMENTS FOR THEIR PROCUREMENT; OR (C) WITH RESPECT TO ANY PRODUCTS FOR WHICH PAYMENT HAS BEEN MADE AND ACCEPTED OR WHICH BUYER HAS RECEIVED AND ACCEPTED.

THESE TERMS TAKE PRECEDENCE OVER BUYER'S ADDITIONAL OR DIFFERENT TERMS AND CONDITIONS AND SELLER'S AGREEMENT TO SELL PRODUCTS TO BUYER, AND ANY ACCEPTANCE BY BUYER, ARE SPECIFICALLY LIMITED TO THESE TERMS. NO AGREEMENT OR UNDERSTANDING, ORAL OR WRITTEN, IN ANY WAY PURPORTING TO MODIFY THESE TERMS, WHETHER CONTAINED IN BUYER'S PURCHASE ORDER OR ELSEWHERE SHALL BE BINDING ON SELLER UNLESS HEREAFTER MADE IN WRITING AND SIGNED BY SELLER'S AUTHORIZED REPRESENTATIVE.

The Terms may be modified by Seller at any time. Any such modifications shall be applicable to all orders placed by Buyer after Buyer receives notice of the modification. Check our website at [www.srsmith.com](http://www.srsmith.com) for the latest Terms and Conditions of Sale. If you have questions about the Terms, contact our customer service department at 800-824-4387.

## PRICES AND PAYMENT TERMS

**PRICING:** All prices are Ex Works, INCOTERMS 2010, Seller's place of shipment. All prices, quotations and billing are in U.S. Dollars. Payment is due in Net 30 days on approved credit unless otherwise agreed upon. Until credit is approved, payment must be made with the order. Cash in Advance (CIA) or Credit Cards are allowable when agreed upon and at Seller's discretion. A service charge of 1.5% per month (Annual percentage rate of 18%) will be charged on all past due accounts.

Prices in any quotation or other communication from Seller are subject to change upon notice sent to Buyer at any time before shipment. Products and services will be invoiced at prices in effect as of date of shipment.

Buyer shall promptly notify Seller in writing of any invoice error. Any and all invoice errors must be disputed within 15 days of invoice date.

**TAXES AND FEES:** Prices exclude any present or future federal, state, provincial, local, or other governmental taxes, duties, and

tariffs applicable to the sale, transportation, importation, or use of products purchased, all of which taxes, duties, and tariffs shall be paid by Buyer. In lieu of Seller collecting sales and use taxes from resellers, the Buyer or reseller may provide Seller with a current, valid sales and use tax exemption certificate for all states in which it does business.

**ACCEPTABLE FORMS OF PAYMENT:** All remittances must be in a single payment in the full amount of the invoice (adjusted for any debit memos approved by Seller) and must be in accordance with the following requirements unless otherwise agreed by Seller in writing:

- Wire or electronic fund transfer (referencing invoice number) and Buyer must be the originator of wire.
- Buyer company check (drawn on company account with company name).
- Third-party checks, bank checks, and foreign drafts will be accepted only if approved in advance in writing by Seller and must have accompanying documentation that references invoices being paid.

**MINIMUM ORDERS:** All orders less than \$50.00 will be charged a \$25.00 handling fee.

**SECURITY INTEREST:** Buyer hereby grants to Seller and Seller reserves, a purchase money security interest in each product sold by Seller to Buyer in the amount of its purchase price. Any such security interest shall be satisfied by payment in full of the invoiced amount. Buyer agrees to execute any and all such documents, including financing statements, as may be necessary for Seller to protect such security interest.

**CHANGE IN BUYER'S FINANCIAL CONDITION:** Buyer agrees to notify Seller in writing of any material changes to its financial condition. Seller reserves the right to cancel an order or require full or partial advance payment if (1) the solvency of Buyer is in question; (2) Buyer files for bankruptcy; (3) there is an appointment of trustee or receiver for Buyer. Seller also reserves the right to cancel Buyer's credit at any time and for any reason.

**DELIVERY, TITLE, AND RISK OF LOSS:** All shipments are Ex Works, INCOTERMS 2010, Seller's place of shipment. Title and risk of loss will pass to Buyer when products are accepted for shipment by the freight company. On-time shipment is dependent upon Buyer promptly supplying all necessary documentation. Seller will ship via its preferred carrier. Seller reserves the right to make partial shipments unless specifically stated otherwise on Buyer's purchase order. Seller will determine the point of shipment. Products may ship from multiple locations.

**EXCUSABLE DELAYS:** Seller shall use commercially reasonable efforts to deliver all products ordered by Buyer as soon as reasonably practical. In the event of interruption of any such delivery due to causes beyond the reasonable control of Seller, including but not limited to fire, labor disturbances, riots, accidents, or inability to obtain necessary materials or components, Seller shall have the right, in its sole discretion and upon oral or written notice to Buyer, to delay or terminate such delivery.

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**FREIGHT DAMAGED GOODS:** Buyer shall inspect all goods before signing the delivery receipt. If goods are obviously damaged, the Buyer shall refuse the specified damaged products. If concealed loss or damage is discovered, Buyer shall report it promptly to the delivery carrier with written confirmation to the carrier. Buyer shall hold shipping cartons and contents for inspection in as close to the same condition as they were when the loss or damage was discovered. If a damage report is not made within 7 days after delivery, the burden of proof will shift to the Buyer or its consignee and it will then be the responsibility of the Buyer/consignee to prove that the loss or damage did not occur after the delivery of shipment. All shipments include a form which clearly states that the buyer/consignee must refuse shipment if products are damaged. The buyer/consignee has 7 days to file a claim with the carrier, and not S.R. Smith. After 7 days, the buyer/consignee accepts full responsibility for any loss or damage of the shipment.

**SHORTAGES:** Buyer must notify Seller's Customer Service Department of shortages within 7 business days following receipt of products. All claims for shortages shall be waived and released if such notice is not provided within such time period. Upon Seller's verification of a shortage, within 30 days of claim receipt, Seller shall at its sole option either cure the shortage or issue a credit to Buyer.

**PRODUCT RETURN POLICY:** Buyer may return products (except custom products and discontinued items) held for less than ninety (90) days from the ship date for a credit equal to the purchase price minus a restocking fee of 25%. All returns must be authorized by Seller's warranty department, be accompanied by the corresponding RMA (Return Merchandise Authorization) number and be received by Seller within 15 days of authorization to qualify for this program. Returns that do not comply with the foregoing requirements will be rejected. The sender will be responsible for all freight costs associated with the return. Credit for the returned product, less restocking fee, will not be issued until the returned product(s) have been received, inspected and deemed suitable for resale. No returns will be accepted in the month of December or after the product has been in the possession of the customer for more than ninety (90) days.

**WARRANTY:** Seller warrants to Buyer that its products will be free from defects in materials and workmanship at the time of delivery. Seller's entire liability and Buyer's exclusive remedy for breach of the foregoing warranty shall be repair or replacement of the product or refund of the purchase price, at Seller's option. This limited warranty is void if failure of the product has resulted from abuse, misapplication, or unauthorized modification. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES AGAINST INFRINGEMENT, OF MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE. BUYER'S EXCLUSIVE REMEDY FOR BREACH OF WARRANTY IS REPAIR, REPLACEMENT OR REFUND, AT SELLER'S OPTION.

Seller further warrants its products to the retail end customer in accordance with Seller's standard Limited Warranty, which Seller may change from time to time. Buyer shall ensure that Seller's Limited Warranty is delivered to the end customer with delivery of the product.

**LIMITATION OF LIABILITY:** IN NO EVENT SHALL SELLER BE LIABLE FOR LOSS OF PROFIT, OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER BASED UPON CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT, WARRANTY, INDEMNITY, OR ANY OTHER LEGAL THEORY. IN NO EVENT SHALL THE LIABILITY OF SELLER EXCEED THE AMOUNT PAID BY BUYER FOR THE SPECIFIC PRODUCT INVOLVED.

**DESIGN CHANGES:** Seller reserves the right to make changes in design of any of its products without incurring any obligation to notify Buyer or to make the same change to units previously purchased.

**CODE COMPLIANCE:** Buyer shall be solely responsible to ensure that the assembly, installation and use of Seller product(s) purchased meet any and all State and Local code requirements.

**EXPORT LAWS:** Buyer agrees to comply with all applicable export laws, assurances, codes and license requirements, and controls of the United States and other applicable jurisdictions in connection with the use and resale of S.R. Smith products.

**GENERAL TERMS:** These Terms shall be governed by and construed and enforced in accordance with the laws of the State of Oregon, USA, including federal law but excluding choice of law rules and excluding the United Nations Convention on the International Sale of Goods. The invalidity or unenforceability of any provision of these Terms by a court of competent jurisdiction, shall not affect the validity of the remainder of these Terms, which shall at all times remain in full force and effect. Any litigation with regards to these Terms shall be brought in the state or federal courts serving Clackamas County in Oregon, USA. Buyer hereby stipulates and consents to the personal jurisdiction of the state and federal courts serving Clackamas County in Oregon, USA. The prevailing party in any such litigation shall be entitled to recover reasonable attorneys' fees and expenses of litigation, including such fees and expenses on any appeals.

THESE TERMS CONSTITUTE THE ENTIRE AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND SUPERSEDE ANY AND ALL PRIOR AGREEMENTS, DISCUSSIONS AND UNDERSTANDINGS, EXPRESS OR IMPLIED, RELATING THERETO. ANY REPRESENTATIONS, PROMISES, WARRANTIES, OR STATEMENTS THAT DIFFER IN ANY WAY FROM THESE TERMS SHALL BE GIVEN NO FORCE OR EFFECT. THESE TERMS MAY NOT BE MODIFIED EXCEPT IN WRITING SIGNED BY SELLER.