

CLIM-A-TECH INDUSTRIES, INC. STANDARD TERMS AND CONDITIONS OF SALE

1. Sale of Goods. The accompanying quote and specific terms contained therein (the "Quote"), along with these Clim-A-Tech Industries, Inc. Standard Terms and Conditions of Sale (the "Standard Terms"), constitute an offer for the sale of goods (the "Offer") on the part of Clim-A-Tech Industries, Inc., P.O. Box 221, 6950 Washington Ave. S., Eden Prairie, Minnesota 55344 ("Clim-A-Tech" or "Seller") to the addressee (the "Buyer") whose name and address is shown on the Quote. The Quote, the Standard Terms, and Buyer's Purchase Order together form a binding and enforceable contract between Seller and Buyer (collectively, the "Contract").
2. Acceptance of Terms. CLIM-A-TECH'S AGREEMENT TO SELL GOODS TO THE BUYER PURSUANT TO THIS CONTRACT IS EXPRESSLY CONDITIONED ON BUYER'S AGREEMENT TO THE SPECIFIC TERMS IN THE QUOTE AND THESE STANDARD TERMS. Any changes to the original Offer or changes included in any Purchase Order or other document issued by Buyer containing Buyer's terms and conditions that are in addition to or different from those contained in the original Offer, which are not separately and specifically agreed to in writing by Seller in an amended Quote and/or in a Purchase Order countersigned by an authorized representative of Seller acknowledging agreement to additional terms or materially different terms from those set forth in the original Offer, are hereby objected to and shall be of no effect.
3. Credit. This Contract is subject to Seller's credit policies and procedures. Seller reserves the right to modify, change or revoke its credit policies and procedures without notice and may refuse to perform services hereunder absent cash payment, guarantee, security or pre-payment by Buyer if, at Seller's discretion, such arrangement becomes necessary.
4. Pricing. Quotes are valid for thirty (30) calendar days from the issuance of the Quote by Seller. Prices in the Quote are F.O.B. Seller's manufacturing facility unless otherwise stated and liability for loss or damage in transit shall pass to Buyer upon Seller's delivery to a common carrier. Orders are subject to a ten percent (10%) over-run or under-run. Unless otherwise expressly provided, Seller shall retain title to, and possession of, any dies, molds, jigs, fixtures and tools relating to this Contract. Seller shall not be responsible for any delay or failure to perform due to matters outside its control including, without limitation, war, epidemics, flood, acts of God accidents, shortage of transportation, terrorism, blockades, embargoes, federal, state, municipal, or any other governmental action or regulation, strikes or other labor troubles, fire, damage to, or destruction in whole or in part to merchandise or manufacturing plant, lack of, or inability to obtain, materials, labor, fuel or supplies, restraining orders or injunctions of any court, or any other causes, contingencies or circumstances within or without the United States.
5. Payment Terms. Unless otherwise provided, payment shall be 1% 10 days, net 30 days from the date of the invoice. A finance charge of one and one half percent (1.5%) per month (or the highest rate allowed by law) will be applied to any outstanding, past-due balances (Annual rate of 18%). All undisputed invoices shall be paid by Buyer regardless of disputes relating to other invoices or other delivered or undelivered goods. Buyer shall pay to Seller any reasonable expenses incurred by it for collection from Buyer of money due and unpaid, including reasonable attorneys' fees and related costs.
6. Warranty. Seller warrants that at the time of shipment its goods shall be substantially free of material defects in workmanship and material under normal use, shall substantially conform to Buyer's specifications and be within the limits and sizes published by Seller, subject to Seller's standard tolerances for variations. In no event shall Seller be liable for any defective good if examination discloses that the good has been taxed beyond its normal capacity or the defective condition of such good was caused by misuse, abuse, improper installation or application, improper maintenance or repair, alteration, accident or negligence in use, storage, transportation or handling. To the extent applicable, Seller states that the original manufacturer's warranty applies to all purchased goods for resale. ALL OTHER WARRANTIES, DIRECT OR IMPLIED, INCLUDING THE IMPLIED WARRANTY OF MERCHANTABILITY, WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY, AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED.
7. Buyer's Remedies. Buyer agrees to inspect the goods upon receipt and prior to acceptance and to give written notice within ninety (90) calendar days to Seller of the precise nature of any claim that the goods breach a warranty provided herein. Seller will be afforded a prompt opportunity to inspect the goods. Seller may, at its option, either repair or replace any nonconforming goods or repay the price thereof. If Seller requests the return of the nonconforming goods, no obligation for breach of warranty shall arise unless the goods have been returned to Seller within thirty (30) calendar days after such request is made. Seller's obligation to repair or replace defective or nonconforming goods or repay the purchase price thereof is expressly agreed by the parties to be the limit of Seller's liability and Buyer's sole and exclusive remedy. IN NO EVENT SHALL SELLER BE LIABLE FOR LOSS OF USE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES OF ANY KIND, INCLUDING FOR PERSONAL INJURIES WHETHER OR NOT RESULTING FROM OR CONTRIBUTED TO BY THE DEFAULT OR NEGLIGENCE OF SELLER, ITS AGENTS OR EMPLOYEES, THAT MIGHT BE CLAIMED AS A RESULT OF THE DEFECT IN, USE OF OR DELAY IN THE PRODUCTION OF GOODS.
8. Indemnification. Buyer shall include in its terms and conditions of sale an effective disclaimer of warranties and limitations of liability at least as restrictive as those contained herein. In any event, BUYER ASSUMES ALL RISKS AND AGREES TO INDEMNIFY AND HOLD SELLER HARMLESS AGAINST ALL CLAIMS AND LIABILITY (INCLUDING LIABILITY BASED ON A CLAIM THAT SELLER IS NEGLIGENT OR STRICTLY LIABLE) ARISING: (1) OUT OF ANY GOODS MADE IN WHOLE OR IN PART FROM THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT, AND (2) AS A RESULT OF USE OR POSSESSION OF THE GOODS SUPPLIED UNDER THE TERMS OF THIS CONTRACT. Buyer shall indemnify, defend and hold Seller harmless against any damages, costs or losses resulting from any suit or proceeding brought for infringement of patents, copyrights, or trademarks or for unfair competition: (1) relating to the use or sale of any of Seller's goods in any combination, method, or process, and/or (2) arising out of compliance by Seller with Buyer's materials, designs, specifications, instructions or use, including claims for patent or copyright infringement.
9. Terminations and Cancellations. Unless otherwise agreed, orders may not be cancelled or terminated absent Seller's written consent and upon terms that indemnify and hold Seller harmless against loss. All notice of cancellations or terminations shall be in writing. In the event of cancellation or termination by Buyer, Buyer shall be responsible for payment for all work performed by Seller, whether or not accepted by Buyer, prior to receiving written notice of cancellation or termination. Buyer shall remit payment for such pre-termination work within ten (10) calendar days of acceptance of cancellation or termination and prior to any delivery to Buyer of all work-in-progress. The representations, warranties and indemnification obligations herein of Seller and Buyer shall survive the cancellation or termination of this Agreement.
10. Assignment. Buyer may not assign this Agreement or any of its rights or obligations hereunder absent Seller's written consent.
15. Governing Law. This Contract shall be governed and construed under the laws of the State of Minnesota.
16. Complete Agreement. The Contract constitutes the entire agreement between Buyer and Seller. No oral promises, agreements, or warranties shall be deemed a part hereof, nor shall any addition to, amendment or variation of the Contract, or waiver of any terms and conditions thereof, whether contained in Buyer's Purchase Order, any shipping release or elsewhere, shall be binding upon Seller unless expressly agreed to in writing signed by Seller. Seller objects to and shall not be bound to any past or future terms or conditions not set forth herein, including, any additional terms shown on Buyer's Purchase Order, any shipping release or elsewhere, which order, release, or other documents shall be accepted for billing purposes only, any inconsistencies therein being null and void. Nothing in this Agreement is intended to, nor shall it confer any rights on a third party.