

TERMS AND CONDITIONS OF SALE

Revision Date: August 1, 2014

Fort Wayne Facility

Fill-Rite and Sotera Products

1. Agreement and Limitations. The agreement between Seller and Buyer (the "sales contract") with respect to the sale of goods and services (the "goods") described on any Order Confirmation, Invoice, or other confirmatory document (each, a "Confirmation") issued by Seller to Buyer shall consist of the Confirmation and these Terms and Conditions of Sale, together with any additions or revisions of such terms mutually agreed to in writing by Seller and Buyer. Seller shall not be bound by any additional or different terms, whether printed or otherwise, in Buyer's purchase order or in any other communication from Buyer to Seller unless specifically agreed to by Seller in writing. The sales contract shall be for the benefit of Seller and Buyer and not for the benefit of any other person. Prior courses of dealing, trade usage and verbal agreements not reduced to a writing signed by Seller, to the extent they modify, add to or detract from the sales contract, shall not be binding on Seller.
2. Termination or Modification. The sales contract may be modified or terminated only upon Seller's written consent. If all or part of the sales contract is terminated, Buyer, in the absence of a contrary written agreement with Seller, shall pay termination charges based upon expenses and costs incurred in the production of the goods to the date such termination is accepted by Seller plus a reasonable profit, except that any goods completed on or prior to Seller's acceptance of such termination shall be accepted and paid for in full by Buyer.
3. Price and Payment. The price of the goods sold pursuant to this contract shall be based upon Seller's prices in effect at the time of shipment. Unless otherwise provided, price is based on the Terms of Delivery shown on the Confirmation. See the Confirmation for payment terms. If the contract is for more than one unit of goods, the goods may be shipped in a single lot or in several lots at the discretion of Seller, and each such shipment shall be paid for separately. Seller may require full or partial payment or payment guarantee in advance of shipment whenever, in its opinion, the financial condition of Buyer so warrants.
4. Taxes. Prices do not include taxes. All taxes and other governmental charges upon the production, sale or use of the goods, to the extent required or not forbidden by law to be collected by Seller from Buyer, shall be paid by Buyer to Seller unless Buyer furnishes Seller with exemption certificates acceptable to taxing authorities.
5. Delivery and Quantities. Delivery dates are not guaranteed but are estimated on the basis of immediate receipt by Seller of all information to be furnished by Buyer and absence of delays, direct or indirect, resulting from or contributed to by circumstances beyond the Seller's reasonable control. Seller shall in good faith endeavor to meet estimated delivery dates.
6. Returned Goods. No goods may be returned without Seller's permission, and if authorized for return, transportation charges must be prepaid by Buyer unless otherwise noted by Seller in the authorization to return goods. All goods authorized for return are subject to Seller's inspection and acceptance, and a minimum handling charge equal to twenty percent (20%) of the original net price of the returned items will be assessed, unless noted in Seller's authorization to return said goods.
7. Risk of Loss. Buyer assumes all risk of loss based on the Terms of Delivery in the Confirmation..
8. Product Warranty. The goods described in the Confirmation are warranted by Seller to be free from defects in materials and workmanship in accordance with the Seller's standard warranty applicable to such goods, literature copy of which may be accessed at www.fill-rite.com or www.sotera.com. By accepting delivery of the goods, Buyer acknowledges its review of the warranty. The terms of the warranty are incorporated by reference as though set forth in full herein. Additional printed copies of such warranty are available on request from the Seller. SUCH WARRANTY IS THE SELLER'S SOLE AND ENTIRE WARRANTY OBLIGATION AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY EXCLUDED.
9. Remedies and Limitation of Liability. In the event Seller has breached any of its obligations under the sales contract, whether of warranty or otherwise, Seller may request the return of the particular goods to which the breach relates and tender to Buyer the purchase price theretofore paid by Buyer, and, in such event, Seller shall have no further obligation under the sales contract expect to refund such purchase price upon redelivery of the goods. If Seller is in breach as to any particular goods and so requests the return of the goods, the goods will be redelivered to Seller in accordance with Seller's instructions and at Seller's expense. THE REMEDIES CONTAINED IN THIS AND THE PRECEDING PARAGRAPH SHALL CONSTITUTE THE SOLE RECOURSE OF BUYER AGAINST SELLER FOR BREACH OF ANY OF SELLER'S OBLIGATIONS UNDER THE SALES CONTRACT, WHETHER OF WARRANTY OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES NOR SHALL SELLER'S LIABILITY ON ANY CLAIM FOR DAMAGES ARISING OUT OF OR CONNECTED WITH THE SALES CONTRACT OR THE MANUFACTURE, SALE, DELIVERY OR USE OF THE GOODS EXCEED THE PURCHASE PRICE OF THE GOODS. Seller shall not be liable for failure to perform its obligations under the sales contract resulting directly or indirectly from or contributed to by acts of God; acts of Buyer; civil or military authority; priorities; fires; strikes or other labor disputes; accidents; floods; epidemics; war; riot; delays in transportation; lack of or inability to obtain raw materials, components, labor, fuel or supplies; or other circumstances beyond Seller's reasonable control, whether similar or dissimilar to the foregoing.
10. Patents. Seller shall hold Buyer harmless against any rightful claim of any third person by way of infringement of any United States Letters Patent by such of the goods as are of Seller's own manufacture, but, if Buyer furnishes specifications to Seller, Buyer shall hold Seller harmless against any such claims which arise out of compliance with the specifications. Seller's agreement to hold Buyer harmless shall not apply to any infringement consisting of the use of goods manufactured by Seller as a part of any combination with goods manufactured by others. In the event that any goods manufactured by Seller are in any suit held to constitute infringement and their use is enjoined, Seller, if unable within a reasonable time to secure for Buyer the right to continue using such goods, either by suspension of the injunction, by securing for Buyer a license, or otherwise, shall at its own expense and its sole discretion, either replace such goods with non-infringing goods or modify such goods so that they become non-infringing, or accept the return of the enjoined goods and refund the purchase price theretofore paid therefor. Except as in this paragraph provided, Seller makes no warranty that the goods will be delivered free of the rightful claim of any third person by way of infringement or the like.
11. Selection and Installation. Buyer represents that the goods sold hereunder are fit for their actual or intended use and that Buyer placed no reliance on Seller's skill or judgment in selecting suitable goods. Installation of the goods shall be Buyer's responsibility. Buyer represents that the use and installation of the goods shall conform to Seller's instructions and all applicable government requirements.
12. Governing Law and Limitation. The formation and performance of the sales contract shall be governed by the Uniform Commercial Code as adopted in the state of Seller's point of shipment. Whenever a term defined by said Uniform Commercial Code is used in these standard provisions, the definition contained in said Uniform Commercial Code is to control. Any action for breach of the sales contract or any covenant or warranty must be commenced within one year after the cause of action has occurred.

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