

SYMTEK SYSTEMS, LLC – TERMS AND CONDITIONS OF SALE

1. **ACCEPTANCE.** SELLER'S ACCEPTANCE OF THIS PURCHASE ORDER IS EXPRESSLY MADE CONDITIONAL ON BUYER'S ACCEPTANCE OF THE FOLLOWING TERMS AND CONDITIONS OF SALE, WHICH ARE IN LIEU OF ANY ADDITIONAL OR DIFFERENT TERMS CONTAINED IN ANY OTHER DOCUMENT OR COMMUNICATION PERTAINING TO BUYER'S ORDER OR THE GOODS. BUYER'S ASSENT TO THE TERMS AND CONDITIONS CONTAINED IN THIS PURCHASE ORDER SHALL BE CONCLUSIVELY PRESUMED FROM BUYER'S ACCEPTANCE OF ALL OR ANY PART OF THE GOODS OR FROM PAYMENT BY BUYER FOR ALL OR ANY PART OF THE GOODS. NONE OF THESE TERMS AND CONDITIONS MAY BE ADDED TO, MODIFIED, SUPERSEDED OR OTHERWISE ALTERED, EXCEPT BY A WRITTEN INSTRUMENT SIGNED BY AN AUTHORIZED EXECUTIVE OF SELLER. FAILURE OF SELLER TO OBJECT TO ANY TERMS OR CONDITIONS WHICH MAY BE CONTAINED IN ANY DOCUMENT OR FORM OF BUYER SHALL NOT BE CONSTRUED AS A WAIVER OF THESE CONDITIONS, NOR AS AN ACCEPTANCE OF ANY SUCH TERMS AND CONDITIONS.
2. **Payment Terms.** Payment terms are net thirty (30) days from the date of invoice, subject to a 2% discount if paid within ten (10) days of the date of the invoice. Any payments not made within thirty (30) days of the date of the invoice shall be subject to a late payment charge equal to the lesser of (i) 1.5% per month (compounded) on the unpaid balance of any amount then past due, or (ii) the highest lawful interest rate.
3. **Quoted Purchase Price; Taxes.** The quoted purchase price may be increased to the extent that Seller's cost of the product sold hereunder may be increased as a result of (1) any agreements, codes, or legislative enactments made or enacted pursuant to federal, state or municipal legislation; and (2) increase in the cost of labor or raw materials. In addition to paying the quoted purchase price, Buyer is solely liable for any excises, levies or taxes which Seller may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use, consumption or transportation of any of the goods covered hereby, and Buyer agrees to pay the amount thereof on the same terms as it shall pay the quoted purchase price. **Furthermore, Seller only collects sales tax for product that is delivered in the State of Wisconsin. Buyer is responsible for remitting any sales and use tax for any product that is delivered outside the State of Wisconsin. Buyer acknowledges and agrees that it is Buyer's responsibility to determine whether or not their purchase of goods from Seller pursuant to this order requires Buyer to remit sales and/or use tax.**
4. **Warranty.** Seller warrants that the goods supplied under this purchase order (the "Goods") shall conform to the description stated on the reverse side hereof. THE FOREGOING WARRANTY IS SELLER'S SOLE WARRANTY WITH RESPECT TO THESE GOODS. ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE HEREBY DISCLAIMED. SELLER'S LIABILITY FOR BREACH OF WARRANTY HEREUNDER IS LIMITED SOLELY TO THE REPLACEMENT OF THE DEFECTIVE GOODS, WHICH SHALL BE RETURNED TO SELLERS WAREHOUSE IN DE FOREST, WI, TRANSPORTATION CHARGES PREPAID BY BUYER; AND THE FAILURE TO GIVE NOTICE OF A WARRANTY CLAIM WITHIN THIRTY (30) DAYS FROM DATE OF DELIVERY SHALL CONSTITUTE A WAIVER BY BUYER OF ALL CLAIMS (INCLUDING UNDER THIS WARRANTY) IN RESPECT TO SUCH GOODS. THE FOREGOING SHALL CONSTITUTE THE SOLE REMEDY OF BUYER AND THE SOLE LIABILITY OF SELLER UNDER THIS WARRANTY.
5. **LIMITATION OF LIABILITY.** SELLER'S LIABILITY TO BUYER, WHETHER IN CONTRACT, IN TORT, UNDER SECTION 4 OF THESE TERMS AND CONDITIONS, IN NEGLIGENCE OR OTHERWISE, SHALL NOT EXCEED IN ANY CASE THE RETURN OF THE AMOUNT OF THE PURCHASE PRICE PAID BY BUYER AND UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES. THE PRICE STATED FOR THE GOODS IS CONSIDERATION FOR LIMITING SELLERS LIABILITY. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS PURCHASE ORDER MAY BE BROUGHT BY BUYER MORE THAN ONE (1) YEAR AFTER THE DATE OF THIS PURCHASE ORDER. WITHOUT LIMITATION OF THE FOREGOING, IN NO EVENT WILL SELLER BE RESPONSIBLE OR LIABLE FOR (A) PENALTIES OR PENALTY CLAUSES OF ANY DESCRIPTION, OR (B) INDEMNIFICATION OF BUYER OR OTHERS FOR COSTS, DAMAGES OR EXPENSES ARISING OUT OF OR RELATED TO THE GOODS.
6. **Claims.** Claims by Buyer for shortages or errors in delivery must be made within five (5) days after the delivery of the Goods. Goods are sold subject to the standard manufacturing practices of Seller's suppliers. Goods purchased on the basis of weight are subject to customary quantity variations recognized by practice in the industry.
7. **"SPECIAL ORDER" Designation.** Upon receipt of this purchase order, Seller may place a designation of "SPECIAL ORDER" on some of the requested Goods. Buyer acknowledges that any Goods bearing the designation "SPECIAL ORDER" are Goods that Seller does not maintain in inventory, and which Seller is procuring solely and specifically for the purpose of fulfilling Buyer's order. Should an order contain items with a "SPECIAL ORDER" designation, Seller shall provide Buyer with a markup of Buyer's original purchase order showing which items have been designated "SPECIAL ORDER," and will require Buyer to pre-pay an amount equal to 30% of the price of the Goods bearing the designation "SPECIAL ORDER" (the "Special Order Deposit") prior to accepting Buyer's purchase order.
8. **Returns.** No Goods shall be returned or otherwise rejected, and Buyer shall not revoke acceptance of this purchase order, without first obtaining written consent from Seller. After Seller has given consent to Buyer's return, rejection or revocation of acceptance of the Goods included in this purchase order, the following shall occur: (i) in the event that Buyer's purchase order includes items that bear the designation "SPECIAL ORDER," Buyer shall make an additional payment to Seller that is equal to the amount by which (a) the total costs advanced by Seller to procure the "SPECIAL ORDER" items exceeds (b) Buyer's Special Order Deposit. If Seller does not consent to Buyer's return, rejection or revocation of acceptance of the Goods, Buyer shall pay Seller the purchase price for the Goods.
9. **Shipment.** Unless otherwise stated on the reverse, delivery terms are F.O.B. Seller's warehouse in De Forest, Wisconsin for purchase orders that do not contain "SPECIAL ORDER" items. For orders that contain "SPECIAL ORDER" items, Buyer will pay the entire cost of freight from Seller's supplier. In either case, Buyer shall assume all risk of loss or damage upon delivery by Seller to the carrier at the point of shipment. Scheduled dates of delivery are determined from the date of Seller's acceptance of this purchase order, and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery. Seller shall not be liable for any damages caused by failure or delay in shipping the goods described herein, if such failure or delay is due to any war, embargo, riot, fire, flood, accident, mill condition, strike or other labor difficulty, an act of Buyer, an act of God, an act of a governmental authority, transportation shortage or failure, inability to obtain sufficient fuel, labor, materials or manufacturing facilities, or any other cause beyond the reasonable control of Seller.
10. **Security Interest.** Buyer grants to Seller a security interest, and Seller retains a purchase money security interest in all Goods not paid for in full, notwithstanding that the goods have been delivered to Buyer, and Buyer hereby authorizes Seller to execute and file financing statements describing the Goods, and to provide or execute such other documents which may be requested by Seller to evidence its security interest.
11. **Cancellation.** Purchase orders accepted by Seller may be cancelled by Buyer prior to Seller's delivery only upon the express written consent of Seller. After Seller has given consent to cancellation of the Buyer's purchase order, the following shall occur: (i) in the event that Buyer's purchase order contains items that bear the designation "SPECIAL ORDER," Buyer shall make an additional payment to Seller that is equal to the amount by which (a) the total costs advanced by Seller between the date the purchase order is accepted and the date Seller agrees to cancellation for procurement of the Goods designated SPECIAL ORDER exceeds (b) Buyer's Special Order Deposit. Absent Seller's consent to the cancellation of this purchase order, Buyer shall pay Seller the purchase price for the Goods.
12. **Indemnification.** In addition to the foregoing, Buyer agrees to save and hold Seller harmless from any claims, demands, liabilities, damages, costs, expenses or judgments arising in whole or in part, directly or indirectly, out of the negligence or lack of care by Buyer or Buyer's customers, agents, employees or invitees involving the use of the Goods supplied by Seller. This indemnification shall include all costs, attorney's fees and other expenses paid or incurred by or imposed upon Seller in connection with the defense of any such claim.
13. **Governing Law.** This purchase order shall be deemed to have been made in De Forest, Dane County, Wisconsin. The parties agree that the validity, interpretation and performance of any agreement arising out of this transaction shall be governed by the laws of the State of Wisconsin, including the Uniform Commercial Code as enacted in Wisconsin, without regard to conflicts of interest laws. Buyer and Seller hereby consent and submit to the exclusive jurisdiction and venue for the resolution of any disputes hereunder of the Dane County Circuit Court in Madison, Wisconsin. This shall be the sole and exclusive jurisdiction and venue for the purpose of adjudication of any rights and liabilities hereunder.
14. **Default.** In the case of default or breach by Buyer in the performance of any or all of the provisions of this purchase order, Seller may cancel any outstanding purchase orders from Buyer and declare all obligations immediately due and payable, and shall in addition have all remedies afforded by the Uniform Commercial Code as enacted in Wisconsin, and any other applicable law. Buyer shall, in addition, be liable for Seller's expenses incurred in exercising any remedies available to it, including reasonable attorney's fees and legal expenses. All unpaid obligations shall bear interest at the contract rate provided under terms of payment above.
15. **Delay.** If Buyer requests deferral of deliveries, Seller's agreement to defer delivery shall not excuse Buyer from its obligation to pay for the Goods at the same times and in the same quantities as the original delivery schedule, including interest due pursuant to these terms and conditions. In addition to adhering to the original payment schedule, Buyer shall pay such storage charges as Seller may assess for storing the goods awaiting delivery.