



## TERMS AND CONDITIONS OF SALE

**1. APPLICABILITY.** The following terms and conditions ("Terms and Conditions") are deemed part of all quotations, proposals, acknowledgments, invoices, orders, statements and other documents, whether electronic or in writing, relating to the sale of goods or services ("Products") by **AmChar Wholesale, Inc.**, a New York corporation ("Seller") to Seller's customers ("Buyer"). These terms and conditions, together with the foregoing documents, constitute the entire contract of sale and purchase between Seller and Buyer with respect to the Products, will supersede all previous communications, agreements or contracts, written or verbal between Seller and Buyer, and no understanding, agreement, term, condition or trade custom at variance herewith will be binding on Seller. In the event of a conflict between or among the terms of documents relating to the Products, the following order of priority will govern, except where the specific terms of a document provide otherwise: (a) any applicable order acknowledgment and invoice;

(b) these Terms and Conditions; (c) the applicable quotation; and (d) the applicable purchase order. No waiver, amendment or modification of these Terms and Conditions will be effective unless in writing and signed by an officer of Seller. **SELLER OBJECTS TO, AND IS NOT BOUND BY, ANY TERMS OR CONDITIONS ON BUYER'S PURCHASE ORDER, CONFIRMATION FORMS OR OTHER DOCUMENTS, WHICH ATTEMPT TO IMPOSE UPON SELLER ANY TERMS AND CONDITIONS AT VARIANCE WITH SELLER'S TERMS AND CONDITIONS OF SALE SET FORTH HEREIN, AND SHIPMENT OR OTHER PERFORMANCE BY SELLER SHALL NOT CONSTITUTE ASSENT TO ANY SUCH INCONSISTENT TERMS.**

**2. QUOTATIONS.** All quotations by Seller are subject to change or withdrawal without prior notice to Buyer unless otherwise specifically stated in the quotation. Quotations are made subject to approval by Seller of Buyer's credit. Seller shall have no obligation to sell or deliver Products covered by Seller's quotation unless and until Seller issues an order acknowledgement form or upon the shipment of Products by Seller.

**3. TERMS OF PAYMENT.** Unless otherwise expressly agreed to by Seller in writing, terms of payment are cash to be paid **in accordance with the terms of the invoice.** Time of payment is of essence. Any invoice not paid **in immediately available funds and in accordance with the terms of the invoice** is subject to a late payment fee of one and one-half percent (1.5%) per month, or, if such rate exceeds that permitted by applicable law, then the highest lawful rate. Buyer also agrees to indemnify Seller for all collection costs on any delinquent accounts, including, without limitation, attorneys' fees and court costs. The inspection rights granted to Buyer hereunder will not affect or alter the payment terms or the timing of Buyer's payment obligations. Under no circumstances will Buyer have a right of set-off. Any returned checks will be subject to a \$35.00 service charge.

**4. CREDIT.** All shipments to be made hereunder shall at all times be subject to the approval of Seller's credit department. Seller may invoice Buyer and recover for each shipment made pursuant to these Terms and Conditions as a separate transaction without regard to any other purchase order or agreement with Seller. All overdue amounts must be paid before additional shipments are made, and Seller reserves the right to cancel any purchase order or refuse to accept or fill any purchase order then outstanding until all overdue amounts are paid in full. In the event that Seller, in its sole and absolute discretion, deems Buyer's credit to be unsatisfactory, Seller shall have the right, in addition to any of its other remedies, to

(a) limit the amount of credit which Seller extends to Buyer and delay the delivery of Products based upon such limitations; (b) require full or partial payment in advance, (c) deliver Products to Buyer C.O.D., or (d) cancel or refuse to accept or fill any purchase order from Buyer then outstanding or thereafter placed. Buyer grants to Seller a purchase money security lien interest in any Products sold to Buyer on credit to secure the payment of such amounts. Buyer hereby authorizes Seller to sign any document required to perfect Seller's security interest, including financing statements under the Uniform Commercial Code. Buyer shall immediately notify Seller, of any event or development that could reasonably be expected to have a material adverse effect on the assets, operations or financial condition of Buyer and any change in the senior management of Buyer.

**5. PRICES AND TAX.** Prices and other information shown in any Seller publication (including product catalogs, brochures and electronic price lists) or provided by Seller verbally are subject to change without notice and to written confirmation by Seller. Such publications and verbal quotations are maintained and provided to Buyer only as a source of general information. Published or quoted Product prices do not include sales, use, excise, customs, value-added or similar taxes. Such taxes shall be the responsibility of Buyer and invoiced as a separate item to be paid by Buyer unless Seller is provided with a resale tax certificate to support any exemption. Failure by the Seller to collect any such fees or taxes shall not affect Buyer's obligations hereunder, and Buyer shall fully defend, indemnify and hold harmless Seller with respect to such tax obligations.

**6. MINIMUM BILLING CHARGE.** Seller shall not accept any purchase order for any Products where the aggregate price for all Products listed thereon is less than \$100.00, exclusive of all taxes, shipping, insurance and other costs. Upon Buyer's request, Seller may waive the minimum order requirement, subject to an additional \$25.00 handling charge. All such Purchase Orders must, and all invoices related thereto will, list the handling charge as a separate line item.

**7. TITLE, RISK OF LOSS, AND SHIPPING TERMS.** Unless otherwise agreed in writing by the parties, deliveries of Products shall be made F.O.B. Seller's facility in Rochester, New York. Title shall pass to Buyer and Buyer will be responsible for and shall assume all risk and liability for, and agrees to indemnify Seller for any use or misuse by third parties who may acquire or use the Products, after Seller's delivery of the same to the carrier. Any loss occasioned by damage or shrinkage in transit will be for Buyer's account, and Buyer shall file any damage or loss claims directly with the carrier. Unless otherwise agreed in writing by the parties, packaging methods, shipping documents and manner, route and carrier of shipment shall be at Seller's sole discretion. Seller reserves the right to ship items in a single or multiple shipments. Unless otherwise agreed in writing by the parties, all freight charges and insurance costs shall be the responsibility of Buyer and will be invoiced as a separate line item to be paid by Buyer.



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**8. INSPECTION AND ACCEPTANCE OF GOODS.** Buyer shall examine Products promptly upon receipt of delivery from the carrier. Buyer shall advise the carrier of any damages or shortages prior to acceptance of Products and, except for any latent defects, shall advise Seller of any claims with respect to shortages, damages or discrepancies within ten (10) days after receipt thereof. If Buyer does not so notify the carrier and Seller of any nonconforming or damaged Products during this period, the Products shall be deemed accepted and it is expressly agreed that Buyer shall have waived all claims based on any defects that were or would have been discovered on reasonable inspection during this period. Buyer shall afford Seller a reasonable opportunity to inspect such nonconforming or damaged Products and to cure any nonconformity. BUYER'S FULL OR PARTIAL PAYMENT OR ACCEPTANCE OF DELIVERY OF PRODUCTS WITHOUT NOTIFYING THE CARRIER AND SELLER OF ANY DAMAGES OR SHORTAGES IN ACCORDANCE WITH THIS SECTION 8 SHALL CONSTITUTE ACCEPTANCE OF SUCH PRODUCTS.

**9. DELIVERY.** Seller's delivery or shipping dates are approximate only and merely represent Seller's best estimate of time required to make delivery or shipment. Shipment dates are contingent on prompt receipt by Seller of all necessary shipping information. Seller shall not be held responsible for failure to meet estimated shipping dates, and in no event shall Seller be liable for any loss, cost, damage or expense whatsoever incurred by Buyer or its customers that may result therefrom.

**10. RETURN POLICY.** No Products shall be returned without the prior written authorization of Seller. Seller, in its sole discretion may reject any nonwarranty return requests. Defective Products are to be returned directly to the manufacturer in accordance with their warranty and return policies. Non-warranty returns of unused and resalable Products for credit will be subject to Seller's return policies in effect at the time, including applicable restocking charges (currently 10%) and other conditions of return. Return requests of incorrectly ordered items will only be accepted against a restocking charge of 20% within ten (10) days after delivery. Products returned under warranty must be properly packed and shipped to Seller specified locations. All shipping containers must be clearly marked per Seller's instruction. Buyer will be responsible for all costs and expenses associated with any returns of Products (other than products returned at Seller's request pursuant to Section 13 hereof) and will bear the risk of loss or damage of all returned Products, unless Seller agrees otherwise in writing. Seller, in its sole discretion may reject any return of Product not approved by Seller in accordance with this paragraph or otherwise not returned in accordance with Seller's then current return policies.

**11. ORDER CANCELLATION.** Purchase orders acknowledged or shipped by Seller may not be canceled, altered or modified by Buyer except as otherwise permitted herein or agreed to in writing by Seller. Buyer will indemnify Seller for all costs and expenses already incurred and commitments made by Seller related to any terminated, cancelled or modified purchase order. Cancellation by Buyer prior to shipment pursuant to any standing, recurring or release purchase order is permitted only by written notice sixty (60) days before the originally scheduled shipment date as confirmed by Seller on the order acknowledgement related to such purchase order and is subject to reasonable cancellation and restocking charges, including reimbursement for direct costs. Notwithstanding any term to the contrary contained herein, a "special product" (non-stock product) will be identified and acknowledged when requested or ordered and cannot be canceled or returned. Buyer will be responsible for cancellation charges of the actual selling price for any cancelled or returned special products.

**12. NO SELLER WARRANTY.** The only warranties applicable to the Products are any applicable express warranties from the manufacturer of a Product. Buyer understands and agrees that Seller makes no representations or warranties of any kind or nature concerning the Products. Buyer agrees to waive any and all implied warranties, including merchantability or fitness for a particular purpose. SELLER MAKES NO WARRANTIES WHATSOEVER, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NONINFRINGEMENT. THE REMEDIES GRANTED BY EACH PRODUCT MANUFACTURER SHALL BE BUYER'S SOLE AND EXCLUSIVE REMEDY UNDER THESE TERMS AND CONDITIONS AND IS EXPRESSLY MADE IN SUBSTITUTION OF ANY AND ALL REMEDIES OTHERWISE PROVIDED.

**13. LIMITATION OF DAMAGES.** IN NO EVENT SHALL SELLER, ITS AFFILIATES, OFFICERS, AGENTS OR EMPLOYEES BE LIABLE FOR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING FROM THESE TERMS AND CONDITIONS OR THE PRODUCTS OR SERVICES PROVIDED HEREUNDER, INCLUDING (WITHOUT LIMITATION) LOSS OF PROFITS OR REVENUES, INTERRUPTION OF BUSINESS, LOSS OF USE OF THE PRODUCTS OR ANY ASSOCIATED EQUIPMENT, MATERIALS, COMPONENTS OR PRODUCTS, DAMAGE TO ASSOCIATED EQUIPMENT, MATERIALS, COMPONENTS OR PRODUCTS, COST OF SUBSTITUTE PARTS, OR CLAIMS OF BUYER'S CUSTOMERS FOR SUCH DAMAGES. SELLER WILL NOT BE LIABLE TO BUYER FOR ANY LOSS, DAMAGE, OR INJURY TO PERSONS OR PROPERTY RESULTING FROM THE HANDLING, STORAGE, TRANSPORTATION, RESALE, OR USE OF ITS PRODUCTS IN MANUFACTURING PROCESSES, OR IN COMBINATION WITH OTHER SUBSTANCES, OR OTHERWISE, INCLUDING (WITHOUT LIMITATION) ANY OBLIGATIONS OR LIABILITY ARISING OUT OF SELLER'S NEGLIGENCE OR FAULT. IN NO EVENT WILL SELLER'S LIABILITY UNDER THESE TERMS AND CONDITIONS OR IN CONNECTION WITH THE SALE OF PRODUCTS BY SELLER, WHETHER SUCH LIABILITY ARISES IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE PURCHASE PRICE OF THE SPECIFIC PRODUCTS OR SERVICES AS TO WHICH THE CLAIM IS MADE.

**14. INDEMNIFICATION.** Buyer shall indemnify and hold Seller, its officers, directors, employees, agents, affiliates, successors and assigns harmless from and against all claims, liabilities, losses, damages, costs and expenses sustained by them (including court costs and attorneys' fees) arising out of or in any way connected with the breach of these Terms and Conditions by Buyer or any of its affiliates, employees, officers or agents.



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**15. REGULATORY COMPLIANCE AND EXPORT RESTRICTIONS.** Sales of firearms and explosives are subject to compliance with federal, state, and local rules and regulations (including but not limited to the Gun Control Act of 1968), and to approvals by the Bureau of Alcohol, Tobacco, Firearms and Explosives and relevant state and municipal governmental authorities. All sales of Products by Seller to Buyer shall be subject to such restrictions and Buyer shall obtain and maintain all licenses and permits required in connection therewith. Buyer further acknowledges that it is subject to and agrees to abide by federal laws and regulations (including the Export Administration Act of 1979, the Arms Export Control Act and International Traffic in Arms Regulations) and restrictions of and controls imposed by Product manufacturers relating to the export of the Products. Buyer shall, if requested by the Seller, provide such assurances and representations to the Seller, as the Seller may deem necessary or desirable to confirm the compliance of Buyer with all applicable legal requirements. Buyer shall immediately notify Seller of any revocation of its required licenses or of any changes in the ownership or control of its business or in the form of its business entity (e.g. partnership, corporation, sole proprietorship).

**16. OWNERSHIP OF INTELLECTUAL PROPERTY.** All drawings, know-how, designs, specifications, inventions, devices, developments, processes, copyrights and other information or intellectual property disclosed or otherwise provided to Buyer by Seller and all rights therein (collectively, "Intellectual Property") will remain the property of Seller and will be kept confidential by Buyer in accordance with these Terms and Conditions. Buyer shall have no claim to, nor ownership interest in, any of the Intellectual Property, and such information, in whatever form and any copies thereof, shall be promptly returned to Seller upon written request from Seller. Buyer acknowledges that no license or rights of any sort are granted to Buyer hereunder in respect of any Intellectual Property.

**17. CONFIDENTIAL INFORMATION.** All confidential information furnished or made available by Seller to Buyer shall be held in confidence by the Buyer. Buyer agrees not to use such information or disclose such information to others without Seller's prior written consent. The obligations in this paragraph will not apply to any information which (a) at the time of disclosure was or thereafter becomes, generally available to the public by publication or otherwise through no breach by the Buyer of any obligation herein, (b) the Buyer can show by written records was in the Buyer's possession prior to disclosure by Seller, or (c) is legally made available to the Buyer by or through a third party having no direct or indirect confidentiality obligation to Seller with respect to such information.

**18. FORCE MAJEURE.** Seller shall not be liable for failure to perform or delay in performance or delivery of any Products due to (a) fires, floods, strikes, or other labor disputes, accidents, sabotage, terrorism, war, riots, acts of precedence or priorities granted at the request or for the benefit, directly or indirectly, of any federal, state or local government or any subdivision or agency thereof, delays in transportation or lack of transportation facilities, restrictions imposed by federal, state or local laws, rules or regulations; or (b) any other cause beyond the control of Seller. In the event of the occurrence of any of the foregoing, the time for performance shall be extended for such time as may be reasonably necessary to enable Seller to perform. Seller may, during any period of shortage due to any of the above circumstances, allocate its available supply of Products among itself and its Buyers in such manner, as Seller, in its judgment, deems fair and equitable.

**19. ASSIGNMENT AND DELEGATION.** No assignment of any rights or interest or delegation of any obligation or duty of Buyer under these Terms and Conditions, Seller's quotation, order acknowledgement, or invoice, or Buyer's purchase order may be made without the prior written consent of Seller. Any attempted assignment or delegation will be wholly void and totally ineffective for all purposes.

**20. WAIVER.** No failure of Seller to insist upon strict compliance by Buyer with these terms and conditions or to exercise any right accruing from any default of Buyer shall impair Seller's rights in case Buyer's default continues or in case of any subsequent default by Buyer. Waiver by Seller of any breach by Buyer of these terms and conditions shall not be construed as a waiver of any other existing or future breach.

**21. LIMITATION OF ACTIONS.** Notwithstanding any contrary statute of limitations, any cause of action for any alleged breach of these terms and conditions by Seller shall be barred unless commenced by Buyer within one (1) year from the accrual of such cause or action.

**22. LITIGATION COSTS.** If any litigation or arbitration is commenced between Seller and Buyer concerning any provision of these Terms and Conditions, the party prevailing in the litigation or arbitration is entitled, in addition to such other relief that is granted, to a reasonable sum as and for their attorney's fees in such litigation or arbitration, provided that if each party prevails in part, such fees shall be allocated in such manner as the court or arbitrator shall determine to be equitable in view of the relative merits and amounts of the parties' claims.

**23. DISPUTES.** Either party may give the other party written notice of any dispute arising out of or relating to these Terms and Conditions and not resolved in the normal course of business. The parties shall attempt in good faith to resolve such dispute promptly by negotiations between executives who have authority to settle the dispute. If unsuccessful, the parties further will attempt in good faith to settle the dispute by nonbinding third-party mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, with mediator fees and expenses apportioned equally to each side. Subject to the foregoing, the parties shall settle any dispute arising out of or related to these Terms and Conditions, or the breach thereof, by arbitration in Rochester, New York in accordance with the rules of the American Arbitration Association. The parties shall agree upon a single arbitrator or, if the parties cannot agree upon an arbitrator within thirty (30) days, then the parties agree that a single arbitrator shall be appointed by the American Arbitration Association. The arbitrator may award attorneys' fees and costs as part of the award. The award of the arbitrator shall be binding and may be entered as a judgment in any court of competent jurisdiction. These procedures are the exclusive procedures for the resolution of all disputes between the parties; provided, however, that, notwithstanding the foregoing, Seller will have the right, and in addition to all other remedies available to it at law, in equity or under these Terms and Conditions, to affirmative or negative injunctive relief from a court of competent jurisdiction in the event Buyer violates or threatens to violate the terms of Sections 16 or 17. Each party acknowledges that a violation of Sections 16 or 17 would cause irreparable harm and that all other remedies are inadequate. Each party further agrees and acknowledges that any such action or proceeding for equitable relief must be brought in a state or federal court having jurisdiction in Monroe County, New York, and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding and agrees to waive any defenses to venue and jurisdiction including forum non conveniens.



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**24. GOVERNING LAW.** The laws of the State of New York shall govern the validity, interpretation and enforcement of these Terms and Conditions, without regard to its conflicts of law principles. The application of the United Nations Convention on Contracts for the International Sale of Goods shall be excluded. Should any term or provision hereof be held wholly or partly invalid or unenforceable under applicable law, the remainder of the agreement evidenced hereby will not be affected thereby.