

ACME MILLS COMPANY TERMS AND CONDITIONS OF SALE

THESE TERMS AND CONDITIONS APPLY TO ALL GOODS AND/OR SERVICES ("PRODUCTS") SOLD AND/OR PERFORMED BY ACME MILLS COMPANY ("ACME MILLS") AND ARE INCORPORATED INTO EACH AND EVERY SALES ORDER, QUOTATION OR OTHER DOCUMENT ISSUED BY ACME MILLS. BY PURCHASING PRODUCTS FROM ACME MILLS, CUSTOMER INDICATES THAT IT HAS READ, UNDERSTANDS AND AGREES TO BE BOUND BY THESE TERMS AND CONDITIONS WITHOUT MODIFICATION.

1. Offer; Acceptance; Exclusive Terms of Contract. ACME MILLS's sales order, quotation or other offer document, together with these Terms and Conditions ("Sales Order") constitutes ACME MILLS's offer to the customer identified in the Sales Order ("CUSTOMER") to sell the Products identified in the Sales Order and otherwise to enter into the agreement the Sales Order describes and the Sales Order shall be the complete and exclusive statement of such offer and agreement ("Contract"). The Contract is formed when CUSTOMER accepts the Sales Order by written acknowledgement or by the issuance to ACME MILLS of a purchase order or other document for the purchase of the Products ("Purchase Order"). Acceptance is expressly limited to these Terms and Conditions and the terms and conditions expressly referenced on the face of the Sales Order. Notwithstanding any contrary provision in CUSTOMER's Purchase Order, neither ACME MILLS's failure to object to CUSTOMER's terms and conditions, nor ACME MILLS's delivery of Products, commencement of performance, or any other conduct in furtherance of ACME MILLS's supply of the Products to CUSTOMER shall constitute acceptance of CUSTOMER's terms and conditions. Where a Sales Order and/or Purchase Order is not issued as described above, ACME MILLS's order acknowledgement or other confirmation document, together with these Terms and Conditions, shall be the complete and exclusive statement of the Contract described herein. Once accepted, all Purchase Orders are FINAL and are not subject to cancellation by CUSTOMER. If CUSTOMER desires to cancel all or part of a final order, it shall promptly contact ACME MILLS. Any decision by ACME MILLS as to whether to cancel all or part of a Purchase Order is in ACME MILLS's sole discretion, including any additional terms that may be imposed.

2. Adjustments. ACME MILLS reserves the right to equitably adjust the price and delivery terms of the Contract in the event of, and as a condition to, any changes in the specifications, timing, quantity or other requirements for Products or the scope of any work covered by the Contract. Acme Mills may substitute or modify any component parts, sources of raw materials, processes, or manufacturing sites.

3. Shipping and Delivery. All sales of Products are F.O.B. ACME MILLS's facility unless otherwise expressly stated in the Sales Order. Where Products are shipped, responsibility of ACME MILLS shall cease upon delivery to and receipt of the Products by a common carrier at which point CUSTOMER will bear all risk of loss for the Products. Deliveries of Products may be changed, deferred or canceled by CUSTOMER only upon specific agreement in writing by ACME MILLS and ACME MILLS may condition such agreement upon CUSTOMER's assumption of liability and payment to ACME MILLS for: (a) all completed work at the Contract price; (b) a sum equal to the costs of work in process including costs accrued for labor and material, (c) any amount for which ACME MILLS is liable by reason of commitments made by ACME MILLS to its suppliers and/or subcontractors, and (d) any other loss, cost or expense of ACME MILLS as a result of such change, deferment or cancellation.

4. Payment Terms. Unless otherwise expressly stated in the Sales Order, all accounts are due and payable in U.S. currency with a 50% deposit down at the time of the Sales Order and the balance due immediately upon delivery of the Products. If any payment owed to ACME MILLS is not paid when due, it shall bear interest at the lesser of 18% per annum (1.5% per month) or the maximum rate permitted by law, from the date on which it is due until it is paid. Credit and delivery of Products shall be subject to ACME MILLS's approval. In the event CUSTOMER defaults under its payment terms or ACME MILLS otherwise deems itself insecure for any reason, ACME MILLS may, without notice, suspend deliveries of Products, cancel all credit available to CUSTOMER, require that any invoices outstanding be immediately due and payable in full, and refuse to make any further credit advances. CUSTOMER is prohibited from and shall not setoff against or recoup from or otherwise debit, chargeback or net from any amounts due or to become due from CUSTOMER or its affiliates any amounts due or to become due from ACME MILLS or its affiliates, whether arising under the Contract or under any other agreement. CUSTOMER shall be responsible for all costs and attorney's fees incurred by ACME MILLS in collecting or enforcing payment under the Contract.

5. Prices. Unless otherwise expressly stated in the Sales Order, prices for Products do not include storage, handling, packaging or transportation charges, service charges or entry fees from outside facilities or any applicable federal, state, local or foreign duties or taxes. ACME MILLS reserves the right to increase Product prices in the event of increases in its raw material or component costs, labor costs or other costs or expenses arising after the date of the Sales Order. The price for Products sold by ACME MILLS that are finished products manufactured by third parties shall be ACME MILLS's price in effect at the time of shipment to CUSTOMER.

6. Limited Warranty. ACME MILLS warrants that at the time of delivery to CUSTOMER, the Products will (a) be free from defects in material, but only to the extent such materials are warranted to ACME MILLS by the third-party manufacturers or other vendors of such materials, (b) be free from defects in ACME MILLS's workmanship, and (c) conform to the specifications that are a part of the Sales Order. Notwithstanding the foregoing, as to any Products sold by ACME MILLS that are finished products manufactured by third parties, the warranty delivered to ACME MILLS by the manufacturer or other vendor of such Products shall, to the extent assignment is permitted by the terms thereof, be assigned to CUSTOMER and shall be expressly in lieu of any other warranty, express or implied, of or by ACME MILLS for such Products. CUSTOMER shall make available for inspection and testing by ACME MILLS all Products claimed by CUSTOMER to be defective or nonconforming. Any claim for defective or nonconforming Products must be verified by ACME MILLS and, upon verification, ACME MILLS's liability shall be limited to the replacement or repair, at ACME MILLS's election, of such part of the Product in question as ACME MILLS may determine is defective or nonconforming.

THE FOREGOING WARRANTIES AND REMEDIES ARE EXCLUSIVE AND ACME MILLS MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. ACME MILLS SPECIFICALLY, BUT NOT BY WAY OF LIMITATION, DISCLAIMS ANY AND ALL LIABILITY FOR THE USE OR PERFORMANCE OF THE PRODUCTS IN THE APPLICATION(S) SELECTED BY CUSTOMER AND/OR ANY THIRD PARTY. ACME MILLS FURTHER DISCLAIMS ANY AND ALL LIABILITY FOR PRODUCTS THAT ARE FURTHER PROCESSED BY CUSTOMER OR ANY THIRD PARTY OR IN ANY WAY CHANGED BY CUSTOMER OR ANY THIRD PARTY FROM THE PRODUCTS DELIVERED BY ACME MILLS; THAT ARE DAMAGED OR CAUSE DAMAGE AS A RESULT OF MISUSE, ACCIDENT, NEGLIGENCE, OR IMPROPER INSTALLATION, HANDLING, CLEANING, MAINTENANCE, STORAGE, SECUREMENT, TRANSPORTATION, ALTERATIONS OR REPAIRS ON THE PART OF CUSTOMER OR ANY THIRD PARTY; OR THAT ARE DAMAGED OR CAUSE DAMAGE AS A RESULT OF VANDALISM, ACTS OF GOD, ANIMALS, POOLING OF WATER, SNOW OR ICE, CONTACT WITH SHARP OR OBTRUSIVE OBJECTS, CORROSIVE ENVIRONMENTS, POOR VENTILATION, OR EXPOSURE TO ENVIRONMENTAL POLLUTANTS, ABRASIVES, CHEMICALS, SOLVENTS, CLEANING AGENTS, LUBRICANTS OR OTHER HARSH SUBSTANCES.

7. Returns. No returned Products will be accepted for any reason unless a valid return authorization for such Products is first secured from an authorized representative of ACME MILLS and such return is shipped in accordance with ACME MILLS's instructions.

8. Termination. Neither CUSTOMER nor ACME MILLS shall have any right to terminate the Contract, or any part thereof, except where the other party materially defaults in any of its obligations under the Contract and the default is not cured within thirty (30) days after written notice to the defaulting party by the non-defaulting party. Upon any such termination by either party, (a) ACME MILLS shall be relieved of any further obligation to CUSTOMER (including, without limitation, any obligation with respect to production or delivery), (b) CUSTOMER shall be liable to ACME MILLS for the immediate payment of amounts then billed to date by ACME MILLS to CUSTOMER, (c) CUSTOMER shall purchase and pay ACME MILLS immediately for all raw materials, components, work in process and finished goods acquired or produced by ACME MILLS in connection with the Contract, and (d) CUSTOMER shall immediately reimburse ACME MILLS for all other loss, cost or expense of ACME MILLS as a result of the termination of the Contract.

9. Liability Limitation. IN NO EVENT SHALL ACME MILLS'S LIABILITY ARISING OUT OF OR RESULTING FROM ANY CONTRACT, INCLUDING, WITHOUT LIMITATION, FOR THE DESIGN, MANUFACTURE, SALE, DELIVERY, INSTALLATION, HANDLING, CLEANING, STORAGE, REPAIR, REPLACEMENT OR USE OF ANY PRODUCT, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER FOR THE PRODUCTS THAT ARE ALLEGED TO BE DEFECTIVE OR NONCONFORMING OR THE CAUSE OF ANY LOSS OR DAMAGE, WHETHER FOUNDED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. IN NO EVENT SHALL ACME MILLS BE LIABLE FOR ANY SPECIAL, INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOSS OF ANTICIPATED PROFITS, LOSS OF USE, LOSS OF REVENUE AND COST OF CAPITAL) ARISING OUT OF OR RELATING TO ANY CONTRACT OR ANY PRODUCTS. ANY CLAIM BY CUSTOMER AGAINST ACME MILLS ARISING OUT OF OR RELATING TO ANY CONTRACT OR ANY PRODUCTS CANNOT BE FILED, MADE OR MAINTAINED, AND SHALL BE DEEMED WAIVED, UNLESS FILED WITHIN TWELVE (12) MONTHS AFTER ACME MILLS HAS SHIPPED OR PROVIDED THE PRODUCTS IN QUESTION. THE LIMITATIONS ON ACME MILLS'S LIABILITY UNDER THIS SECTION 10 SHALL APPLY NOTWITHSTANDING ANY PROVISIONS OF ANY MANUFACTURER OR OTHER VENDOR WARRANTY REFERENCED UNDER SECTION 6 HEREOF.

10. Compliance. CUSTOMER shall be solely responsible for compliance with any international, federal, state or local laws, rules, regulations and ordinances or any industry standards that may be applicable to the Products. CUSTOMER agrees to adhere to all applicable US Export laws and regulations with respect to the products.

11. Proprietary Materials. ACME MILLS shall have and retain all rights, title and interest, including all intellectual property rights, in and to all Products and associated materials, including, without limitation, all related reports, specifications, drawings, designs, computer programs and any other property, tangible or intangible, furnished by ACME MILLS in connection with or under the Contract ("Proprietary Materials"). No Proprietary Materials created by ACME MILLS in connection with or pursuant to the Contract shall be considered "works made for hire" as that term is used in connection with the U.S. Copyright Act.

12. Confidentiality. CUSTOMER shall maintain the confidentiality of all technical, business or financial information of ACME MILLS ("Confidential Information") in the same manner in which it protects its own confidential information of like kind, but in no event shall CUSTOMER take less than reasonable precautions to prevent the unauthorized disclosure, publication, dissemination or use of the Confidential Information. Upon termination of the Contract, CUSTOMER shall return the Confidential Information and shall not use the Confidential Information for its own, or any third party's, benefit.

13. Excusable Delay. ACME MILLS shall not be liable for any delay or failure to perform if such delay or failure to perform is caused by circumstances beyond its reasonable control, including without limitation acts of God or public authority, riots or other public disturbances, labor disputes of any kind, power failures, pandemics, failure of CUSTOMER to provide required information, failure of CUSTOMER to provide adequate containers, or the change in cost or availability of raw materials, components or services based on market conditions, supplier actions or contract disputes. During any such delay or failure to perform by ACME MILLS, ACME MILLS's obligations under the Contract shall be suspended and ACME MILLS shall not have any obligation to provide CUSTOMER with Products from other sources or to pay or reimburse CUSTOMER for any additional costs to CUSTOMER of obtaining substitute Products. ACME MILLS may, during any period of shortage due to any of the above circumstances allocate its available supply of Products among itself and its customers in any manner that ACME MILLS deems fair and reasonable in its sole discretion.

14. Assignment. The Contract shall not be assigned in whole or in part by CUSTOMER without the prior written consent of ACME MILLS.

15. Waiver. Waiver by ACME MILLS of any of the terms or conditions of the Contract shall be effective only if in writing and signed by ACME MILLS, and shall not constitute a waiver of such terms as to any subsequent events or conditions, whether similar or dissimilar. No course of dealing or custom in the trade shall constitute a modification or waiver by ACME MILLS of any right.

16. Survival. These Terms and Conditions shall survive and continue in full force and effect following the expiration, cancellation or termination of any Contract.

17. Entire Agreement. These Terms and Conditions and any other terms and conditions, attachments, exhibits or supplements expressly referenced on the face of the Sales Order, constitute the entire agreement and Contract between ACME MILLS and CUSTOMER with respect to the matters contained herein and therein and supersede all prior oral or written representations and agreements. Except as otherwise provided in these Terms and Conditions, the Contract may only be modified by a written agreement signed by ACME MILLS.

18. Governing Law; Jurisdiction; Venue. Each Contract and any other documentation between ACME MILLS and CUSTOMER for the Products shall be governed by the internal laws of the State of Michigan without regard to any applicable conflict of laws provisions. The United Nations Convention on the International Sale of Goods is expressly excluded. CUSTOMER consents to the exclusive jurisdiction of the Courts of the State of Michigan located in Oakland County, Michigan and the United States District Court for the Eastern District of Michigan for any action or proceeding arising out of, or in connection with, each Contract and any other documentation between ACME MILLS and CUSTOMER for the Products. CUSTOMER specifically waives any and all objections to venue in such courts.