

DURAFLEX, INC. - CUSTOMER SALES ORDER TERMS & CONDITIONS

- 1. PARTIES AND APPLICATION.** The parties are Seller and Buyer. "Seller" is Duraflex, Inc. and "Buyer" is the party buying product(s) ("Products") from Seller. Hereafter, these terms and conditions and the sales order (the "Order") are collectively the "Agreement". This Agreement is incorporated into the transaction described on the Order. It is agreed that all purchase(s) of Products by Buyer from Seller are made pursuant to this Agreement. The terms and conditions herein may in some instances conflict with the terms and conditions contained in a purchase order or other document submitted by Buyer. Therefore, acceptance by Seller of Buyer's order is made only on the express understanding and condition that insofar as the terms and conditions of this acceptance conflict with any term(s) and/or condition(s) of the Buyer's order, the terms and conditions of this Agreement shall govern, irrespective of whether the Buyer accepts these conditions by a written acknowledgement, by implications or acceptance and payment of goods ordered hereunder. Any failure by Seller to object to any provision(s) contained in any document(s) or communication(s) from Buyer shall not be deemed a waiver, addition to or modification of any provision(s) of this Agreement.
- 2. MODIFICATION.** This Agreement may not be amended, changed or modified except by a writing duly executed by Buyer and Seller, and it is expressly understood that in the case of Seller, any such writing must be executed by an authorized representative of Seller. This Agreement, together with any specifications, schedules, or amendments referred to herein or attached hereto, sets forth the complete agreement between the parties, and supersedes any prior or contemporaneous communication(s) relating to its subject matter.
- 3. PRICES.** Seller reserves the right to revise prices for any Products if there is a change in quantity, size, analysis, finish, method and/or time of shipment differing from those provided for in the original Order.
- 4. PAYMENT.** Buyer shall make payment to Seller in the manner set forth in this Agreement. If in the judgment of Seller the creditworthiness of Buyer becomes impaired at anytime or Seller otherwise becomes insecure Seller shall have the right to require payment in advance before making any future shipments. Seller may, upon seven days written notice to Buyer, declare the unpaid purchase price of any Products shipped to Buyer to be immediately due and payable. Any payment for Products not made when due shall accrue interest at a rate of (a) 1.5% for each month (or any portion of any month in which a balance remains unpaid), or (b) the highest interest rate permitted by law, whichever rate is less. At Seller's option, upon any breach or default by Buyer hereunder, Seller may declare any outstanding debt, obligation or liability of Buyer to Seller, under this Agreement or otherwise, to be immediately due and payable. With respect to all payments due to Seller from Buyer hereunder, and unless in each instance waived by Seller in writing, timely payment shall be a required condition precedent to any subsequent deliveries of Products or other performance by Seller of its duties and obligations under this Agreement.
- 5. RISK OF LOSS.** All risk of loss of or damage to any Products shall pass from Seller to Buyer upon Seller's delivery of such Products to the carrier designated in the shipping instructions of Buyer or to a carrier reasonably selected by Seller if such shipping instructions do not designate a carrier for shipment. Any charges by carrier at destination for spotting, switching, demurrage or other services shall be paid by Buyer. Any price quotations contained herein are price terms only. Risk of loss or damages and shipping terms are as separately provided in this in this Agreement.
- 6. DEFECTIVE NON-CONFORMING OR REJECTED MERCHANDISE.** Buyer shall inspect all Products shipped immediately upon arrival at the shipment's destination. Within 3 business days of arrival Buyer shall notify the Seller's Quality Department of (a) any alleged defects in any Products in that shipment, (b) any reason(s) Buyer rejects any Products, and/or (c) any claim of shortage of Products in a shipment. When appropriate Seller will then issue a Return Goods Authorization (RGA) number to Buyer. SELLER WILL NOT ACCEPT ANY RETURNS WITHOUT HAVING FIRST ISSUED AN RGA NUMBER. AN RGA NUMBER MUST BE CLEARLY WRITTEN ON ANY PACKAGE AUTHORIZED FOR RETURN. A WRITTEN EXPLANATION OF THE REASON FOR REJECTION MUST ALSO ACCOMPANY THE RETURNED PRODUCT. Further, in the event any model or sample of any Products was shown to Buyer before an Order was placed, the Buyer acknowledges that such model or sample was merely used to illustrate the general type and quality of the Products and not to represent that the Products would necessarily be identical to the model or sample. Therefore, any alleged difference between the Products shipped and any model or sample shall not be a valid basis for rejection of any Products.
- 7. CHANGES AND CANCELLATIONS.** Should Buyer desire to revise or suspend an Order for reasons allegedly beyond the Buyer's control, Buyer shall first discuss the matter promptly with the Seller and the parties shall attempt to reach a mutually satisfactory agreement. Seller's Products are custom, made-to-order per specific customer requirements and therefore are non-cancellable as Products cannot be resold. All sales are final.

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8. **LIMITATIONS OF LIABILITY.** In no event shall the amount of Seller's liability for any breach or default hereunder exceed the purchase price paid or payable by Buyer to Seller for the Products and in no event shall Buyer be entitled to claim compensation for special, incidental or consequential damages for defective goods or services, late delivery or non-delivery, nor shall Seller be liable for Buyer's loss of any kind or description whatsoever. BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND SHALL NOT MAKE OR BE LIABLE UNDER ANY GUARANTEES, WARRANTIES, OR REPRESENTATIONS, EXPRESSED OR IMPLIED IN ANY MANNNER OR FORM WHATSOEVER. THIS INCLUDES BUT IS NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR USE OR PURPOSE, EXCEPT THOSE EXPRESSLY SET FORTH HEREIN OR IN A WRITING DELIVERED BY SELLER TO BUYER AND SELLER SHALL NOT, DIRECTLY OR INDIRECTLY, BE RESPONSIBLE OR LIABLE FOR ANY CLAIM, LOSS, DAMAGE, LIABILITY, COST OR EXPENSE IN CONNECTION WITH, ARISING OUT OF OR RELATING TO THE PRODUCTS, EXCEPT AS EXPRESSLY SET FORTH HEREIN.

9. **TERMINATION.** In the event of any breach or default by either party in any of the terms or conditions of this Agreement, or any other agreement between the parties, the other party may immediately terminate this Agreement by giving written notice to the defaulting party. This Agreement shall immediately terminate without written notice by or to, or other action by, either party in the event of any assignment for the benefit of creditors or offer to make an extension to creditors by Buyer, the insolvency (as such term is defined in the Uniform Commercial Code) of Buyer, the commencement of any proceeding under any bankruptcy laws by or against Buyer, the suspension or liquidation of Buyer's usual business, or any transfer (either voluntary or involuntary) of a substantial part of Buyer's property or assets other than in the ordinary course of business. Provided however, that in the event of any such termination, the terms and conditions of this Agreement shall continue to be binding upon the parties in connection with all the Products shipped by Seller to Buyer prior to any such termination.

10. **NOTICES.** Any notice given under this Agreement shall be in writing and mutually agreed upon and signed by both parties. The content of any notice, or any other communication, from Buyer shall not be construed as a modification of these terms and conditions unless such communication is specifically acknowledged by the Seller, in writing, as a modification or amendment hereto.

11. **CHOICE OF LAW, SEVERABILITY & VENUE.** This Agreement and each transaction described in the Order shall be construed and interpreted only under the laws of the State of Illinois. If any provision of this Agreement shall be determined invalid, only the portion of that provision shall be construed ineffective without invalidating the remainder of such provision or the remainder of the Agreement. In the event that any dispute relating to this Agreement or the transaction described in the Order shall result in judicial action, it is agreed that the venue for such action shall be the federal courts located in Chicago, Illinois, providing sufficient jurisdiction shall exist; and, if not, then the venue shall be the state courts located in McHenry County, Illinois.

12. **ATTORNEY'S FEES.** If any legal action is initiated by either party, the party in whose favor judgment shall be entered shall be entitled to recover from the other party all costs and expenses (including attorney's fees) incurred in such action, including all such costs and expenses of any appeal therefrom.