

# Terms & Conditions of Sale

## GENERAL

The sale by icotek Corp. ("Seller") of the goods ("Products") set forth on the purchase order on the face hereof ("Purchase Order") is subject to the terms set forth below ("Agreement"). This Agreement shall not be superseded by any other terms or conditions of the purchaser set forth on the Purchase Order ("Buyer"). Seller shall be deemed to have accepted this Agreement when Seller returns a Purchase Order confirmation to Buyer or begins substantial performance under the Purchase Order. This Agreement merges and supersedes all prior negotiations or agreements of the parties, either written or oral, made either prior to or contemporaneous with this Agreement. This Agreement, together with its attachments, constitutes the complete, exclusive and final agreement between Buyer and Seller. Seller reserves the right at its sole discretion to modify any and all provisions of this Agreement at any time.

## PRICES; TAXES; PAYMENT

The price of the Products specified the Purchase Order does not include federal taxes, state or local sales taxes, use taxes or occupational taxes. Unless prohibited by law, Buyer is responsible for and shall pay all applicable sales, use, occupational, excise, value added or other similar taxes applicable to the manufacture, sale, price, delivery or use of the Products, or in lieu thereof, Buyer shall provide Seller with a tax exemption certificate acceptable to and considered valid by the applicable taxing authorities. Payment is due thirty (30) days from the invoice date. Failure to make prompt and full payment constitutes a material breach of this Agreement. Past due balances shall be subject to interest charges at the maximum rate permitted by law. Buyer agrees to pay taxes appearing on the invoice or furnish Seller with a valid resale/exemption certificate no later than the time of payment.

## CREDIT

Seller may recover for each shipment hereunder as a separate transaction, without reference to any other shipment. If Buyer fails to pay any invoice in accordance with the terms of this Agreement or is past due in payment of any other amount owing to Seller, Seller may, at its option (and without liability or prejudice to any other remedies) defer further shipments until all payments owing to Seller by Buyer have been made (in which event Seller may elect to extend the Agreement period for a time equal to that for which shipments were so deferred), stop any Product in transit and/or decline further performance of this Agreement. If at any time in the judgment of Seller, the financial responsibility of Buyer is impaired, Seller may change the terms of payment and may require advance payment as a condition of shipment.

## DELIVERIES

All sales are EXW Seller's warehouse. Unless otherwise directed, Seller will prepay all freight and invoice the Buyer for the amount of freight paid. Seller shall use reasonable efforts to make deliveries promptly and in a commercially reasonable manner. Seller shall be permitted to make partial deliveries. Delivery dates and estimates are not guaranteed. Seller shall not be liable for failure to deliver or delays in delivery of the Products if such failure or delay is due, in whole or part, to any cause or conduct beyond the reasonable control of Seller.

## TITLE; RISK OF LOSS

Title and risk of loss, destruction of or damage to the Products shall be Seller's until delivery of the Products to a carrier at the Seller's warehouse. Thereafter, Buyer shall be fully responsible for and assume all risk of loss, destruction of or damage to the Products. Loss or damage to the Products after risk of loss has passed to Buyer will not release or excuse Buyer from its obligations under this Agreement to Seller, including the obligation to make full payment. Seller shall retain a first priority security interest in and a lien on such Products until payment by Buyer of all amounts due Seller from Buyer with respect to such Product.

## INSPECTION

Buyer shall inspect the Products at the place of delivery to Buyer promptly upon receipt. If Buyer alleges that the Products or any part thereof are not in accordance with the applicable specifications, Buyer shall give written notice to Seller stating all defects within seven (7) days after delivery of the Products and permit Seller or its agent to inspect the Products before the Products are used, processed, sold or otherwise dealt with. Any and all inspections by Buyer shall be at Buyer's sole cost and expense. If the Products or any part thereof are proven not to be in accordance with the contract or specifications, then Seller will accept Buyer's rejection of such Products and Buyer shall be entitled to receive a replacement Product, or, at Seller's option, repayment of the purchase price paid by Buyer.

If Buyer fails to give written notice to Seller in accordance with this paragraph, Buyer shall be deemed to have accepted the Products on the eighth (8th) day following the delivery of the Products to Buyer ("Acceptance Date"). Any attempt to reject or revoke acceptance of the Products after the Acceptance Date shall be null and void.

BUYER'S FAILURE TO INSPECT AND/OR NOTIFY SELLER AS PROVIDED ABOVE SHALL BE DEEMED TO BE A WAIVER OF ANY AND ALL RIGHTS AND REMEDIES THAT BUYER MAY HAVE WITH REGARD TO ANY DEFECT

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OR NONCONFORMITY REGARDING THE PRODUCTS EXCEPT FOR ANY LATENT DEFECT WHICH WOULD NOT HAVE BEEN DISCOVERABLE UPON REASONABLE INSPECTION.

## CANCELLED ORDERS

Buyer may cancel the Purchase Order only if Seller approves such cancellation in a signed writing. Cancelled orders are subject to a restocking fee of 50 USD or 30% of the purchase price of the Products (whichever is the higher amount). Custom orders, special orders or orders for specific Product requiring a factory order may not be cancelled.

## DESIGNS; SPECIFICATIONS

The design and specifications of the Products are subject to change without notice. Seller reserves the right to ship the latest type and design of the Products at current prices and shall have no liability or obligation for changes in design or specifications. In the event designs or specifications are changed, Buyer may, within fourteen (14) days of receiving notice of any changes in design or specifications, cancel the Purchase Order without liability, but only if the changes in design or specifications would have a negative material impact upon the business or operations of Buyer or otherwise render the Purchase Order or the delivery or use of the Products commercially impracticable.

## NOTICE OF CLAIMS; LIMITATION OF ACTIONS

All claims must be received by Seller in writing prior to the Acceptance Date; provided, however, that with respect to any defects incapable of discovery by Buyer (with the exercise of reasonable diligence) until in use or in processing in the manufacture of other products, all claims must be received by Seller in writing within fifteen (15) days after Buyer learns (or, with the exercise of reasonable diligence, could have learned) of the alleged defect. All claims must be received by Seller at the address specified on the front of this Agreement. All claims not made in writing as specified above and received by Seller within the time periods specified above shall be deemed waived. Upon receipt of Buyer's notification, Seller shall have the option of making inspection, analyses and tests of the Product at Buyer's premises or of requiring Buyer to send the Product or adequate samples thereof, at Buyer's expense, to Seller or to a person designated by Seller for inspection, analyses and tests. No inspection or any other actions by third parties are authorized or will be paid for by Seller, without Seller's prior consent in writing. Any action for Seller's breach of this Agreement (including breach of warranties) must be commenced by Buyer within one year after the cause of action accrues, and no such action may be maintained which is not commenced within such period.

## WARRANTIES

EXCEPT FOR THE EXPRESS LIMITED WARRANTY, IF ANY, STATED IN OR ATTACHED TO THE PURCHASE ORDER, SELLER MAKES NO EXPRESS OR IMPLIED WARRANTIES IN THIS AGREEMENT, THE PURCHASE ORDER OR OTHERWISE. TO THE FULLEST EXTENT PERMITTED BY LAW, SELLER

DISCLAIMS ALL WARRANTIES, WRITTEN OR ORAL, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. SELLER EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY TO BUYER FOR ANY CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF USE, LOSS OF PROFITS, INCOME OR REVENUE, LOSS OF TIME OR INCONVENIENCE, LOSS OR DAMAGE TO ASSOCIATED EQUIPMENT, COST OF SUBSTITUTED OR REPLACEMENT EQUIPMENT, LOSS TO FACILITIES, LOSS OF CAPITAL, LOSS OF SERVICES, COST OF REPLACEMENT, OR ANY OTHER INCIDENTAL CONSEQUENTIAL OR SPECIAL DAMAGE ARISING OUT OF THE PURCHASE ORDER, THIS AGREEMENT OR THE OPERATION, FUNCTION OR CHARACTERISTICS OF THE PRODUCTS PURCHASED HEREUNDER OR OTHERWISE PROVIDED BY SELLER. IN THE EVENT A LIMITED WARRANTY IS GIVEN BY SELLER, IT IS EXPRESSLY UNDERSTOOD THAT SAID LIMITED WARRANTY IS THE SOLE AND EXCLUSIVE REMEDY OF BUYER.

SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR ADEQUACY OF INFORMATION FURNISHED TO BUYER CONCERNING THE PHYSICAL CHARACTERISTICS OF, AND PROTECTIVE MEASURES TO BE TAKEN REGARDING THE PRODUCT. SELLER SHALL NOT BE LIABLE FOR ANY ERROR OR OMISSION IN THE PREPARATION OF SUCH INFORMATION. SELLER SHALL NOT BE LIABLE TO BUYER, BUYER'S EMPLOYEES OR ANYONE IN CONNECTION WITH THE ACCURACY, ADEQUACY OR FURNISHING OF SUCH INFORMATION.

IF THE PRODUCT DOES NOT CONFORM TO THE EXPRESS LIMITED WARRANTY PROVIDED BY SELLER, IF ANY, OR IF BUYER MAKES ANY OTHER CLAIM OF ANY SORT WHATSOEVER AGAINST SELLER, BUYER'S EXCLUSIVE REMEDY SHALL BE LIMITED TO REPLACEMENT OF THE PRODUCT, OR, AT SELLER'S OPTION, REPAYMENT OF THE PURCHASE PRICE PAID BY BUYER.

## REPLACEMENT PRODUCTS

Any Product supplied by Seller under this Agreement to replace a Product shall be deemed supplied subject to all of the terms and conditions of this Agreement, including, without limitation, those concerning warranties, limitation of liability, remedies and damages, to the same extent as the Product. In the event Seller agrees to replace any Product or agrees to repay to Buyer the purchase price of any Product supplied by Seller to Buyer under this Agreement pursuant to this portion of this Agreement, Buyer agrees that it shall take reasonable steps, at Seller's written request, to return to Seller (at Seller's expense) the product for which replacement or repayment is sought.

## LIMITATION OF LIABILITY

To the fullest extent permitted by law, the parties waive and relinquish any claims, demands, causes of action or recoveries for punitive damages, exemplary damages, or statutory damages. Seller shall not be liable for indirect, special, incidental or consequential damages arising under this Agreement or otherwise with respect to the sale of the Products, including any lost revenues or profits, consequential and/or incidental damages, business interruption or damage to business reputation, regardless of the theory upon which any claim may be based. Notwithstan-

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ding the terms of any limited warranty provided by Seller, in no event will Seller's entire liability to Buyer exceed the purchase price actually paid by Buyer for the Products, or any defective portion thereof, whichever is the lesser amount.

## INDEMNIFICATION

Buyer shall defend (including attorneys' fees), indemnify and hold Seller harmless from and against all damages, causes of action, claims, liabilities, penalties, personal injuries (including death), environmental damages and tangible property damage caused by Buyer's negligence, strict liability, breach of warranty, breach of this Agreement, fault, omissions and willful or wanton conduct arising, without limitation, from the handling, transportation, modification, storage and use of the Products or other goods provided hereunder.

## BUYER'S HANDLING/USE OF PRODUCT

Buyer assumes all risks and liability with respect to unloading and discharge of the Product (including failure of discharge or unloading implements or material used by Buyer, whether or not supplied by Seller), storage, handling, sales and use of the product, and the compliance or noncompliance with all federal and local laws and regulations with respect thereto. Buyer assumes all risk of patent infringement by reason of any use Buyer makes of the Product in combination with other material or in the operation of any process.

## FORCE MAJEURE

Seller shall have no liability or obligation to Buyer of any kind, including but not limited to any obligation to deliver the Products, arising from any delay or failure to perform all or any part of the Purchase Order or this Agreement as a result of causes, conduct or occurrences beyond Seller's reasonable control, including, but not limited to, commercial impracticability, fire, flood, act of war, civil disorder or disobedience, acts of public enemies, problems associated with transportation, acts or failures to act of any state, federal or foreign government or regulatory authorities, labor disputes, strikes, or failures of suppliers to make timely deliveries of materials, goods or services to Seller.

## TERMINATION

Should Seller for any reason elect to suspend manufacture of any Product which is the subject of any Purchase Order or curtail production or sale of the Product in consequence of the application of any governmental regulation or order which will, in the reasonable judgment of Seller, render the production, marketing or transportation of the Product economically, technically or commercially impracticable, Seller may terminate the Purchase Order upon thirty (30) days prior written notice to Buyer. If Buyer fails to perform any of the terms of this Agreement, Seller may at its option defer shipments until the default is remedied and/or treat such default as a breach of the entire Agreement.

## ATTORNEYS' FEES

In the event it becomes necessary for Seller to enforce the terms and conditions of the Purchase Order or this Agreement by litigation or otherwise, or to defend itself in any controversy, litigation, claim, demand or cause of action arising out of or as a result of the Purchase Order, this Agreement or the Products, and if Seller is the substantially prevailing party in said controversy, litigation, claim, demand or cause of action, then Seller shall be entitled to recover, in addition to any other relief granted or damages assessed, its reasonable attorneys' fees, expert witness fees, costs and expenses of litigation.

## GOVERNING LAW; FORUM SELECTION

This Agreement shall be governed by and subject to the laws of the State of Illinois (exclusive of its conflict of law principles). The United Nations Convention on Contracts for the International Sale of Goods (CIGS) shall not apply. The parties consent to the exclusive jurisdiction of the federal court in Chicago, Illinois or the state court located in Cook County, Illinois with respect to all litigation, claims, causes of action, demands, controversies or disputes among the parties. The only exception to this forum selection provision is a claim by Seller seeking the replevin of the Products in the event the courts specified in this provision will not or cannot assert jurisdiction. All counterclaims, if any, in connection with the replevin claim, shall be subject to this forum selection provision.

## WAIVER

No claim or right arising out of a breach of this Agreement can be discharged, in whole or in part, by a waiver or renunciation of the claim or right unless the waiver is supported by consideration and is in writing and signed by the aggrieved party.

## SEVERABILITY

If any term, covenant, warranty or condition of this Agreement, or the application thereof to any person or circumstance shall, to any extent, be held or deemed invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or provision, to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each remaining term, covenant or provision of this Agreement shall be deemed valid and enforced to the fullest extent permitted by law.

## ASSIGNMENT

Buyer's rights and obligations under this Agreement shall not be assignable without Seller's prior written consent.