

General Terms and Conditions of Sale



1. DEFINITIONS: The term "Buyer" as used herein shall mean the individual, firm, partnership or corporation to whom this invoice is issued. The term "Seller" as used herein shall mean Apple Rubber Products, Inc. The term "Goods" as used herein shall mean the articles, materials, goods, supplies, items, services and/or facilities to be produced and/or furnished by the Seller hereunder.

2. CONTRACT: Seller's offer consists of the specific written terms and conditions on the face hereof and these general terms and conditions of sale. Acceptance of this offer, to the extent consistent with and confirming, without variance or enlargement, Seller's specific and general terms and conditions of sale as set forth herein, shall constitute the contract (the "Contract"). The terms of the Contract apply exclusively between Buyer and Seller, and shall not be deemed to be for the benefit of any third party without the express written consent of Seller. No duty or right under the Contract shall be delegated or assigned by Buyer without the express written consent of the Seller. In case of conflict between specific terms and conditions and general terms and conditions, the specific terms and conditions shall prevail. In the event of conflict between these specific and general terms and conditions and any other documents or instruments of either Buyer or Seller, the provisions of these specific and general terms and conditions shall prevail. Seller specifically objects to any proposed term or condition of Buyer purporting to give priority, in case of conflict, to terms and conditions of sale proposed by Buyer purporting to eliminate from the Contract any of Seller's specific or general terms or conditions of sale, or requiring the insertion into the Contract of terms or conditions of sale proposed by Buyer. Buyer's receipt and use or storage for use of Goods representing partial or complete delivery hereunder shall constitute Buyer's acceptance of Seller's specific and general terms and conditions of sale.

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3. **MODIFICATION:** All Goods are sold and delivered only under this Contract. This Contract constitutes the complete, final and exclusive agreement between Buyer and Seller and no course of performance shall be relevant to explain or supplement any term used herein. No modification, rescission, or waiver of any term or condition shall be effective unless in a writing signed by Seller.

4. **PRICES:** Prices herein quoted supersede all previous quotations and proposals, and are subject to change without notice. Prices quoted do not include property, sales, use or privilege taxes, or any export or import taxes, customs, duties, or the like, whether any of the above be federal, state, local or otherwise, unless stated.

5. **PAYMENTS:** Terms of payment are net thirty (30) days from date of invoice unless otherwise agreed to in writing. If shipments are delayed by Buyer, for any reason whatsoever, invoices may be rendered on date(s) Seller is prepared to make shipment(s). If completion of manufacture is delayed by Buyer, for any reason whatsoever, invoices may be rendered when delay is ascertained, based upon percentage of completion. If such percentage of completion cannot, in good faith, be determined by Seller, any delay by Buyer, in shipment or completion of manufacture, shall constitute a substantial impairment of the value of the whole Contract. Should Buyer fail to comply with these terms of payment, Seller may elect, at its sole discretion, to commence an action to recover the purchase price of the Goods and related damages. Buyer agrees to pay all costs and expenses related hereto including Seller's reasonable attorney fees and a reasonable profit and overhead fee of fifteen percent (15%) of the purchase price of the Goods. Buyer agrees that Seller may charge interest at the maximum rate allowed by law on all invoices which remain unpaid more than thirty (30) days after being rendered to Buyer.

6. SHIPMENT: Shipment date is approximate. Goods will be shipped F.O.B. point of shipment unless otherwise specified by Seller. If freight must be prepaid, payment will be made for the account of Buyer and Buyer's expense. Seller may, in its sole discretion, consolidate, on a single bill of lading, multiple shipments of a single date. Additionally, Seller may, in its sole discretion, make delivery in installments, separately invoiced and payable without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve Buyer of its obligation to accept and pay for any remaining installments without regard to any prior delayed delivery. Seller will use its best efforts to fill each order with the exact number of parts requested. However, because of the availability of parts and because of manufacturing efficiencies, Seller reserves the right to supply parts in the amount of 10% over or 10% under the amount of each part ordered, which will be invoiced and paid at the normal per part price.

7. LOSS, DAMAGE OR DELAY: Seller will use reasonable efforts to ship by the date(s) specified; however, Seller shall not be liable for any delay or failure in the estimated delivery or shipment of Goods or for any damages suffered by reason thereof. Shipping dates may be extended for delays due to act of God, acts of Buyer, acts of government, fires, floods, labor unavailability or labor difficulties (including but not limited to picketing, strikes, slowdowns and walkout), riots, war, embargo, transportation shortages, fuel shortages or delays in obtaining raw materials or parts, inspections, shipping instruction delays and all other causes, both similar and dissimilar to those listed (all of the above, collectively, the "Causes"), beyond the reasonable control of Seller, its subcontractors or suppliers.

When Goods are ready for shipment and any act, omission or request of the Buyer, for any reason whatsoever, or the occurrence of any Causes results in a delay in shipment of the Goods, Buyer shall assume all risk of loss or damage and shall be responsible for all charges in connection with storage and reconditioning of Goods in the events of such delay. Also, in the event of such delay, the date of delivery shall be regarded as the date

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when the Goods are reported ready for shipment and payments shall be made by Buyer accordingly. Title and risk of loss of, or damage to, the finished Goods or any portion thereof, shall pass to the Buyer upon delivery to the carrier F.O.B. point of shipment unless otherwise agreed to in writing, or in the event of delay as stated herein, upon the date of notice to the Buyer that the Goods are ready for shipment.

8. **WARRANTIES AND DISCLAIMERS:** Goods upon shipment will be as described on the face hereof, will conform to applicable written specifications, if any, will be free of reasonably discoverable defects in workmanship and materials for a period of thirty (30) days from the date of shipment and will be free of any security interest, lien or encumbrance which the Buyer has not assumed.

EXCEPT FOR THESE EXPRESS WARRANTIES, SELLER MAKES NO WARRANTY EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR PURPOSE, OR DESIGN. It is the sole responsibility of the buyer to conduct adequate testing to determine the goods suitability and safety of use. Seller cannot know each application's specific requirements and hereby notifies the buyer that it has not conducted any testing nor determined any goods suitability or safety for use in any application. Additionally, buyer is responsible for meeting any legal, statutory, or regulatory requirements, laws, or regulations. Any sample or literature exhibited to Buyer was to illustrate the general type of goods and not an affirmation that goods will conform thereto. No employee or representative of Seller has authority to bind Seller to any representation, affirmation or warranty not specifically included herein.

9. **LIMITATION OF LIABILITY:** All remedies of Buyer arising out of this transaction, or with respect to Goods, shall be limited exclusively and in lieu of any and all other remedies, to those contained in these terms and conditions, whether based upon breach of

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warranty, contract, negligence, strict liability or other tort. Seller's liability is limited to the repair or replacement of defective or nonconforming Goods, or, at Seller's option, to refund the portions of the purchase price applicable to defective or nonconforming Goods upon return of such Goods F.O.B. Seller's plant or other place of origin of Goods as specified by Seller. In the event any Goods are accepted for return by Seller, credit will be issued to Buyer only as against future purchases by the Buyer. In no event shall cash be refunded to Buyer for Goods accepted for return by Seller.

IN NO EVENT SHALL SELLER BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR DIRECT DAMAGES, OR LOSSES OF BUYER, ARISING OUT OF THIS TRANSACTION OR THE USE OR THE MISUSE OF GOODS OR ANY PART THEREOF, UNDER THEORY OF BREACH OF WARRANTY OR CONTRACT, OR AS A RESULT OF ANY NEGLIGENCE, STRICT LIABILITY OR OTHER TORT.

10. DEFAULT AND NON-WAIVER: If Buyer shall fail to pay all or any part of the sums due or to become due, or to observe, keep and perform any of its obligations, become insolvent or become a party to any federal or state insolvency proceedings or receiverships, or become a judgment debtor, all sums due or to become due may at the option of the Seller, become immediately due and payable, and concurrently, or in the alternative, Seller may at its option, terminate this contract and exercise any other remedies available under all applicable laws. No waiver of a breach, default or failure to perform any provision of the Contract (collectively, "Default") shall be effective unless expressly consented to by Seller in writing. Any waiver of any Default shall not be a waiver of any other or subsequent Default.

11. SPECIFICATIONS: If specifications and/or designs for goods are furnished by Buyer, Buyer will indemnify, hold harmless and defend Seller from all claims, costs and expenses (including costs and attorneys' fees) arising from any patent infringement claim

or proceeding, or arising from any use of special tooling by Seller in order to comply with such specifications and designs. Seller shall not be responsible for the accuracy or suitability of such designs or specifications or for the performance of any apparatus built in conformity thereto. In the event Buyer does not provide any specifications and /or designs, nor states that Goods are to be used in a critical application, Seller will deem that a critical application of Goods will not be made and will supply such Goods from stock. All means of production and testing, including but not limited to tools and dies even if specially made for Buyer's order, are the sole property of Seller unless there is a specific agreement in writing to the contrary.

12: INDEMNIFICATION: Buyer shall indemnify, hold harmless and defend Seller from any liability on any claim made upon Seller by any person whomsoever, which are in any way related to or connected with the subject of the Contract including, without limiting the generality of the foregoing, such claims for personal injury or death, property damage, patent, trademark, trade name or copyright infringement, or upon the basis of breach of warranty, negligence, strict liability or tort. Buyer shall defend all aforementioned claims, proceedings, actions or arbitration and be solely liable for any amounts due thereon, and shall pay all costs, and expenses incidental thereto including reasonable attorney fees and a reasonable profit and overhead fee of fifteen percent (15%) of all costs insured by Seller in the defense of such claims. Buyer shall maintain such product liability, property damage, employer's liability and compensation insurance as will protect Seller from such risks and from any claims under any applicable Workman's Compensation and/or occupational disease acts.

13. INSURANCE: No entity, including but not limited to the buyer, shall be named an additional insured on any seller insurance policy.

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14. **CANCELLATION:** Any express written contract or order may be cancelled by Buyer only with the consent of Seller and upon reimbursement by Buyer to Seller of any and all expenses and any other losses incurred as a result of such cancellation including a reasonable profit and overhead fee of fifteen percent (15%) of the purchase price of the Goods.

15. **APPLICABLE LAW:** This transaction shall be governed by the laws of the State of New York. Any and all actions and proceedings relating to or arising from this agreement shall be commenced and shall be maintained in New York State Supreme Court, Erie County, or in the United States District Court for the Western District of New York. Buyer agrees to comply with all applicable federal, state and local law and to indemnify, hold harmless and defend Seller against all liability for Buyer's failure to so comply.

16. **WAIVER:** No waiver of any of these terms and conditions shall be effective unless expressly consented to by Seller in writing. No single waiver shall be deemed to be a continuing waiver. Waiver by Seller of any of these terms and conditions shall not constitute a waiver of any other of these terms and conditions.

17. **SHORTAGES:** Shortages must be reported in writing to Seller within ten (10) days of receipt of Goods, otherwise, shipment shall be deemed to be complete and in accordance with the bill of lading and packing list. Such written notice shall be sent to the attention of Steven L. Apple, Apple Rubber Products, Inc. at the address specified on the face hereof.

18. **SEVERABILITY:** In the event any of these terms and conditions shall be declared by a Court to be void or unenforceable, then such terms or conditions shall be severed from the Contract without affecting the validity and enforceability of the other terms and

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conditions contained herein, and the Buyer and Seller shall negotiate in good faith to replace such unenforceable or void terms or conditions with similar provisions to achieve, to the extent permitted under law, the purpose and intent of the terms or conditions declared void and unenforceable.

19. HEADINGS: The headings throughout these terms and conditions are provided for convenience only and the words contained therein shall in no way be held to expand, amplify, modify, or aid in the interpretation or construction thereof.