

ATEX, Inc. Conditions of Sale

1. **SOLE AGREEMENT AND ACCEPTANCE:** The terms and conditions set forth herein contain the sole, entire and exclusive agreement between the Seller and the Buyer in all transactions and supersedes all prior discussions, proposals, negotiations, representations, and agreements: except as expressly provided herein any addition or conflicting terms, whether or not material, shall not, in any manner, by implication, by waiver, or otherwise, govern the relationship between Seller and Buyer. Seller objects to and shall not be bound to any past or future terms or conditions not set forth herein, including any additional terms shown on Buyer's purchase order or acknowledgement or shipping documents, which order, acknowledgement or shipping document shall be accepted for billing purposes only, and any inconsistencies therein with the provisions hereof shall be null and void. Shipment pursuant to Buyer's order containing different or additional terms does not constitute acceptance of such terms and Seller's shipment pursuant to such order is expressly made conditional herein. ANY WAIVER, MODIFICATION, OR AMENDMENT OF THESE TERMS AND CONDITIONS SHALL ONLY BE EFFECTIVE AS AGAINST EITHER PARTY IF SUCH WAIVER, MODIFICATION, OR AMENDMENT IS CONTAINED IN A WRITTEN INSTRUMENT DULY EXECUTED BY OR ON BEHALF OF BOTH PARTIES. All orders are subject to acceptance by Seller.
2. **PRICE AND PAYMENT:** The price(s) herein specified may be revised for any thirty (30) day period by written notice from Seller dispatched not less than fifteen (15) days prior to the date on which any such period commences. In the absence of such written notice Seller to Buyer, the price then in effect shall continue in effect until such notice is given. If no price is specified on the face hereof all orders shall be priced in accordance with Seller's price quotation or order confirmation in effect on the date of shipment. Payment for all shipments hereunder shall be made by Buyer against Seller's invoice within payment terms specified on the invoice, terms net cash, unless otherwise indicated on the face hereof. Past due invoices shall be subject to a finance charge of 1.5% per month or the maximum rate allowed by law, whichever is less. If at any time, in Seller's opinion, the financial responsibility of Buyer becomes impaired or unsatisfactory to Seller, or inadequate to meet the obligations hereunder, the terms of payment may at Seller's option, be revised or withdrawn, and Seller may request cash or other satisfactory security before making further shipment to Buyer. If payment is defaulted, Buyer is responsible to reimburse Seller for all legal fees and expenses incurred in the collection / legal process.
3. **TAXES AND DUTIES:** Any tax, excise, inspection fee, duty, or other governmental charge upon the sale and/or shipment of the material(s) herein specified now imposed by federal, state or local authorities, or hereafter becoming effective within the life of this Agreement shall be added to the price herein provided and shall be paid by Buyer.
4. **DELIVERY:** Shipment dates are based on Seller's best judgment, are subject to production limitations and factory schedules, and hence are not guaranteed. Unless Seller specifically agrees otherwise, Buyer will pay the freight or other delivery charges and all other charges levied or imposed on the material after the loading is completed. If the Seller prepays such charges on Buyer's request or for Buyer, Buyer will reimburse Seller. Seller's weights or measurements taken at the shipping point shall control unless proven to be in error.
5. **TITLE AND RISK OF LOSS:** Title and risk of loss of the goods shall pass to the Buyer upon loading of the goods into transportation equipment at the Seller's shipping point in Gainesville, Georgia, USA.
6. **FORCE MAJEURE:** In case performance of any terms or provisions hereof shall be delayed or prevented because of compliance with any law, decree, request or order of any governmental agency or authority, either local, state or federal, or because of pandemics, medical emergencies, riots, war, public disturbances, strikes, lockouts, differences with workmen, fires, floods, acts of God, accidents of

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navigation, breakdown or failure of transportation or transportation facilities, failure of or interference with the manufacture, receiving, handling, or consumption of the material covered hereby, inability to obtain raw material, fuel, power, labor, containers or transportation facilities, or commercial impracticability, or for any other reason (whether or not of the same class or kind as herein set forth) which is not within the control of the party whose performance is interfered with and which by the exercise of reasonable diligence said party is unable to prevent, the party so suffering may at its option suspend deliveries or receipts during the period such cause continues, and no liability shall attach against either party on account thereof. In the event of a force majeure affecting Buyer, Buyer shall apportion its purchases among its written contract suppliers or material, including its own departments and affiliates, on an equitable basis. In the event of a force majeure affecting Seller, Seller may apportion its available supply of such material among its purchasers, including its own departments and affiliates on an equitable basis without incurring liability for failure to perform this Agreement. The provisions of this paragraph shall not be available to any party that fails to use reasonable diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch. The requirement that any force majeure be remedied with all reasonable dispatch shall not require the settlement of strikes, or labor controversies by acceding to the demands of the opposing party or parties. Should a force majeure situation increase costs of production and/or transportation, the parties will confer and discuss how to best proceed with the order(s).

7. **WARRANTY AND LIABILITY:** The Seller warrants that the goods furnished shall meet Seller's standard shipping specifications. Any technical advice given by Seller in reference to the use of its products is given gratis and without any warranty whatsoever as to advice given or results obtained. SELLER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THOSE OF MERCHANTABILITY AND FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO SAID GOODS, EXCEPT AS SPECIFICALLY SET FORTH HEREIN. Buyer assumes all risk, liability and damage resulting from the use of the goods, of technical advice furnished, and specification changes. Seller assumes no responsibility for end use products, testing, product marketing, or qualification of products for end use. If any model or sample was shown to Buyer such model or sample was used merely to illustrate the general type and quality of the goods and not to represent that the goods would necessarily be of that type and nature. Unless written and mutually agreed to provisions exist to the contrary, Buyer is responsible for all testing costs.
8. **REMEDIES OF BUYER:** The Seller's liability and Buyer's exclusive remedy is expressly limited, at Seller's option, to either the repair of defective goods or the replacement thereof with conforming goods at the F.O.B. shipping point, or the repayment of the net unit billing price. Failure to give notice of claim within thirty (30) days from the date of delivery or the date fixed for delivery, respectively, shall constitute a waiver by Buyer of all claims of any kind arising as a result of such delivery or non-delivery. Claims for shortages of less than 1% of the gross weight for bulk shipments will not be allowed. As a condition of replacement for defective goods, Buyer must, after first obtaining authority from Seller, return such goods to Seller for inspection and/or repair. Seller shall not be liable for goods which have been altered, delayed, or damaged in transit, and such loss claims must be filed directly with carrier.
9. **LIMITATION OF LIABILITY:** The remedies of Buyer set forth herein are exclusive. The total liability of Seller, with respect to the goods furnished hereunder, or with respect to the manufacture, sale, delivery, repair, or technical direction covered by or furnished pursuant to these terms and conditions, whether such liability of Seller is based on contract, warranty, negligence, strict liability, indemnity, or otherwise, shall not exceed the purchase price of the goods for which the claim is made. Seller shall in no event be liable to the Buyer, any successors in interest or assignees of the Buyer, any customers of Buyer or any beneficiary or assignees of the Buyer for any consequential, incidental, indirect, special, or punitive damages arising out of any defect in, or failure of or malfunction of the goods sold hereunder, whether such damages are based upon lost good will, lost profits or revenue, interest, work stoppage, impairment of other goods, loss by reason of shutdown or nonoperation, increased expenses of operation, loss of use

related goods or operations and/or cost of purchase of replacement goods, whether or not such loss or damage is based on contract, warranty, negligence, indemnity, strict liability, or otherwise. Similarly, Buyer acknowledges and agrees that these damage limitations also apply to any legal fees and costs incurred by it relating to the products associated with this order.

10. **CERTIFICATION OF MATERIAL GOODS:** Should buyer request certification of materials or goods after sale; Seller reserves the right to quote additional charges for such request. Unless otherwise included under these terms and conditions, no certification is given concerning either the material or goods sold hereunder.
11. **PATENT INFRINGEMENT:** Seller reserves the right to discontinue deliveries of any material, the manufacture, sale or use of which in its opinion might involve patent infringement.
12. **PATENT LICENSE:** The contract of sale formed by these terms and conditions in no way provides Buyer with any license, express or implied, to any patented inventions or discoveries owned by Seller, except any patented invention or discovery that is embodied by the form and/or composition of the product(s) as sold by Seller to Buyer.
13. **CANCELLATION:** Seller may cancel the Agreement formed by these terms and conditions at any time in the event that Buyer shall fail to perform or observe any terms or conditions hereof by giving Buyer ten (10) days written notice of cancellation. Cancellation hereunder shall not prevent Seller from pursuing any other remedy available to Seller by law or from seeking all such damages to which Seller may be entitled.
14. **ASSIGNMENT:** This Agreement shall extend to and be binding upon the parties hereto, their successors and assigns, provided, however, that Buyer shall not assign its rights nor delegate its duties under this Agreement without written consent of the Seller.
15. **APPLICABLE STATE LAW:** THE CONSTRUCTION OF THIS AGREEMENT and the rights and obligations of the parties hereunder SHALL BE GOVERNED BY THE LAWS OF THE STATE OF GEORGIA, USA, excluding any choice of law rules which may direct the application of the laws of any other jurisdiction.
16. **CONFIDENTIALITY:** Nothing stated herein shall be construed to relieve Buyer from any obligation of confidentiality owed to Seller or its affiliates with respect to any materials or information furnished to Buyer subject to such obligation.