

TERMS and CONDITIONS

Sales by GINGER® (“Seller”) to purchaser (“Buyer”) are governed by these terms & conditions, which may not be varied by any unilateral writing of the buyer without the expressed written consent of the seller.

1. PRICES:

Prices are subject to change without notice and are exclusive of any shipping, delivery, packaging or handling charges that might apply.

2. TERMS OF DELIVERY:

Seller’s products (“Products”) are offered ex-works, unless otherwise specifically agreed in writing. Risk of loss of products shall pass to buyer upon delivery to carrier at place of shipment. Title shall also pass to buyer upon delivery thereof, subject only to being demanded back by seller pursuant to paragraph 3(c) below. Carrier acts as buyer’s agent.

3. TERMS OF PAYMENT:

(a) Unless otherwise mutually agreed in writing, Seller’s terms on all products sold are net 30 days from invoice date. Accounts past due are subject to a 1.8% monthly charge (21.6% per annum) on unpaid balance.

(b) Trade discounts from the list prices are expressly conditioned upon timely payment by the buyer. Trade discounts for accounts past due are subject to rescission by the seller, at the seller’s sole and absolute discretion. Upon demand by the seller, the full list price for past due invoices shall become due, subject to the monthly interest charge, as described in section 3(a).

(c) Until seller has received full payment for all products provided by the seller, seller shall retain sufficient title to such products so that all such products which remain within the possession or control of buyer shall be subject to being demanded back by seller at any time pursuant to seller’s purchase money security interest in such products.

4. CLAIMS:

(a) Nonconforming orders: buyer shall submit to seller any and all claims for nonconforming delivery of products by written notice to seller within five (5) days of receipt of products. Seller’s occasional acceptance of claims made beyond the 5-day period does not constitute a waiver of the 5-day requirement.

(b) Damages: upon delivery of the products, buyer should examine the package for damage. Any damage should be noted on the carrier’s delivery receipt before signing. In the event of apparent or concealed damage or shortage, buyer should retain all packaging and file a claim with the carrier. **SELLER’S RESPONSIBILITY CEASES WHEN THE PRODUCTS ARE DELIVERED IN GOOD CONDITION TO THE CARRIER.**

5. RETURNS:

No returns shall be accepted without a ginger returned goods authorization (RGA) affixed to the outer carton. Returned merchandise must be in first-quality, resalable condition and be shipped prepaid in its original packaging, packed within an outer shipping carton (that is, the item package must be packed inside a second, outer carton).

Returns of current merchandise may be made within 1 year of original shipment from GINGER®. No debits should be taken in advance of receipt of a GINGER® credit memorandum. All GINGER products are sealed with safety tape or tabs. Material returned with seals in tact, are subject to a 15% restocking charge. A 25% restocking charge is applied to material returned with broken seals. Restocking charges do apply even in those cases where a substitute order has been placed. Returns made due to shipping errors or defective products are not subject to restocking charges.

6. QUOTATIONS:

In making quotations for special projects, seller will provide an estimated time of delivery (ETD). The ETD is offered as a best estimate of the anticipated delivery time, which the seller will attempt to meet. It is expressly stated that the ETD is not binding upon seller and does not provide the basis for consequential or other damages.

7. CHARGES:

- (a) foam charge: \$10 for all cartons requiring Instapack® foam (mirrors and display boards).
- (b) Below minimum order surcharge: \$10 for all orders below \$100 NET.
- (c) Returned check charge: \$50.
- (d) Handling charge: \$3 per carton is included in the freight charge.
- (e) Rush charge: \$25 per shipment for same-day dispatch of orders of in-stock items requiring overnight delivery. This rush charge must be acknowledged in writing on the faxed order. **ORDERS MUST BE RECEIVED BEFORE 1:00 PM EASTERN TIME.**
- (f) Restocking charge: 25% or 15% of invoiced value, per 5 above.

8. PATENT OR TRADEMARK INFRINGEMENT:

If the goods sold hereunder are to be prepared for manufacture according to the buyer's specifications, buyer shall defend, hold harmless, and indemnify seller against any claims, liability, costs or attorney's fees incurred in relation to any claim for patent or trademark infringement.

9. FORCE MAJEURE:

Seller shall not be liable for any delay in delivery or for nondelivery, in whole or in part, cause by the occurrence of any contingency beyond the control either of seller or of suppliers to the seller, including but not limited to failure or delay in transportation, acts of any government of any agency or subdivision thereof, judicial action, labor, fuel, raw material or machinery or technical failure. If any contingency occurs, seller may allocate production and deliveries among seller's customers.

10. CREDIT APPROVAL:

Shipment and delivery of goods and performance of work shall at all times be subject to the approval of seller's credit department and seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or upon terms and conditions or security satisfactory to seller. Seller is entitled to recover costs and attorney's fees in the enforcement or defense of any rights under any order. Interest accrues on all past-due accounts at the maximum rate of interest allowed by law.

11. PATENT, INVENTIONS, TECHNICAL DATA:

Buyer does not and shall not acquire ownership or any rights in seller's patents, inventions and/or technical data under any order, regardless of when such patents, inventions, and/or technical data may be or have been issued, conceived, generated, or produced. All seller patents, information, and/or technical data are reserved by seller, and the same shall not be reproduced or used by buyer for any purpose whatsoever without seller's written permission.

12. GOVERNING LAW:

All orders shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the state of Delaware.

13. LIMITATIONS ON ACTIONS AND LIABILITY:

The statute of limitations applicable to all buyer's claims arising under this agreement shall be one year from the date the claim accrues.

14. ENTIRE AGREEMENT:

This instrument contains the entire agreement of the parties relating to the subject matter hereof and may not be waived, changed, modified, extended or discharged orally but only by agreement in writing and signed by the party against whom enforcement of any such waiver, change, modification, extension or discharge is sought.