

Terms & Conditions of Sale

Policy: TAP-SA-001 Issued: 2015-11-06



1. **General.** The terms and conditions on the face and reverse hereof (the "Contract") supersede all prior representations or arrangements and contain the entire agreement between the parties in connection with the products described on the face hereof (the "Products"), except in so far as the Seller and the Buyer have signed a supply agreement in which case the present Standard Terms and Conditions of Sale complement the supply agreement. In the event of a conflict between the present Standard Terms and Conditions of Sale and the validly signed supply agreement between the Seller and the Buyer, the terms of the supply agreement shall prevail. Seller's acceptance of Buyer's order and sale of the Products to Buyer are expressly conditioned upon Buyer's assent to the Contract and all other terms and conditions, express or implied, are excluded. Any conduct by Buyer which recognizes the existence of a contract between Seller and Buyer, including, without limitation, acceptance of delivery of or payment for the Products, shall be conclusive evidence of Buyer's assent to the Contract. No subsequent document, purchase order, or conduct, including acts or verbal statements of any buyer shall purport to modify this Contract. Any additional, contradictory or different terms contained in any initial or subsequent order or communication from Buyer pertaining to the Products are hereby objected to.
2. **Delivery.** Unless otherwise expressly agreed in writing, delivery within North America, except to Alaska, will be EXW Origin, FCA or DDP. Shipping and delivery dates are approximate and are given by Seller in good faith, but are not guaranteed unless otherwise specifically agreed in writing. Buyer shall be responsible for all storage and other costs relating to Buyer's failure to accept delivery pursuant hereto. The method and agency of transportation, unless otherwise agreed to in writing, will be selected by Seller and Seller reserves the right to ship collect. Seller's receipt from the carrier shall be conclusive evidence of delivery and the amount delivered.
3. **Returns.** No Products may be returned for any reason without Seller's written authorization and Returned Material Authorization number must appear on all shipping paperwork. Custom Tinted product and special orders may not be returned at any time. If Seller authorizes a return, Buyer must return the Products in clean, resalable condition. If returned for reasons other than Seller's error in filling Buyer's order, the Buyer will receive a credit in the amount of the billed price of the Products returned less 25% for handling, if returned within 90 days of the invoice date. Amount of credit for materials returned after 90 days is subject to negotiation. Products returned to Seller are to be shipped by the Buyer DDP Seller's designated warehouse.
4. **Price.** All orders will be invoiced at Seller's prices prevailing at the time of shipment and are subject to change without notice. All accounts are payable in Canadian or US funds, free of exchange, collection or other charges. Delivery costs are not included in the price. Packaging is included in the price except for air and ocean shipments and is not returnable. Any additional packaging and documentation requirements will incur a non-refundable additional charge. Buyer is responsible for all applicable sales or use taxes, excises, or any other taxes or charges. Buyer shall reimburse Seller for any such taxes, excises or charges which Seller may be required to pay in addition to the price payable by Buyer for the Products.
5. **Credit Terms.** Credit terms, if any, shall be Net 30 days. In circumstances described in Section 6(a), all unpaid balances owing to Seller from Buyer shall become immediately due and payable, irrespective of whether title to the products has passed to Buyer. Any amounts not paid in accordance with invoiced terms shall bear interest at a rate of two percent (2%) per month or, if less, the highest rate permitted by applicable law.
6. **Seller's Warranty**
 - a. Seller warrants that Products manufactured by Seller shall conform to Seller's published specifications covering such products in effect at time of manufacture ("Seller's Warranty"). EXCEPT AS SET FORTH HEREIN, SELLER MAKES NO WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, THE APPLICATION THEREOF, OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Certification by Seller by separate writing as to compliance with Buyer's specifications, blue prints, part numbers, quantity, test or otherwise will not create any other warranty by or other obligation of Seller.
 - b. Buyer shall notify Seller of any Product which does not conform to Seller's Warranty within a reasonable time after discovery of non-performance, but in no event later than sixty (60) days following delivery of the Products. Failure to notify Seller of such nonconformance shall constitute a waiver by Buyer of any claims with respect to such nonconforming Products.
 - c. SELLER'S LIABILITY WITH RESPECT TO PRODUCTS (BASED ON ANY LEGAL THEORY), AND BUYER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT THERETO, SHALL BE LIMITED TO, AT SELLER'S SOLE OPTION, THE REPLACEMENT BY SELLER OF ANY NONCONFORMING PRODUCT FOR WHICH CLAIM IS MADE BY BUYER IN ACCORDANCE WITH 6(b) ABOVE, OR TO THE REFUND OF THE PORTION OF THE PURCHASE PRICE PAID BY THE BUYER ATTRIBUTABLE TO SUCH NONCONFORMING PRODUCT. IN NO EVENT SHALL SELLER BE LIABLE TO BUYER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE OR CONTINGENT DAMAGES, OR COSTS OF LITIGATION OR LOSS RELATING TO BUYER'S PURCHASE OR USE OF THE PRODUCTS.
 - d. Seller makes no warranties to any third parties for this purchase. If Products are purchased for resale by Buyer, Buyer shall include in the terms and conditions of such resale disclaimers of warranties and limitations of liabilities at least as restrictive as contained in this Contract.
 - e. Seller's Warranty does not apply to any Products identified as obsolete, substandard, or past the recommended shelf-life, or which are sold "AS IS, WHERE IS."
7. **Force Majeure.** Seller shall not be liable for any failure to ship Products or to otherwise comply with the Contract (Whether or not involving Seller's negligence) which are beyond Seller's reasonable control and which prevent or restrict Seller from complying with the Contract. Without limiting the generality of the foregoing, Seller may without liability suspend or terminate (in whole or in part) its obligations under the Contract if Seller's ability to manufacture, supply, deliver or acquire materials for the production of the Products by Seller's normal means is materially impaired.
8. **Intellectual Property.** Buyer shall not use in any manner any trade names or trademarks applied to or used by Seller with respect to the Products, unless otherwise permitted by Seller in writing.
9. **Advice or Assistance.** Recommendations and advice by Seller for the use of Products are furnished gratuitously and are based upon information believed to be reliable. Buyer's use of or reliance upon the same shall be at Buyer's risk.
10. **Health and Safety at Work.** Buyer expressly assumes all liability resulting from, or in any way connected with, the possession, handling and/or use by its employees, agents, or clients of the Products. Buyer hereby agrees to indemnify, defend and hold Seller and its affiliates harmless from all claims, judgments, losses or expenses and any costs (including, but not limited to court costs and attorney's fees) in any way related to Buyer's or its subcontractor's failure to comply with any of the foregoing.
11. **Compliance with Law.** Products manufactured by Seller are produced in compliance with the requirements of all Canadian federal, provincial and local laws.
12. **Miscellaneous**
 - a. Buyer may not assign its rights under the Contract without Seller's prior written consent.
 - b. Failure by Seller at any time or times to require strict performance of any provision hereof shall not be considered to be a waiver of Seller's rights with respect to such breach or any succeeding breach of such provision or any other provision of this Contract.
 - c. If any of the terms and conditions of this Contract or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable, the remainder of such terms and conditions or the application of such provision to person or circumstances other than those to which it was held to be invalid or unenforceable shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.
13. **Governing Law.** The laws of the Province of Ontario and where applicable the federal laws of Canada, without giving effect to principles of conflict of laws, govern all matters under this Contract.
14. **Notice.** All notices, request, demands or other communications to or upon the Seller shall be made in writing to the following address: Tempo Aerospace Inc, 205 Fenmar Drive, Toronto, ON M9L 2X4 Canada.