

Standard Terms and Conditions of Sales

1. **TERMS & CONDITIONS OF SALE.** The goods that are the subject of a sale by Hurberries, Inc. ("Hurberries") to Buyer are referred to as the "Products," the services sold by Hurberries to Buyer are referred to as the "Services," and items of tangible property on which Hurberries performs Services or that result from Services are referred to as the "Service Items." All sales of Products or Services by Hurberries are governed by and subject to (a) Hurberries quotation, order acknowledgement, or a separate written agreement signed by an authorized representative of Hurberries, as applicable, and (b) these terms and conditions, whether or not they are specifically referenced in or incorporated by Hurberries quotation, order acknowledgement, or the separate written and signed agreement. Any irreconcilable conflict between these terms and conditions and any terms in Hurberries' quotation, order acknowledgement, or the separate written and signed agreement shall be resolved in favor of the quotation, order acknowledgement, or the separate written and signed agreement. Hurberries' acceptance of Buyer's purchase order or commencement of performance shall not constitute acceptance of any of Buyer's terms and conditions. HURBERRIES ACCEPTANCE IS EXPRESSLY CONDITIONED ON BUYER'S ASSENT TO THESE TERMS AND CONDITIONS, INCLUDING THOSE THAT ARE ADDITIONAL OR DIFFERENT. TERMS ADDITIONAL TO OR DIFFERENT FROM THESE TERMS AND CONDITIONS, INCLUDING BUT NOT LIMITED TO TERMS CONTAINED IN BUYER'S PURCHASE ORDER OR BUYER'S STANDARD TERMS AND CONDITIONS OF PURCHASE, ARE DEEMED MATERIAL AND HEREBY REJECTED UNLESS OTHERWISE ACCEPTED BY HURBERRIES IN WRITING.
2. **BUYER'S ASSENT TO THESE TERMS AND CONDITIONS.** Buyer's assent to these terms and conditions shall be conclusively presumed from Buyer's (1) receipt of Hurberries' order acknowledgement without written objection sent to Hurberries within ten (10) days after receipt of the order acknowledgement, (2) instructing Hurberries to begin work or ship any of the Products or Service Items after receipt of Hurberries' order acknowledgement, (3) acceptance of or payment for all or any part of the Products or Services, or (4) taking any other action evidencing Buyer's acceptance of the benefits of the agreement between the parties. Hurberries may commence performance in reliance upon Buyer's acceptance of these terms and conditions, and Hurberries will not be obligated to fulfill an order or request for the Products or Services unless Hurberries affirmatively acknowledges the order. BUYER AND HURBERRIES AGREE THAT THESE TERMS AND CONDITIONS ARE ACCEPTED IN GOOD FAITH BY BOTH PARTIES AS THE CONTROLLING AND FINAL TERMS AND CONDITIONS.
3. **MODIFICATION.** No modification of this Agreement or waiver of any of its terms will be binding on Hurberries unless clearly expressed in writing and signed by an authorized representative of Hurberries. This paragraph excludes, among other things, purported modifications and waivers by oral agreement, course of performance, and usage of trade. Hurberries and Buyer expressly agree that Hurberries may modify these terms and conditions from time to time, and such modifications shall be binding upon Buyer.
4. **DELIVERY.** Delivery dates are approximate. The failure to meet an indicated delivery date will not constitute a breach of this Agreement. In no event shall Hurberries be liable for any claims for labor or for any special, indirect, incidental, or consequential damages including, but not limited to, demurrage charges, cost of shipment, downtime, lost profits (whether direct or indirect), lost sales, or any other damages resulting from delay in delivery.
5. **SHIPMENT AND RISK OF LOSS.** All deliveries are Ex Works (Incoterms 2010) Hurberries' facility freight prepaid or freight collect to destination. If Buyer desires to pick up the Products or Service Items at Hurberries' facility, Buyer must contact Hurberries to arrange a mutually convenient time for pick up. Buyer shall indemnify and hold harmless Hurberries from and against any claims, damages or liabilities suffered by Hurberries resulting from any acts or omissions of carrier.

6. CANCELLATIONS BY BUYER. "Cancellation Costs" include all labor, materials, overhead, general and administrative costs, restocking charges, freight, sub-vendor cancellation charges, scrapping and disposal fees, and other harm, costs and charges incurred directly or indirectly by Hurberries in connection with a cancellation of an order for the Products or Services. Buyer is not entitled, without Hurberries' prior written consent, to cancel or delay a delivery of Products or Services if considered a special order. Special order Products are items that are ordered, manufactured or remanufactured specifically for Buyer. If Hurberries consents to the cancellation or delay, Buyer shall pay a cancellation charge in an amount determined in Hurberries' sole discretion to reflect all applicable Cancellation Costs, including, at a minimum, inventory carrying costs, financing costs associated with the finished Special Order Products, work in process and raw materials, and costs of labor. In the case of cancellation of Special Order Products, any deposits paid by the Buyer are forfeited. Hurberries maintains an inventory of In Stock Products in addition to any Special Order Products. Return/cancellation of an order for In Stock Products made within 15 days will not be charged a restocking fee. Any freight incurred as a result of delivery or receiving a returned In Stock Product will apply and be adjusted before refunding Buyer account. Any return/cancellation of In Stock products after the 15 day grace period will be subject to a 15% restocking fee less any applicable freight costs.
7. PURCHASE PRICE. The purchase price of the Products or Services shall be as stated in Hurberries' quotation, order acknowledgement, or separate written agreement signed by an authorized representative of Hurberries, as applicable. Unless agreed by Hurberries in writing, the purchase price does not include shipment costs. If the Products or Service Items are shipped freight prepaid, the charge for freight shall be added to the invoice. Prices are based on and assume Buyer's compliance with all of the terms and conditions of this Agreement. Any discrepancies or changes in pricing will be proposed to the Buyer on a revised quotation.
8. PAYMENT TERMS. Payment terms are net 30 days with Buyers that maintain a credit account. Buyers without a credit account must prepay in full for In Stock Products before shipments are made. Buyers without a credit account must pay a deposit for Special Order Products before Hurberries commences on Special Order products.
9. TAXES. Prices do not include any taxes or other assessments. All taxes, duties, fees, assessments or other charges of any kind imposed by any federal, state, municipal or other governmental authority which Hurberries is required to collect or pay with respect to the provision, production, sale or shipment of the Products or Services shall be the responsibility of Buyer. Buyer agrees to pay all such taxes and further agrees to reimburse Hurberries for any such payments made by Hurberries. Buyer hereby affirms that it is purchasing the Products referenced herein for resale, and/or that Buyer is not the end user of the Products, so as to be exempt from any otherwise applicable sales tax. It is the Buyer's responsibility to provide Hurberries with state sales tax exemption forms.
10. SETOFF. Hurberries shall have the right to credit toward the payment of any monies that may become due Buyer hereunder any amounts which may now or hereafter be owed to Hurberries. Buyer shall pay Hurberries' invoices without discount, setoff or reduction for any reason, including asserted warranty claims or other claims of non-performance by Hurberries.
11. ACCORD AND SATISFACTION. Checks or payments, whether full or partial, received from or for the account of Buyer, regardless of writings, legends or notations upon such checks or payments, or regardless of other writings, statements or documents, shall be applied by Hurberries against the amount owing by Buyer with full reservation of all Hurberries' rights and without an accord and satisfaction of Buyer's liability.
12. INTELLECTUAL PROPERTY. Nothing in this Agreement is to be construed as a grant or assignment of any license or other right to Buyer of any of Hurberries' intellectual property rights, whether patent, trademark, trade secret, copyright or otherwise. All improvements and developments related to the Products or the efforts of Hurberries and Buyer will be owned exclusively by Hurberries, and Buyer shall reasonably cooperate with Hurberries in confirming that result.

13. CONFIDENTIALITY. Any pricing or other sensitive commercial information provided by Hurberries to Buyer is proprietary to Hurberries and shall be held in confidence by Buyer, shall only be used by Buyer in connection with this sale, and shall not be used for any other purposes or disclosed to third parties without Hurberries' prior written consent. Buyer shall be liable for any loss to Hurberries or commercial gain by others from unauthorized use of confidential information occasioned by Buyer's failure to comply with this provision.
14. INDEMNIFICATION. Buyer agrees to indemnify, defend and hold harmless Hurberries, its directors, officers, employees, agents, successors and assigns from and against any and all damages, losses, expenses, costs (including without limitation reasonable attorney's and accountant's fees), claims, suits, actions, judgments or other liability asserted against or incurred by Hurberries arising out of (a) Buyer's breach of its obligations hereunder, (b) Buyer's negligence or misconduct, or (c) Buyer's misuse or misapplication of the Products or Service Items or damage to the Products or Service Items caused by Buyer or its employees, agents or customers.