

HandyTube Corporation Standard Terms and Conditions of Sale

The sale of goods described on the face side hereof ("Goods") is made on the express condition that Buyer assents to the promises, terms, and conditions set forth below, whether or not they are additional to or different from any terms and conditions proposed by Buyer. HandyTube Corporation ("Seller") expressly objects to Buyer's additional, different or conflicting terms.

1. **Deliveries.** The Goods will be delivered FOB place of shipment unless otherwise specified on Buyer's order and shipment may be made by the method or carrier deemed most feasible by Seller. Freight allowances, if any, are based on rates prevailing on the date of price quotation. Buyer shall pay any freight increases upon due date for payment of Goods. The Goods furnished hereunder shall be produced and their amounts determined in accordance with Seller's standard practices.
2. **Cancellations.** Cancellations by Buyer shall only be permitted with the written consent of Seller. Buyer may be required to pay to Seller the costs incurred up to the date of termination of finished work and work in progress allocable to the terminated work and any additional expenses incurred by Seller. Seller reserves the right to cancel any order for Goods owing to: (a) its inability to perform due a Nonliability Event (as defined below); (b) a change in the identity of the Buyer; (c) a failure on the part of the Buyer to pay its account when due; or (d) for any other reason that Seller finds it impossible, despite its best efforts, to perform hereunder.
3. **Risk of Loss.** After delivery of the Goods to the carrier, and in other circumstances as provided by law, Buyer shall bear all risks of loss, whether or not the products so delivered are conforming or non-conforming, whether or not a right of rejection exists in Buyer's favor, and whether or not Buyer rightfully revokes acceptance. The occurrence of any such risk shall not release Buyer from its obligations hereunder.
4. **Warranties.** Seller warrants only that the Goods conform to Seller's published specifications, if any, and the description on the face hereof for a period of 60 days from the date of shipment. This limited warranty does not apply to any Goods that have been repaired or altered outside Seller's facility or which have been subject to misuse, negligence, accident, or failure to properly install or apply. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY WITH RESPECT TO NON-INFRINGEMENT OF THE PATENT RIGHTS OF OTHERS OR ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR USE. This warranty is afforded by Seller only to Buyer and shall not be assigned or transferred. If Buyer elects to afford any warranty to its customers, Seller shall have no liability whatsoever in connection therewith.
5. **Anti-Bribery.** Buyer shall comply fully at all times with applicable national and international antibribery rules, including, without limitation, the U.S. Foreign Corrupt Practices Act, the UK Bribery Act 2010, and any other applicable EU, OECD and Council of Europe anti-bribery rules. Buyer will not offer, make, promise to make, or authorize the making of any gift or payment of money or anything of value either directly or indirectly for purposes of (a) influencing any act or decision of any government official or political party (or candidate thereof) (collectively, "Officials"); (b) inducing an Official to do or omit to do any act in violation of the lawful duty of that Official; or (c) inducing an Official to use influence with a non-U.S. government or instrumentality.
6. **Credit.** Any credit is subject to final approval by an authorized officer of Seller at its main office.
7. **Payment Terms.** Payment is due 30 days after invoice, unless otherwise stated.
8. **Service Charge.** Buyer agrees to pay a service charge of the lesser of 1-1/2% per month or the maximum allowed by applicable law on all unpaid amounts after due date.
9. **Modification.** No modification of any promise, term or condition of sale shall be of any force or effect unless signed by an officer of Seller.
10. **Claims of Buyer.** As a condition precedent to recovery of any claim of any kind, Buyer must comply with the following. All claims of any kind, except nonreceipt, must be made to Seller within five days after receipt of shipment. Claims for non-receipt must be made in writing delivered to Seller within twenty days after receipt of an invoice. Seller's liability for breach of warranty or contract shall arise only upon prompt return of the products claimed to be defective at Buyer's expense and after due notice to Seller of the claimed breach.
11. **Buyer's Exclusive Remedies: Exclusion of Remedies.** The monetary remedy for any claim for nonreceipt of all or part of Buyer's order or any other claim of any kind except breach of warranty shall be limited to the purchase price of the Goods affected, as shown on the invoice. Seller's liability for breach of warranty shall be limited to the furnishing of a like quantity of the same products free from defects or, at Seller's option, to the refunding of the purchase price of the defective product. The foregoing shall constitute Buyer's exclusive remedies. IN NO EVENT SHALL SELLER BE LIABLE, WHETHER IN CONTRACT, TORT, WARRANTY, OR UNDER ANY STATUTE OR ON ANY OTHER BASIS FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, MULTIPLE OR CONSEQUENTIAL DAMAGES SUSTAINED BY BUYER OR ANY OTHER PERSON OR ENTITY ARISING OUT OF SELLER'S PERFORMANCE OR FAILURE TO PERFORM ITS OBLIGATIONS RELATING TO THE PURCHASE OF GOODS OR PERFORMANCE OF SERVICES, THE POSSESSION OR USE OF ANY PRODUCT, OR THE PERFORMANCE BY SELLER OF ANY SERVICES, WHETHER OR NOT FORESEEABLE AND WHETHER OR NOT SELLER IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES ARISING FROM OR RELATED TO DOWNTIME, LOSS OF REVENUE, LOST PROFITS, LOST GOODWILL, LOST BUSINESS OR ANY OTHER FINANCIAL LOSS. Buyer waives all right of offset for any alleged obligation of breach of contract and breach of warranty (except as set forth herein), negligence, strict liability in tort, and/or other tort. The waiver, agreement and release in the foregoing sentence is binding upon Buyer's successors in title and assigns.
12. **Risk of Seller's Nonperformance.** The following shall be hereinafter known as Nonliability Events: action by governmental authority, public enemy, insurrection, rebellion, or riot; fire; explosion; flood; severe weather conditions; accidents; labor trouble or strikes; shortage of inventory, raw material, power or fuel; difficulties with equipment or transportation; or acts of God or any other cause or events beyond Seller's control. In the event of delays in delivery or nondelivery of the goods which, directly or indirectly, were caused by a Nonliability Event or to which a Nonliability Event contributed, Seller shall not be liable for damages, whether direct, incidental, or consequential, and (a) the time for performance shall, at Seller's option, be extended in whole or in part until the termination of the Nonliability Event and for an additional period thereafter reasonably necessary to cure the effects thereof, or (b) at Seller's option, a part or all of the Goods affected may be eliminated from the contract of sale, without any liability to Seller; and the contract price shall be appropriately reduced.
13. **Prices, Taxes and Other Additional Charges.** Prices on Goods covered may be adjusted at Seller's option. Seller may adjust prices (a) to those Seller has in effect at the time of shipment; (b) for delays acceptable to Seller or (c) for Seller's specific consent to delivery material beyond a twelve-month period from the initial contract date, to cover the additional charges involved through (b) or (c). In addition to the price for the Goods, Buyer will pay Seller the amount of any excise, sales, use, or similar tax relating to the Goods or their sale, and any freight (unless there is an express freight allowance) stop-over charge, lot loading charge, demurrage charge or the like relating to the transportation or storage of the Goods, which Seller is legally obligated to pay, within ten days after the date of an invoice for the charge.
14. **Assignment.** The contract for sale of the Goods is not assignable in whole or in part by Buyer without the written approval of Seller, and any attempted assignment shall be void.
15. **No Sales "on Approval" or "Sale Return".** No sale is made on approval or under a sale or return. Seller may, however, at its option, allow a return. Any such return shall be at Buyer's sole risk and expense; return shall be effected only upon actual delivery to Seller or as otherwise instructed by it in writing. No credit, whether by refund of monies paid or by allowance against monies due, shall be given until such actual receipt by Seller of return products in the same condition as they were when delivered to the carrier by Seller for original shipment to Buyer.
16. **Governing Law.** The contract for sale for the Goods shall be governed by the laws of the State of Delaware, excluding both its choice of law provisions and the UN Convention on Contracts for the International Sale of Goods. The parties agree that the exclusive venue for pursuing any claim arising hereunder shall lie in the state or federal courts of the State of Delaware, but that a judgment from such courts may be enforced in any court of competent jurisdiction.
17. **Seller's Non-Exclusive Remedies.** Upon any breach by Buyer of any promise, term, and/or condition contained herein, including, but not limited to, the nonpayment by Buyer of any amount due hereunder, or if Seller deems itself insecure, Seller may, at its option, and without prejudice to or limitation of any other legal remedy hereunder, by law, or otherwise, resort to one or more of the following remedies: (a) suspend further deliveries, even though partial payment for undelivered Goods has been received; (b) demand adequate assurance of due performance, including but not limited to, the delivery to Seller of a third-party bond satisfactory to Seller; (c) declare the unpaid balance of the contract immediately due and payable; (d) collect from Buyer all costs of collection, including but not limited to, reasonable attorneys' fees incurred in enforcing any right or remedy hereunder or in law, pertaining in whole or in part to the goods; and (e) reposes and/or reclaim the Goods or any part thereof. Buyer hereby agrees, upon demand, to assemble the Goods or any part thereof to Seller, at Buyer's expense, all in accordance with Seller's instructions. Buyer hereby grants Seller a security interest in the Goods and any and all proceeds thereof and accessions thereto to secure all of Buyer's obligations hereunder under this or any other agreement. Buyer hereby irrevocably appoints Seller as Buyer's lawful attorney-in-fact to execute and file all documents necessary to desirably to effectuate the purposes of this paragraph, including but not limited to, appropriate financing statement. A photo static copy of this document may be filed as a financing statement.
18. **No Implied Waiver.** The failure of one party to require performance by the other party of any provision of these Terms and Conditions shall not affect the right to require performance at a later time. The waiver by one party to a breach by the other of any provision of these Terms and Conditions must be in writing and shall not be deemed a waiver of any later breach of the provision.
19. **Statement of Responsibilities.** Each customer or user of Seller's Goods is solely responsible for determining the suitability of the Goods selected for the intended application. Each customer or user must conduct its own studies and gain all necessary approvals and certifications as required for the intended finished product.
20. **Integration Clause.** These Terms and Conditions constitute the entire agreement between the parties with respect to the subject matter hereof and there are no agreements, understandings, representatives or warranties, except as expressly set forth herein. These Terms and Conditions supersede all previous and contemporaneous communications, representations, understandings and agreements. Any purchase orders submitted by Buyer shall be for administrative purposes only. These Terms and Conditions shall supersede any different, conflicting or additional terms used by Buyer in the ordering, shipment and receiving of Goods. Notwithstanding anything to the contrary herein, Seller reserves the right to correct all stenographic or arithmetical errors which appear on the front of this Agreement, or any invoice relating hereto.