

VacuForm, Inc.
Terms and Conditions of Sale

1.) Acceptance. Seller's acceptance of Buyer's order for the Products covered hereby and the making of any shipments of such Products are subject to the terms and conditions of the applicable written contract between Buyer and Seller, as signed by Seller, or, if none, subject to and expressly condition Upon Buyer's assent to the terms and conditions on the face and back hereof, which in such case constitute the Contract covering such order and shipments and the entire understanding and agreement between the parties relating thereto, anything inconsistent or to the contrary in any purchase order notwithstanding. Buyer shall be deemed to have assented to the provisions hereof in all respects by failure to give Seller notice of objection received by Seller within ten (10) day of Buyer's receipt of any Products shipped, Seller shall not be bound by any change in, addition to or waiver of any of the provisions hereof, unless approved in writing by an authorized representative of Seller.

2.) Price. Unless otherwise stated on the face side of this document, the price is F.O.B. shipping point of origin. All prices exclude sales, use, occupation, license, excise and other taxes in respect of manufacture, sale or delivery of the Product and export and Import duties, all of which shall be paid by the Buyer.

3.) Delivery/Risk of Loss. Title and risk of loss to the Product shall pass from Seller to Buyer when Seller delivers Product to the carrier at Seller's facility. Seller will not be responsible for any loss or damage to the Product after delivery to the carrier. Any usage of terms such as delivered F.O.B. Buyer's facility, freight prepaid on the face side of this Invoice, or in other communications, shall relate solely to pricing.

4.) Warranties.

A. Seller warrants that at the time of delivery:

- (1) it transferred unencumbered title to all Product sold;
- (2) the Product met the Seller's then current sales specifications;
- (3) Unless the Product was made to Buyer's specifications, the Product itself did not infringe any valid US patent issued as of such date.

B. SELLER DOES NOT MAKE AND EXPRESSLY DISCLAIMS, AND BUYER WAIVES, ANY AND ALL OTHER WARRANTIES WHATSOEVER, INCLUDING WITHOUTLIMITATION ANY AND ALL WARRANTIES OF MERCHATABILITY OR FITNES FOR A PARTICULAR PURPOSE, REGARDLESS WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED, OR ALLEGEDLY ARISING FROM ANY USAGE OF ANY TRADE OR ANY COURSE OF DEALING.

5.) Product Inspection and Claims. Buyer shall examine the Product promptly upon receipt of each shipment at Buyer's plant and before any use or commingling of Product with other materials. Buyer shall promptly notify Seller of any damaged or off-specification Products, shortfall in delivery or non-receipt of Product, together with relevant details. The parties will cooperate with each other in the handling of any claim with the carrier. Seller will not be responsible for any variation in quality or quantity unless Buyer gives Seller written notice within thirty (30) days of receipt and the variation is verified by an authorized agent of Seller or an independent professional inspector. Buyer's failure to so give notice of any claim shall constitute an unqualified acceptance of the Product and a waiver by Buyer of all claims with respect thereto.

6.) Liabilities of the Parties.

A. Except In the case of personal injury or death, Buyer's exclusive remedy for Product which does not meet the specifications in all material respects or for failure to deliver Product as set forth on the face side of the document shall be replacement (or at Seller's option refund of the purchase price) of the quantity of Product in respect of which the claim is made.

In all events, Seller's total liability to Buyer for any claim relating to this contract, other than for personal injury or death, shall not exceed the lesser of:

- (1) the actual out-of-pocket loss, liabilities or damages directly and proximately incurred by Buyer; or
- (2) an amount equal to the purchase price of the Product in respect of which such claim is made. This shall constitute Seller's maximum liability even if Product has been handled, stored, processed or transported by Buyer or third parties. In no event shall Seller be liable for any lost profits or any indirect, consequential, special, incidental, contingent or punitive damages or losses suffered or incurred by Buyer.

B. As between the parties hereto, Buyer assumes full responsibility for and liability arising out of the storage, handling, transportation, sale, use and disposal and any Product after delivery to it of such Product, and of any derivative product, any co-product, by-product or waste product there from, including the use of any such product alone or in combination with another substances and compliance or non-compliance with any laws or regulations relation thereto.

C. As between the parties hereto. Seller shall, subject to the limitations set out in Paragraph 5 and 6A, defend and indemnify Buyer from and against all claims, losses, liabilities, damages, and expenses (including reasonable attorney's fees) made against or incurred by Buyer arising out of any claim, suit, or proceeding by any governmental agency or any third parties (including without limitation any employee of Seller or member of his/her family) which claim suit or proceeding alleges death, personal or economic injury or damages to any private or public property or resources caused or contributed to by the Product to the extent that such death, injury or damage is caused by reason of the failure of the Product to meet the physical and chemical specifications in all material respects when delivered to Buyer, which failure is not reasonably discoverable by Buyer, or by reason of a material inaccuracy in the health and safety information provided by Seller concerning the Product.

D. As between the parties hereto, Buyer shall defend and indemnify Seller from and against all claims, losses, liabilities, damages, and expenses (including reasonable attorney's fees) made against or incurred by Seller arising out of any claim, suit, or proceeding by any governmental agency or any third parties (including without limitation any employee of Buyer or member of his/her family) which claim, suit or proceeding alleges death, personal or economic injury or damages to any private or public property or resources caused or contributed to by the Products delivered to Buyer, or any derivative product, co-product, by-product, or waste product, if the event or condition causing such death, injury, or damage occurred subsequent to delivery of the Product by Seller to Buyer, except to the extent such loss, injury or damage is caused by reason of the failure of the Product to meet the physical and chemical specifications in all material respects when delivered to Buyer, which failure is not reasonably discoverable by Buyer, or by reason of a material inaccuracy in the health and safety information provided by Seller concerning the Product.

E. The Foregoing undertaking in this paragraph 6 apply in full measure, whether or not it is alleged or proved that either party was negligent or at fault, or liability without fault is sought to be imposed on either party for any reason or on any legal theory.

F. Buyer shall, at its own expense, carry and maintain comprehensive general bodily injury liability insurance and broad form property damage liability insurance with companies in amounts and on terms satisfactory to Seller to support the indemnities in this paragraph 6. Seller shall be treated under such policies as an additional insured in the same manner and to the same extent as Buyer. Buyer's obligation to carry insurance does not otherwise limit, satisfy or derogate from Buyer's primary obligations under this paragraph 6.

7. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Ohio, without application of its choice of law rules.

8. Arbitration. The parties agree to use reasonable efforts to amicably resolve any dispute between them concerning this Contract, In the event that the parties acting in good faith are not able to resolve any such dispute, the matter shall be submitted to arbitration. The rules of commercial arbitration of the American Arbitration Association in effect on the date the matter is submitted to arbitration shall apply. The decision of the arbitrators shall be in writing and shall contain the findings of fact and conclusions binding on the parties unless clearly erroneous as a matter of law and may be enforced in any court having jurisdiction.