

**VOLLMER OF AMERICA CORP.  
TERMS AND CONDITIONS OF SALE**

1. **Offer, Governing Provisions and Cancellation.** This document is an offer or counter-offer by Vollmer Of America Corp. ("Seller") to sell the goods and/or services described in it in accordance with these terms and conditions; is not an acceptance of any offer made by buyer; and is expressly conditioned upon buyer's assent to these Terms and Conditions of Sale. Seller objects to any additional or different terms contained in any purchase order or other communication previously or hereafter provided by buyer to Seller. No such additional or different terms or conditions will be of any force or effect. The terms contained in or incorporated into this document will be the entire agreement between Seller and buyer on the subject of the transaction described herein; and there are no conditions to that agreement that are not so contained or incorporated. **THIS OFFER AND THAT AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAWS OF THE STATE OF PENNSYLVANIA AND THE U.S. (WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS). THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL NOT BE GOVERNED BY THE 1980 U.N. CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.**

No accepted offer may be cancelled or altered by buyer except upon terms and conditions accepted by Seller in writing; and no changes to this document will be binding unless set forth in writing and manually signed by Seller. This offer may be revoked by Seller at any time before it is accepted by buyer, and shall automatically expire 30 calendar days after its date if buyer has not accepted it before then. Neither buyer's acceptance of this offer nor any conduct by Seller (including but not limited to shipment of goods) shall oblige Seller to sell to buyer any quantity of goods in excess of the quantity that buyer has committed to purchase from Seller at the time of such acceptance or conduct.

2. **Credit Approval; Payment Terms.** All payment terms set forth in this document are subject to Seller's approval of buyer's credit, in Seller's discretion; and if such approval is withheld, payment shall be due in advance of Seller's performance. Except as otherwise provided on the face of this document or in the preceding sentence, payment is due as follows: 30% upon Seller's acceptance of buyer's order; 60% upon delivery of the goods to buyer; and, 10% within 30 days after the date of delivery. Interest will be charged at the lesser of (i) 18% per year, or (ii) the highest rate permitted by applicable law, on accounts more than 30 calendar days past due. If production or shipment of completed goods, or other Seller performance, is delayed by buyer, Seller may immediately invoice, and buyer shall pay, the percentage of the purchase price corresponding to the percentage of completion; in addition, buyer shall compensate Seller for storage of completed goods or work in process during any such delay, whether stored at Seller's facility or an independent storage company's facilities.

3. **Taxes and Other Charges.** Any manufacturer's tax, occupation tax, use tax, sales tax, excise tax, value added tax, duty, custom, inspection or testing fee, or any other tax, fee, interest or charge of any nature whatsoever imposed by any governmental authority on or measured by the transaction between Seller and buyer shall be paid by buyer in addition to the prices quoted or invoiced. In the event Seller is required to pay any such taxes or other charges, buyer shall reimburse Seller therefore on demand.

4. **Delivery, Claims and Force Majeure.** Unless otherwise provided on the face of this document, goods shall be delivered to buyer F.O.B. Seller's loading dock or, for ultimate destinations outside of the U.S., ex works Seller's loading dock (as the latter shipping term is defined in [Incoterms 2000](#)). Delivery of products to the carrier shall constitute delivery to buyer; and regardless of shipping terms or freight payment, buyer shall bear all risk of loss or damage in transit. Seller reserves the right to make delivery in installments, unless otherwise expressly stipulated herein; all such installments to be separately invoiced and paid for when due per invoice, without regard to subsequent deliveries. Delay in delivery of any installment shall not relieve buyer of its obligations to accept remaining deliveries.

Claims for shortages or other errors in delivery must be made in writing to Seller within 10 calendar days after receipt of shipment; and failure to give such notice shall constitute unqualified acceptance and a waiver of all such claims by buyer. Claims for loss of or damage to goods in transit must be made to the carrier, and not to Seller.

All delivery dates are approximate. Seller shall not be liable for any losses or damages as a result of any delay or failure to deliver due to any cause beyond Seller's reasonable control, including but not limited to any act of God, act of buyer, embargo or other governmental act, regulation or request, fire, accident, strike, slowdown, war, act of terrorism, riot, delay in transportation, or inability to obtain necessary labor, materials or manufacturing facilities. In the event of any such delay, the date of delivery shall be extended for a period equal to the time lost because of the delay. Buyer's exclusive remedy for other delays and for Seller's inability to deliver for any reason shall be rescission of its agreement to purchase.

5. **Changes.** Seller may at any time make such changes in design and construction of products, components or parts as Seller deems appropriate, without notice to buyer. Seller may furnish suitable substitutes for materials unobtainable because of priorities or regulations established by governmental authority or non-availability of materials from suppliers.

6. **Warranties.** Seller's warranty ("Warranty") as separately set forth is incorporated herein by reference as if set forth in full. Any repair or replacement called for pursuant to the Warranty shall be made F.O.B. Seller's loading dock or, for customers outside of the U.S., ex works Seller's loading dock (as the latter shipping term is defined in Incoterms 2000). Repair, replacement, or refund pursuant to the Warranty shall be Seller's sole obligation and buyer's exclusive remedy for any deficiency in goods furnished hereunder, and shall be conditioned upon compliance with all buyer requirements provided for in the Warranty. If the buyer is an authorized distributor of Seller, buyer shall provide its customers with a copy of the Warranty without change or amendment of any kind. The buyer shall be solely responsible for any change or amendment to the Warranty and the consequences thereof.

**THE REFERENCED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED; AND SELLER EXPRESSLY DISCLAIMS AND EXCLUDES ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING OR USAGE OF TRADE.**

7. **Patents, Trademarks and Copyrights.** Seller will, at its own expense, defend any suits that may be instituted by anyone against buyer for alleged infringement of any United States patent, trademark or copyright relating to goods or services provided by Seller, and pay any final damage award therein, provided buyer shall have made all payments then due hereunder, shall give Seller immediate notice in writing of any such suit, shall transmit to Seller immediately upon receipt all processes and papers served upon buyer, and shall permit Seller, through its counsel, to defend or settle the same either in the name of buyer or in the name of Seller, giving Seller all needed information, assistance and authority to enable Seller to do so. Further, if the result of any such suit is a determination or acknowledgement of infringement, Seller shall, at Seller's option (a) obtain for buyer the right to continue to use the goods or products of the services purchased from Seller, or (b) replace the same with non-infringing goods or services, or (c) modify such goods or services so that they are non-infringing, or (d) remove such goods or products of services and refund to buyer the un-depreciated portion of the purchase price, determined on the basis of a five-year useful life.

To the extent that any goods or services that Seller furnishes to buyer are manufactured in accordance with drawings, designs or specifications proposed or furnished by buyer, Seller shall not be liable, and buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages, claims and expenses (including but not limited to Seller's reasonable attorneys' fees and other costs of defense) incurred by Seller as a result of any claim of patent, trademark, copyright or trade secret infringement, or infringement or any other proprietary rights of third parties.

8. **Consequential Damages and Other Liability; Indemnity.** Seller's liability with respect to the goods or services sold hereunder shall be limited to the Warranty referred to and the indemnity provided for in sections 6 and 7 of these Terms and Conditions of Sale and, with respect to any other breaches of its contract with buyer, shall be limited to the contract price. **SELLER SHALL NOT BE SUBJECT TO ANY OTHER OBLIGATIONS OR LIABILITIES, WHETHER ARISING OUT OF BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR UNDER OTHER THEORIES OF LAW OR EQUITY, WITH RESPECT TO GOODS OR SERVICES SOLD BY SELLER, OR ANY UNDERTAKINGS, ACTS OR OMISSIONS RELATING THERETO.** Without limiting the generality of the foregoing, Seller specifically disclaims any liability for property damages, penalties, special or punitive damages, damages for lost profits or revenues, down-time, lost good will, cost of capital, cost of substitute goods or services, or for any other types of economic loss, or for claims of buyer's customers or any third party for any such damages, costs or losses. **SELLER SHALL NOT BE LIABLE FOR AND DISCLAIMS ALL CONSEQUENTIAL, INCIDENTAL, INDIRECT AND CONTINGENT DAMAGES WHATSOEVER.**

Buyer shall indemnify and hold harmless Seller from and against any and all losses, liabilities, damages and expenses (including but not limited to attorneys' fees and other costs of defense) that Seller may incur as a result of any claim by buyer or by buyer's customers or by any third party arising out of or in connection with the goods or services sold hereunder, including but not limited to any such claim based upon the negligence of Seller in designing, manufacturing, performing and/or selling such goods or services, unless such losses, liabilities, damages or expenses are ultimately determined to be attributable solely to the willful misconduct of Seller.

9. **Technical Information.** Any sketches, models or samples submitted by Seller shall remain the property of Seller, and shall be treated as confidential information unless Seller has in writing indicated a contrary intent. No use or disclosure of such sketches, models or samples, or any design or production techniques revealed thereby, shall be made without the express, prior written consent of Seller.

10. **Tools.** Any dies, jigs or tools that Seller manufactures or acquires in connection with its performance hereunder shall remain the property of Seller, notwithstanding any charges to buyer therefore. Any such charges convey to buyer the right to have the tools, dies or jigs used by Seller for performance hereunder, but do not convey title or right of possession or any other right.

**VOLLMER OF AMERICA CORP.  
WARRANTY**

(A) Vollmer warrants that the Goods/Equipment sold by Vollmer, and that is manufactured by Vollmer, (1) conforms to Vollmer specifications, and (2) will remain free from defects in materials and workmanship appearing under normal usage (and provided that Vollmer's operation and maintenance instructions are followed by competent personnel), for a period of twelve (12) months following delivery of the Goods/Equipment to Buyer. Normal wear and tear shall not be considered a defect.

(B) Vollmer's only responsibility with respect to equipment that is not manufactured by Vollmer will be to assign to Buyer any manufacturer's warranty that does not prohibit such assignment.

(C) Equipment and parts that are consumed in normal operation are not covered by this Warranty.

(D) If Buyer discovers a defect within the applicable warranty period, it must be reported to Vollmer's service department at (412) 278-0655 immediately upon discovery.

(E) Within a reasonable time after proper notification, Vollmer shall, during its normal business hours, Monday through Friday, correct any defect covered by this Warranty with either new or used replacement parts, without charge. The original duration of this Warranty shall remain applicable to those parts not repaired or replaced. Any part repaired or replaced is warranted to conform to Vollmer's specifications and to be free from defects in materials or workmanship appearing within a period of twelve (12) months after repair or replacement, subject to the other terms of this Warranty. The above remedies are the exclusive remedies of Buyer, and the sole responsibility of Vollmer, for breach of this Warranty.

(F) Vollmer's warranty ceases to be effective if Buyer fails to operate and use the Goods/Equipment sold hereunder in a safe and reasonable manner in accordance with Vollmer's written instructions.

(G) Buyer shall not be entitled to any remedy under this warranty with respect to

(1) Goods/Equipment that has been (a) subjected to any alteration, disassembly, tampering, modification, or repair without prior authorization by Vollmer or (b) used with parts that are not genuine Vollmer parts;

(2) Goods/Equipment subjected to experimental running or any type of operation or use other than that for which the Goods/Equipment is designed; or

(3) Goods/Equipment from which Vollmer's and/or vendor's trademark or serial number has been altered, removed, or obliterated without Vollmer's written permission, excluding any alteration, removal, or obliteration directly caused by accident or mishap.

**(H) VOLLMER MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, AND SPECIFICALLY MAKES NO WARRANTY OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE; AND THE EXPRESS WARRANTY SET FORTH HEREIN IS IN LIEU OF ANY SUCH WARRANTY AND ANY OTHER OBLIGATION OR LIABILITY ON THE PART OF VOLLMER. UNDER NO CIRCUMSTANCES SHALL VOLLMER BE SUBJECT TO ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, OR CONTINGENT DAMAGES OF ANY KIND OR NATURE WHATSOEVER, WHETHER BASED ON CONTRACT, TORT, STRICT LIABILITY, OR OTHER THEORY OF LAW, WHETHER OR NOT SIMILAR IN KIND OR NATURE TO THE FOREGOING, ALL SUCH DAMAGES AND CLAIMS BEING HEREBY SPECIFICALLY DISCLAIMED.**

(I) For purposes of the exclusive remedies set forth in this Warranty, and the limitations of liability set forth in Section 8 of the Terms and Conditions of Sale into which it is incorporated, "Vollmer" shall be deemed to include Vollmer, its subsidiaries, and their affiliates, directors, officers, employees, agents, representatives, subcontractors, and suppliers of all of them.

(J) This Warranty is only transferable by an authorized distributor of Vollmer to its original customer and is otherwise non-transferable and applicable only to Vollmer's original customer.

(K) This Warranty shall not be extended, altered or varied in any manner or by any person, including, without limitation, by any distributor of Vollmer, except by written instrument executed by Vollmer.

(L) Any official action or legal proceeding for breach of this Warranty must be commenced within thirty (30) months after acceptance of the Goods/Equipment.