

# Terms & Conditions of Sale

**PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY. THEY MATERIALLY AFFECT THE PARTIES' OBLIGATIONS. SELLER WILL ACCEPT ORDERS AND DO BUSINESS ONLY ON THE TERMS AND CONDITIONS ON THIS FORM.**

- 1. ACCEPTANCE AND AGREEMENT:** The provisions on the face of the Alto-Shaam acknowledgment and these Terms and Conditions of Sale constitute the entire agreement between Seller and the customer (the "Customer") with respect to the purchase and sale of the products covered hereby (the "Products"), and supersede Customer's purchase order and all other communication between the parties, whether written or oral. No purported modification or waiver of the provisions hereof shall be binding on Seller for any reason of purpose unless contained in writing signed by an authorized representative of Seller.
- 2. LIMITED WARRANTY AND REMEDY:** Alto-Shaam, Inc. warrants to the original purchaser that any original part that is found to be defective in material or workmanship will, at Alto-Shaam's option, subject to provisions hereinafter stated, be replaced with a new or rebuilt part. The labor warranty remains in effect one (1) year from installation or fifteen (15) months from the shipping date, whichever occurs first. Alto-Shaam will bear normal labor charges performed by an authorized Alto-Shaam service agent during standard business hours, and excluding overtime, holiday rates or any additional fees. The parts warranty remains in effect for one (1) year from installation or fifteen (15) months from the shipping date, whichever occurs first.

THIS WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT SHALL ALTO-SHAAM BE LIABLE FOR LOSS OF USE, LOSS OF REVENUE OR PROFIT, OR LOSS OF PRODUCT, OR FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

- 3. LIMITATION OF LIABILITY:** SELLER WILL NOT BE LIABLE UNDER ANY CIRCUMSTANCES FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES, INCLUDING WITHOUT LIMITATION ANY LOST PROFITS OR LABOR COSTS, ARISING FROM THE SALE, USE OR INSTALLATION OF THE PRODUCTS, FROM THE PRODUCTS BEING INCORPORATED INTO OR BECOMING A COMPONENT OF ANOTHER PRODUCT OR FROM ANY OTHER CAUSE WHATSOEVER, WHETHER BASED ON WARRANTY (EXPRESSED OR IMPLIED) OR OTHERWISE BASED ON CONTRACT, ON TORT OR ANY OTHER THEORY OF LIABILITY, AND REGARDLESS OF ANY ADVICE OR REPRESENTATIONS NOT IN WRITING THAT MAY HAVE BEEN RENDERED BY SELLER CONCERNING THE SALE, USE OR INSTALLATION OF THE PRODUCTS.
- 4. DELAYS BEYOND THE CONTROL OF THE SELLER:** Seller shall have no liability as a result of any delay or failure to manufacture, ship or deliver any Products to Customer if such delay or failure is directly or indirectly caused by fire, flood, strike, or other labor dispute, accident, inadequate transportation, shortage of labor, material or supplies, or due to regulations, priorities or orders of any governmental authority or due to any other cause, whether or not similar to the foregoing, beyond the reasonable control of Seller.
- 5. CANCELLATION:** Seller must receive written notification of all cancellations and changes on in-house orders within 48 hours from date of order acknowledgment. Customer will be responsible for outgoing and return freight charges on orders shipped prior to the receipt by Seller of a written notice of cancellation or order change. Cancellation or changes to Customer's order will be subject to Customer's payment of Seller's 20% cancellation charges, which shall include all reasonable costs incurred by Seller in preparing to meet Customer's anticipated delivery schedule, including without limitation commitments made by Seller to its suppliers, and the cost of inventory (raw materials, work-in-process and finished goods) allocated to Customer's order.
- 6. SHIPMENT AND RETURNS:** Seller reserves the right to select the manner and route of shipment unless at least 5 days prior to shipment Customer furnishes exact shipping instructions. Any Products which are not shipped as scheduled on account of Customer will be held at the sole risk and expense of Customer. All shipments for domestic sales (i.e., when the destination is within the United States) shall be F.O.B., point of shipment (within the meaning of the Uniform Commercial Code) and for export sales shall be Ex-Works, Seller's plant in Menomonee Falls, Wisconsin, U.S.A. (within the meaning of INCOTERMS 1990), unless otherwise stated on the face of the Alto-Shaam acknowledgment. Prices are quoted based on these F.O.B. or Ex-Works terms, as applicable, unless otherwise specified. Prices include skidding, crating or boxing unless otherwise noted. Export processing and boxing for overseas shipment are at additional cost, as separately quoted. Customer agrees to assure all risks of loss or damage to the Products while being transported or enroute to truck or railroad, airway or other carrier direct to Customer. It is agreed that the carrier is to be the purchaser's agent for all purposes. Therefore, Customer must file claims for loss or damage directly with the carrier. Seller's responsibility ceases upon delivery, in good order, to the carrier. No returns will be accepted on special or custom built equipment or parts, or on equipment or parts older than ninety (90) days from the original date of shipment. Written permission must be obtained from Seller before returning any Products, and any Products returned without such written authorization will be refused as "Returned Shipment Unauthorized."
- 7. FAIR LABOR STANDARDS ACT:** Seller certifies that all Products covered by this order have been manufactured in compliance with the Fair Labor Standards Act, as amended, and all other applicable government laws and regulations.
- 8. EQUAL OPPORTUNITY/AFFIRMATIVE ACTION CLAUSES:** Seller certifies it is in compliance with Readjustment Assistance Act of 1974, as amended (38 USC 4212) and Section 503 of Rehabilitation Act of 1973, as amended.
- 9. PRICE CHANGES:** Seller reserves the right to raise the prices set forth herein in connection with its adoption of a new price schedule or modification of an existing price schedule, provided such increase is generally applicable to Products of the kind covered hereby. Such revised prices shall be applicable hereunder on all shipments made on and after the effective date of the price change. Customer may upon receipt of notice of increase in prices of Products covered hereby, cancel that part of the order scheduled to be shipped within 4 weeks after the price notification and which will be subject to such increased prices, by written notice to Seller given within 7 days after its receipt of such notice.
- 10. CREDIT AND TERMS:** All prices are stated in and shall be payable in U.S. dollars. If Customer's credit has been approved by Seller's credit department, terms of sale are net 30 days from the date of invoice except where different terms are stated on the face hereof. If Customer's credit has not been so approved it will be required to make payment in advance, by letter of credit or other means of shipment will be established which are agreeable to Seller. If Customer is new, credit approval will be expedited if Customer promptly submits the names, address and phone numbers of at least five trade references and the name, address and phone numbers of Customer's bank. All C.O.D. requests, whether requested by Seller or by Customer, must be paid by certified check. Each letter of credit required by Seller shall (a) be issued or confirmed by a prime U.S. bank acceptable to Seller, (b) be in the case of export shipments, subject to and governed by the Uniform Customs and Practice for Documentary Credits (ICC Publication No. 500, revised effective January 1, 1994), (c) otherwise be acceptable in form and substance to Seller, and (d) provide for payment to Seller of the full amount of the purchase price plus prepaid freight in U.S. dollars, and presentation by Seller of sight drafts, Seller's invoice and such other documents that shall be required by the letter of credit. All banking and other charges for such letter of credit will be for the account of the Customer.
- 11. INFRINGEMENT:** Seller at its own expense will defend and hold Customer harmless from and against all damages, costs and expenses arising from any valid claim of infringement of any patent, trademark registered design or other intellectual property rights caused by the Products originally manufactured by Seller, provided Customer (a) has not modified such Products, (b) gives Seller immediate notice in writing of a claim or institution or threat of suit, and (c) permits Seller to defend or settle the same, and gives all immediate information, assistance and authority to enable Seller to do so.
- 12. F.O.B. OR EX-WORKS:** F.O.B. MENOMONEE FALLS UNLESS OTHERWISE STATED ON FACE OF DOCUMENT.
- 13. WORK BY OTHERS; ACCESSORIES AND SAFETY DEVICES:** Unless otherwise agreed in writing, Seller has no responsibility for labor or work of any nature relating to the operation, use or installation of the Products, all which will be performed by Customer or others. It is the responsibility of Customer to furnish such accessory and safety devices as may be desired by it and/or required by law. Customer shall require its employees to use all safety devices, guards and proper and safe operating procedures to the extent set forth in operator and machine manuals and instruction sheets furnished by Seller. Customer is responsible for consulting any such manuals and instruction sheets, applicable OSHA regulations and other applicable sources.
- 14. GENERAL:** (a) No modification or waiver of this agreement or any of its provisions is valid unless expressly agreed to by Seller in writing, and no waiver by Seller of any default under this agreement is a waiver of any other subsequent default; (b) no agreement is formed hereunder unless Customer's order is accepted by Seller in writing; (c) the unenforceability or invalidity of one or more of the provisions of this agreement will not affect the enforceability or validity of any other provision of this agreement; (d) THE COMPLETE AGREEMENT BETWEEN SELLER AND CUSTOMER IS CONTAINED HEREIN AND NO ADDITIONAL OR DIFFERENT TERMS OR CONDITIONS STATED BY CUSTOMER SHALL BE BINDING UNLESS AGREED TO BY SELLER IN WRITING; (e) no course of dealing, usage of trade or course of performance will be relevant to supplement or explain any terms used in this agreement; (f) Customer may not assign any of its rights, duties or obligations under this Agreement without Seller's prior written consent and any attempted assignment without such consent, even if by operation of law, will be void; (g) this agreement is governed by and shall be construed in accordance with the internal laws of the State of Wisconsin, including the Uniform Commercial Code as enacted by such state; provided, however, that the rights and obligations of the parties hereunder shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods; and (h) all export shipments hereunder are subject to compliance with the Export Administration Act, as amended, and the regulations thereunder, and all other U.S. laws and regulations concerning exports. Customer agrees to comply with all such laws and regulations concerning use, disposition and sale of the Products. Alto-Shaam's management reserves the right to make final decisions on all order related policies and/or cancellation/change fees and/or waivers. Final determination of the decision rests with an officer of Alto-Shaam or the President of the Company.

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