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# INCAB AMERICA LLC STANDARD TERMS & CONDITIONS OF SALE

## 1. APPLICABILITY OF TERMS AND CONDITIONS

These Terms and Conditions will govern all sales by Incab America LLC (hereinafter "Incab" or "Seller"), unless otherwise agreed to in writing and signed by an authorized Incab agent at its home in Arlington, Texas. Terms and conditions contained in Buyer's purchase order or any other document that are different from or in addition to these Terms and Conditions are objected to and will not be binding on Incab. Buyer will be deemed to have agreed to these Terms and Conditions by issuing a purchase order number and upon receipt from Incab of a written acknowledgement of Buyer's placement of an order. Notwithstanding the foregoing, if Incab, at Buyer's request, commences performance in any way prior to receipt by Buyer of Incab's written acknowledgement, Buyer's acceptance of these Terms and Conditions will be deemed to have occurred on the date such performance commences. If for any reason, Incab's Quotation is deemed an acceptance of an offer made by Buyer, such acceptance is expressly conditioned on Buyer's assent to these Terms and Conditions, which assent will be evidenced by the earlier of Buyer's acceptance of items delivered by Incab or any other performance by Buyer. Incab will proceed to sell items only if Buyer assents to the Terms and Conditions.

## 2. SHIPMENTS AND FREIGHT

All sales are made F.O.B. Destination and each shipment or delivery shall be considered a separate and independent transaction. Buyer has risk of loss upon delivery to F.O.B. point. Freight costs will be prepaid and added unless otherwise agreed in writing by Seller.

## 3. SHIPPING DATES

Shipping dates given in advance of actual shipment are estimated and deliveries will be made subject to prior orders on file with Seller. Seller shall not be liable for failure to perform or delay in performance hereunder resulting from fire, labor difficulties, transportation difficulties, delays in usual sources of supply, major changes in economic conditions, commercial impracticability, or without limitation by the foregoing, cause beyond Seller's control.

## 4. FINANCIAL RESPONSIBILITY

If in Seller's judgments, the financial condition of the Buyer at the time products are ready for shipment does not justify the terms of payment specified, Seller reserves the right to require full payment before shipment or delivery.

## 5. SALES ARE FINAL/CANCELLATION

All sales are final. This contract may be canceled by the Buyer only if agreed to by Seller and upon payment of reasonable charges based upon expenses already incurred and commitments made by Seller.

## 6. LIMITATIONS ON REMEDIES

Seller shall not be liable for special, indirect, incidental, or consequential damages. The remedies of Buyer set forth herein are exclusive and the liability of Seller with respect to any contract or sale of anything done in connection therewith, whether in contract, tort, (including Seller's negligence), under any warranty or otherwise, shall not exceed the purchase price of the product or part on which such liability is based.

## 7. TAXES

*The prices shown do not include any sales, use or other taxes or charges payable to Federal, state or local authorities. Any such taxes or charges now or hereafter imposed with respect to sales or shipments hereunder will be added to such prices and the Buyer agrees to pay, or reimburse Seller, for any such taxes or charges.*

## **8. PAYMENT TERMS**

Net payment due within 30 days from date of invoice unless otherwise agreed in writing by Seller.

## **9. AUTHORITY**

No outside sales representative of Seller has authority to alter, vary, or waive any of the foregoing standard terms and conditions stated herein.

## **10. CLAIMS**

*Buyer agrees that any claim of any kind by Buyer based on or arising out of this contract or otherwise shall be barred unless asserted by Buyer by the commencement of legal action within 12 months after the delivery of the products or other event, action, or inaction to which such claims relate. This provision shall survive any termination of this contract, however arising.*

## **11. OVERDUE INVOICES**

Buyer shall pay interest to Seller on overdue invoices at the rate of 1-1/2% per month on the unpaid portion.

## **12. COLLECTIONS**

Should Seller employ professional collection agents and/or attorneys at law to effect payment of monies due on this contract, all costs incident to said collection, including court costs, reasonable attorney's fees, etc. will be borne by Buyer at cost plus 15%.

## **13. WARRANTY AND DISCLAIMERS OF WARRANTY**

*Incab warrants to the Buyer that the goods supplied hereunder will be free from defects in material and workmanship under normal and proper usage for a period of one year from the date of shipment by Incab. The foregoing warranty will not cover, and Incab makes no warranties with respect to, any goods subjected to abuse, misuse, misapplication, neglect, alteration, or accident; to improper and incorrect installation or maintenance; or to abnormal conditions of use, temperature, moisture, dirt or corrosive matter; and (ii) any materials, parts, goods or other components that are manufactured by someone other than Incab.*

*THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED OR OTHERWISE ARISING BY OPERATION OF LAW, TRADE, USAGE OR COURSE OF DEALING, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.*

*Buyer agrees to provide Incab with written notice of any breach of the above warranty within thirty days after Buyer discovers, or should have discovered, the alleged breach. Time is of the essence herein, and Buyer's failure to provide written notice to Incab within the required time of any alleged breach of the foregoing warranty will release and discharge Incab from any obligation or liability for that breach of warranty. The foregoing warranty extends only to Buyer and to no other person.*

## **14. RETURNS**

No returns will be allowed unless the Seller has given prior written authorization from Incab. Authorized returns must be carefully identified and tagged with quantity and reason for return. All unauthorized returns will be refused or shipped back to the sender by collect freight with no action taken.

## **15. WAIVER OF CLAIM**

Failure to give Seller notice of any claim within 30 days of delivery of the materials concerned shall constitute a waiver of such claim by the Buyer. Any request for return for replacement, repair, or credit must be made in writing to the Seller at Arlington, Texas within this time period.

## **16. STANDARD BILLABLE TOLERANCE**

Unless otherwise specified in writing, the following variations shall constitute satisfactory compliance with the order and unit prices will apply: Cable delivery -0%/+2% of ordered length.

## **17. TOLERANCES AND VARIATIONS**

Except as specified by Buyer and agreed to in writing by Incab, the Goods will be produced in accordance with Incab's standard practices. All Goods, however, including those produced to meet an exact specification, will be subject to tolerances and variations consistent with good manufacturing practices in regard to dimension, weight, section, composition, mechanical and electrical properties; to normal variations in surface and internal conditions and in quality; and to deviations from tolerances and variations consistent with practical testing and inspection methods.

## 18. NOTICES

Any notice to Incab required or permitted hereunder will be deemed to have been effectively delivered if in writing and served by personal delivery to Incab or sent by registered or certified mail with return receipt requested (or such form of mail as may be substituted therefor by postal authorities), postage prepaid, to Incab at the address specified on the front page hereof and marked ATTN: Sales Support.

## 19. CONFIDENTIALITY

Buyer agrees that all information furnished by or obtained from Incab in connection with the sale of Goods hereunder will be confidential, and Buyer agrees not to (i) disclose any such information to any other person, or (ii) use such information for any purpose, other than performing this contract.

## 20. SECURITY INTEREST

Incab retains a security interest in all Goods and all proceeds and products thereof until all amounts due or to become due hereunder have been paid. Any repossession and removal of Products shall be without prejudice to any of Incab's other remedies at law or in equity. Buyer agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instruments as Incab may reasonably request in order to perfect Incab's security interest.

## 21. INTELLECTUAL PROPERTY

Incab shall own all intellectual property embodied in the Goods, and Buyer shall assist Incab, at no cost, with filing any documentation necessary to demonstrate Incab's ownership. Incab shall defend Buyer against any claim of infringement and shall pay any resulting damages finally awarded, provided that (a) Buyer promptly notifies Incab in writing of any claim, and (b) Incab has sole control of the defense and all related settlement negotiations. This obligation does not apply to claims arising out of combinations of Goods with goods provided by others, or to claims resulting from compliance of the goods with Buyer's design or specifications, or which Buyer assumes and shall hold Incab harmless for any claims thereof.

## 22. ENTIRE AGREEMENT

This instrument constitutes the entire and only agreement between the parties hereto, and any representation, affirmation of fact, course of prior dealing, promise or condition in connection therewith or usage of the trade not specifically incorporated herein shall not be binding on either party. No waiver, alteration, or modification of any of the provisions hereof shall be binding unless in writing and signed by a specifically authorized representative of Seller.

## 23. APPLICABLE LAW

The validity and construction of this contract shall be determined under the laws of the State of Texas. Shall any provision be held avoidable or unenforceable for any reason; all remaining provisions hereof remain in full force and effect.

## 24. JURISDICTION

The parties consent to the jurisdiction of the Superior Court of Tarrant County, Texas, the courts of Texas, and the United States District Court for the Northern District of Texas for all matters relating to or arising out of this contract.  
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